

over boxes.¹ The Office accepted the claim for contusions to the elbow, shoulder and neck and later accepted a cervical strain. The Office authorized right radial nerve mobilization surgery, which was performed on January 17, 1992. Appellant stopped work on March 3, 1989 and was placed on the periodic rolls for temporary total disability by letter dated October 19, 1989.

At the time of appellant's 1989 employment injury, her treating physician was Dr. Seymour Leiner. On January 13, 1992 the Office granted appellant's request to change her treating physician to Dr. James Hunter, a Board-certified orthopedic surgeon. On April 22, 1993 Dr. Hunter referred appellant to Dr. Frank Bergman, a chiropractor.

On January 22, 1999 the Office referred appellant to Dr. Robert Aiken, a Board-certified neurologist, for a second opinion evaluation. He concluded that appellant was capable of working with restrictions in a February 20, 1999 report and work capacity evaluation form (OWCP-5c). In an April 25, 1999 supplemental report, Dr. Aiken opined that appellant continued to have residuals of her accepted employment injury based on her persistent right arm and neck pain. He also opined appellant had a "permanent cervical strain that is a consequence of her fall at work."

On December 9, 1999 the Office issued a proposed notice of termination of wage-loss compensation on the grounds that the medical evidence established that she could perform her date-of-injury job.² On January 24, 2000 the Office finalized the termination of appellant's wage-loss compensation based upon Dr. Aiken's report. The Office noted that appellant was entitled to further medical treatment expenses, but excluded payment for medical expenses for chiropractic care and physical therapy.

In a letter dated June 21, 2005, appellant, through counsel, requested that the Office authorize Dr. George L. Rodriguez as her attending physician since she did not have a treating physician. Appellant noted that the January 24, 2000 decision "determined that she could no longer treat with the chiropractor who she had seen after Dr. Hunter stopped practicing."

By letter dated July 12, 2002, the Office stated that it was unable to authorize a change of physician because appellant "has not provided any sort of documentation" which shows "her accepted condition is active and causing objective findings." The Office then informed appellant that she would have to file a claim for a recurrence of disability with supporting medical documentation. The Office stated it was appellant's burden to show that "her current symptomatology is causally related to her accepted" employment injuries."

In letters dated July 13 and 14, 2005 appellant's counsel stated that appellant was requesting authorization for a new physician and requested either a decision denying her request or authorization to change her physician.

¹ The employing establishment discharged appellant during her probationary/trial period effective January 18, 1991.

² Appellant disagreed with the proposal to terminate her benefits and submitted an October 22, 1993 decision by a Social Security Administrative Law Judge which found she was totally disabled.

By decision dated July 20, 2005, the Office denied appellant's request to change her treating physician. The Office stated that the record contained no evidence that she has "received any medical treatment since 1999." The Office noted that both appellant and her counsel were advised as to the deficiencies in her claim and to what was required to authorize the medical treatment, which included filing a claim for a recurrence and medical documentation. The Office found the evidence insufficient to establish that her accepted employment injuries were "active and causing objective findings" and she was "not authorized to seek the services" of Dr. Rodriguez.

LEGAL PRECEDENT

The payment of medical expenses incident to securing medical care is provided for under section 8103 of the Federal Employees' Compensation Act.³ This section provides in pertinent part 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.⁴ 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."⁵

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.⁶ 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.⁷

³ 5 U.S.C. § 8103; *see Sean O'Connell*, 56 ECAB ____ (Docket No. 04-1746, issued December 20, 2004).

⁴ 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 (1988).

⁵ 20 C.F.R. § 10.316(b).

⁶ *See Delphia Y. Jackson*, 55 ECAB ____ (Docket No. 04-165, issued March 10, 2004); *Dona M. Mahurin*, 54 ECAB 309 (2003); *Daniel J. Perea*, 42 ECAB 214 (1990).

⁷ *Id.*

ANALYSIS

In the instant case, the Office accepted appellant's claim for claim for contusion to the elbow, shoulder and neck and cervical strain. By decision dated January 24, 2000, the Office terminated appellant's wage-loss compensation benefits, but found she was still entitled to receive medical compensation benefits except for chiropractic treatment and physical therapy. At the time of the January 24, 2000 termination decision, appellant's treating physician was a chiropractor, Dr. Bergman, to whom appellant was referred by Dr. Hunter, a former treating physician prior to his retirement from practice. The Board finds that the Office incorrectly placed the burden on appellant to file a claim for a recurrence of disability with supporting medical documentation. The Office did not find that she no longer had any residuals due to her accepted employment injury. The Office's refusal to authorize a change in physicians because appellant failed to file a claim for a recurrence claim constitutes an abuse of discretion. While appellant may not have submitted medical evidence since 1999, this does not support that she no longer has residuals due to her accepted employment injuries. Dr. Aiken, a second opinion Board-certified neurologist, concluded in an April 25, 1999 supplemental report that appellant had residuals of her accepted employment injury based on her persistent right arm and neck pain and that she had a "permanent cervical strain that is a consequence of her fall at work." In denying appellant's request for a change in physicians and instructing her to file a recurrence claim, the Office appears to be terminating her entitlement to medical benefits without establishing that the accepted medical conditions have ceased.

CONCLUSION

The Board finds that the Office's refusal to authorize appellant's request for a change of physician constituted an abuse of discretion.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 20, 2005 is reversed.

Issued: March 7, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board