

**United States Department of Labor
Employees' Compensation Appeals Board**

CLARA K. DANNER, Appellant

and

**FEDERAL JUDICIARY, CLERK OF THE
U.S. DISTRICT COURT, Sacramento, CA,
Employer**

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Docket No. 03-1258
Issued: April 27, 2004

Appearances:

Clara K. Danner, pro se

Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On April 18, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated January 22, 2003 which denied her request to change her treating physician. Since she filed her appeal within a year of the Office's decision, the Board has jurisdiction to review this issue pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly denied appellant's request to change her treating physician.

FACTUAL HISTORY

This case is before the Board for the second time.¹ In the prior appeal, the Board affirmed the Office's June 28, 1999 decision which granted appellant schedule awards for 60 percent impairment of the right and left arms for the period June 20, 1999 to August 22, 2006.

Appellant requested a change of physician to Dr. Gregg Singer, a Board-certified physiatrist, when she moved from California to Montana and required a different doctor. In an August 28, 2002 report, the physician diagnosed chronic pain and "presumed RSD [reflective sympathetic dystrophy]" from prior workup. Dr. Singer believed that appellant also had a somatoform disorder. In an October 30, 2002 report, he opined that appellant was "most likely" capable of returning to work but psychological factors might prevent a successful return to work. Dr. Singer thought a neuropsychological evaluation would be helpful. In a report dated October 30, 2002, he stated that he told appellant "once again" that she might have a somatoform disorder and require psychological evaluation and treatment. Dr. Singer stated that he would continue appellant on work restrictions but did not know if she actually needed them and that she required no more pain medication.

In a report dated September 5, 2002, Dr. Glenn K. Guzman, a Board-certified family practitioner, performed a physical examination and diagnosed hypertension and intermittent episodes of nausea and lightheadedness. He believed that appellant's Neurontin medication might be causing her episodes of nausea and lightheadedness and that there might be a significant anxiety and pain component to some of her elevated blood pressure values.

By letter dated October 30, 2002, appellant informed the Office that she was displeased with the medical treatment she had received from Dr. Singer, alleging he called her "a liar" and stated that she was mental. She stated that he laughed at her while "pounding" her arm and pulled her arm back in such a way as to hurt her. Appellant did not feel that Dr. Singer was in her best interest and that he did not even believe the medical records of the accepted injury. She felt that the stress from seeing him was exacerbating her injury. Appellant requested that the Office find her another physician.

In a report dated October 31, 2002, Dr. Singer found that appellant's response to his touching her hands -- that she jumped in discomfort -- was inconsistent with her ability to use her hands to move papers and attach paper clips without any visible discomfort. He stated that appellant had limitations with the range of motion in her hands but there was no atrophy in the thenar or hypothenar eminences. Dr. Singer stated that he was unable to determine whether appellant had actual physical limitations, although he thought her work restrictions would be continued. He stated that she might have some somatoform disorder and require psychological evaluation and treatment.

By letter dated November 13, 2002, the Office stated that it was unable to authorize a change of physician because appellant did not provide sufficient reasoning to support her

¹ Docket No. 99-2323 (issued November 13, 2000). The Office accepted appellant's claim for carpal tunnel syndrome and reflex sympathetic dystrophy. The facts and history surrounding the prior appeal are set forth in the November 13, 2000 decision and are hereby incorporated by reference.

request. The Office requested that appellant provide an additional explanation detailing why she requested a new physician and to provide the name, address and specialty of the physician she wished to see.

By letter dated November 16, 2002, appellant stated that she provided sufficient reasoning in her October 30, 2002 letter regarding why Dr. Singer was not in her best interest. Appellant contended that Dr. Singer refused to consider any of her medical records. She stated that he called her condition psychological and misdiagnosed her when she had received a 60 percent permanent schedule award for impairment of both arms. Appellant stated that she wanted to be treated by Dr. Mary Jozwiak, a Board-certified internist, with a specialty in psychiatry.

By decision dated January 22, 2003, the Office denied appellant's request to change treating physicians. The Office considered that Dr. Guzman in his September 5, 2002 report and Dr. Singer in his October 31, 2002 report stated that appellant had a somatoform disorder, and Dr. Singer recommended that appellant obtain psychological treatment. The Office considered that Dr. Guzman stated that appellant's pain medication might be causing her symptoms. The Office stated that a change in physicians was not in appellant's best interest due to the new diagnosis.

LEGAL PRECEDENT

The payment of medical expenses incident to securing medical care is provided for under section 8103 of the Federal Employees' Compensation Act.² The pertinent part provides that an employee "may initially select a physician to provide medical services, appliances and supplies, in accordance with such regulations and instruction as the Secretary considers necessary...." Further, section 10.316(a) of the Office's federal regulations provides that an employee only has an initial request of physicians and thereafter must submit a written request to the Office containing his or her reasons for desiring a change of physician.³ Section 10.316(b) provides:

"[T]he Office will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating conditions like the work related one or the need for a new physician when an employee has moved."⁴

² 5 U.S.C. § 8103.

³ 20 C.F.R. § 10.316(a); *see Billy W. Forbes*, 45 ECAB 742, 744 (1994) (Board holds the Office should have employed a "reasonable and necessary" standard in determining whether a change of physician should be authorized when appellant did not obtain authorization prior to changing physicians); *see also Elizabeth J. Davis-Wright*, 39 ECAB 1232, 1237 (1988).

⁴ 20 C.F.R. § 10.316(b).

In interpreting section 8103(a), the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.⁵ The Office has administrative discretion in choosing the means to achieve this goal and the only limitation on the Office's authority is that of reasonableness.⁶

ANALYSIS

The instant case does not involve the initial selection of a physician. Appellant was treated for her accepted conditions and upon her move to Montana was authorized to receive treatment from Dr. Singer, a Board-certified specialist. In requesting a change of physicians appellant contended that Dr. Singer did not review any of her prior medical records, believed her condition was psychological, called her a liar, and hurt her by pulling her arm back and pounding it on examination. Appellant's allegations of how Dr. Singer treated her are not substantiated by the evidence of record. Dr. Singer noted appellant's complaints of pain and the prior diagnosis of reflex sympathetic dystrophy. He noted, however, that there was a somatoform disorder and that psychological factors could preclude a return to work. Appellant was also seen by Dr. Guzman, who noted her complaints of nausea and lightheadedness could be due to her medication and also commented on symptoms of anxiety and a pain component. The Board finds that there was no abuse of discretion by the Office in refusing to authorize a change of physicians, explaining the new diagnosis of an emotional component to appellant's symptoms which were discussed by Dr. Singer and Dr. Guzman. No evidence has been submitted by appellant to indicate that Dr. Singer was delivering inappropriate or inadequate care.⁷ Based on the evidence in the record, the Office acted reasonably in determining that a change of physicians was not necessary to treat appellant's accepted conditions.

CONCLUSION

Appellant's dislike of Dr. Singer is not sufficient reason for the Office to determine that a change of physician is warranted. The Office properly refused appellant's request to change physicians.

⁵ See *Dona M. Mahurin*, 54 ECAB ____ (Docket No. 01-1032, issued January 6, 2003); *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

⁶ *Id.*

⁷ The Office did not address Dr. Singer's recommendation of a neuropsychological evaluation.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 27, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member