

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERNEST H. BERARD and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 03-1418; Submitted on the Record;
Issued August 13, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly exercised its discretion in declining to authorize a change in treating physicians.

On May 27, 1998 appellant, then a 58-year-old mailhandler, filed a notice of traumatic injury alleging that his "back wrenched" while he was carrying trays in the performance of duty. The Office accepted the claim for a lumbosacral strain. Appellant returned to limited duty following his work injury, working six hours per day with restrictions. His treating physician was Dr. Fabio F. Fiore, a Board-certified orthopedic surgeon, who provided appellant's medical care from August 17, 1998 to February 18, 1999, at which time the Office authorized a change of physicians. Appellant then came under the care of Dr. John D. Okun, a Board-certified orthopedic surgeon, who opined that appellant had a lumbar back strain and degenerative changes confirmed by a magnetic resonance imaging scan. Dr. Okun referred appellant to Dr. Erick A. Grana, a Board-certified physician in physical medicine and rehabilitation. On March 30, 2001 the Office authorized appellant's request to change his attending physician from Dr. Okun to Dr. Grana.

In a letter dated January 30, 2003, appellant requested to change his attending physician of record from Dr. Grana to Dr. Chet J. Janicki, a Board-certified orthopedic surgeon. Appellant alleged that Dr. Grana had prescribed epidural injections on January 13, 2003 and that the steroid content of the injections interfered with his anti-anxiety medication thereby causing him to suffer a panic attack on January 15, 2003. Appellant alleged that he saw Dr. Grana on January 25, 2003 at which time the doctor refused to discuss appellant's concerns regarding the injections and his mental state.

In a decision dated February 10, 2003, the Office denied appellant's request to change his treating physician, noting that there was no evidence to show that the treatment appellant

received from Dr. Grana was anything other than proper and adequate treatment for his accepted lumbosacral strain.¹

The Board finds that the Office properly exercised its discretion in declining to authorize a change in treating physicians.²

Under section 8103(a) of the Federal Employees' Compensation Act,³ an employee is permitted the initial selection of a physician. However, Congress did not restrict the Office's power to approve appropriate medical care after the initial choice of a physician. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office, therefore, has broad administrative discretion in choosing the means to achieve this goal within the limitation of allowing an employee the initial choice of a doctor. An employee who wishes to change physicians must submit a written request to the Office fully explaining the reasons for the request. The Office may approve the request in its discretion if sufficient justification is shown.⁴ The only limitation on the Office's authority is that of reasonableness.⁵ Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁶

In the instant case, appellant initially chose Dr. Fiore as his treating physician. The Office subsequently approved two subsequent requests for appellant to change his physician from Dr. Fiore to Dr. Okun, and then from Dr. Okun to Dr. Grana. Appellant has recently expressed his dissatisfaction with Dr. Grana's medical care, alleging that the physician prescribed a course of steroid epidural injections that interfered with his anti-anxiety medications and caused him to suffer an anxiety attack. Appellant, however, does not state whether Dr. Grana had knowledge of his nonwork-related emotional disorder prior to ordering the steroid injections or that the physician had any prior knowledge of his reliance on the anti-stress medication. Appellant has failed to provide medical evidence that steroid injections are inappropriate for the treatment of a lumbosacral strain to relieve pain symptoms. Appellant, therefore, has not demonstrated that the Office's decision to deny the change of physician was unreasonable. As such, appellant has failed to establish that the Office abused its discretion by

¹ The Office noted that appellant had changed doctors three times since his work injury and questioned why appellant's lumbosacral strain had not yet been resolved.

² The Board has no jurisdiction to review evidence for the first time on appeal that was not before the Office at the time it issued its final decision. Consequently, the Board has no jurisdiction to review evidence that was submitted by appellant subsequent to the Office's February 10, 2003 decision. See 20 C.F.R. § 501.2(c); *Felix Flecha*, 52 ECAB 268 (2001).

³ 5 U.S.C. § 8103(a).

⁴ See *Elizabeth Stanislav*, 49 ECAB 540 (1998); 20 C.F.R. § 10.316(b) (2002).

⁵ *Daniel J. Perea*, 42 ECAB 214 (1990); *Pearlie M. Brow* 40 ECAB 1090 (1989).

⁶ *Rosa Lee Jones*, 36 ECAB 679 (1985).

refusing to authorize a change of physicians on the basis of inadequate treatment or improper care.

The decision of the Office of Workers' Compensation Programs dated February 10, 2003 is hereby affirmed.

Dated, Washington, DC
August 13, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member