



and returned to a limited-duty position for four hours per day on October 28, 2003. She stopped work again on January 6, 2004.

Appellant was initially treated by Dr. James T. Wilson, a Board-certified orthopedic surgeon, who indicated that a magnetic resonance imaging (MRI) scan of the lumbar spine revealed mild degenerative changes at L4-5 and L5-S1 with a discreet fragment in the foramen of the L4 nerve root on the left compressing the nerve root. In an operative report dated January 24, 2003, Dr. Wilson performed a left L4-5 far-lateral discectomy and diagnosed far-lateral disc herniation on the left at L4-5. In reports dated February 20 to July 21, 2003, he advised that appellant was treated for an infection to the wound site which had resolved and she was progressing well postoperatively.

Appellant was also treated by Dr. John Pier, a Board-certified orthopedic surgeon, to whom appellant was referred by Dr. Wilson. In a report dated September 3, 2003, he reviewed appellant's history of injury and advised that appellant experienced persistent back pain. Dr. Pier diagnosed post-discectomy pain with components of epidural fibrosis. He discussed treatment options and recommended conservative care including medical management, physical therapy and spinal injections. He opined that she could return to work in a sedentary position for four hours per day. In reports dated October 13, 2003 to January 12, 2004, Dr. Pier noted that appellant received only slight benefit from oral analgesics and was experiencing new minor areas of pain. He diagnosed continued pain status post discectomy, left calf atrophy, pes anserinus bursitis on the left and probable plantar fasciitis and that appellant was totally disabled. On January 12, 2004 Dr. Pier noted that appellant was experiencing constant unremitting pain in her back and was unsuccessful in her attempt to return to work. He advised that she should not return to work at the employing establishment. Dr. Pier referred appellant for a left transforaminal L4-5 epidural steroid injection which was performed on January 27, 2004. An MRI of the lumbar spine dated December 29, 2003 revealed degenerative postoperative changes and noted that the overall findings had improved slightly both at L4-5 and L5-S1.<sup>1</sup>

Appellant submitted reports from Dr. Pier, dated December 4, 2003 to March 15, 2005, for treatment of continued back pain and radicular symptoms status post surgery. He indicated that a follow-up MRI scan of the lumbar spine revealed no lesions and that he performed several transforaminal L4-5 epidural steroid injections for pain relief. In a report dated May 25, 2004, Dr. Pier opined that appellant's treatment course would be focused on managing her pain as various conservative modalities had proven unsuccessful. He referred appellant for consultation for osteopathic manipulative therapy upon her request and she responded positively to this treatment.

In a letter dated February 1, 2006, appellant requested to change physicians to Dr. Judith Ziegler, an osteopath Board-certified in family medicine.

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<sup>1</sup> On August 21, 2004 appellant filed a claim for a schedule award. In a decision dated April 12, 2005, the Office granted appellant a schedule award for 23 percent permanent impairment of the left lower extremity. The period of the award was from March 20, 2005 to June 23, 2006.

In a letter dated February 1, 2006, the Office denied authorization to change physicians. The Office noted that appellant was under the care of a qualified specialist and that her treatment had been appropriate. The Office advised appellant that she could arrange, at her own expense, an examination with another specialist. The Office indicated that when a report was received from the other physician, her request for a change in physicians would be further considered.

In a letter received on February 13, 2006, appellant requested that the Office reconsider her request for a change in physician. She stated that her husband filed an official complaint against Dr. Pier with the State of Maine which was currently pending and contended that Dr. Pier's diagnosis, decision of work capabilities and treatment were inadequate. Appellant indicated that any future contact with Dr. Pier would be uncomfortable and there would be no cooperation from Dr. Pier because of the complaint. She requested that her physician be changed to Dr. Michael J. Totta, Board-certified in physical medicine and rehabilitation.

In a decision dated February 14, 2006, the Office denied appellant's request to change her treating physician, finding that she was under the care of a qualified specialist and that her treatment had been appropriate.

### **LEGAL PRECEDENT**

Under section 8103(a) of the Federal Employees' Compensation Act,<sup>2</sup> 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 her 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.<sup>3</sup> The only limitation on the Office's authority is that of reasonableness.<sup>4</sup> 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.<sup>5</sup> It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>6</sup>

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<sup>2</sup> 5 U.S.C. § 8103(a).

<sup>3</sup> See *Elizabeth Stanislav*, 49 ECAB 540 (1998); 20 C.F.R. § 10.316(b) (2006).

<sup>4</sup> *Daniel J. Perea*, 42 ECAB 214 (1990); *Pearlie M. Brown*, 40 ECAB 1090 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> *Rosa Lee Jones*, 36 ECAB 679 (1985).

### ANALYSIS

Appellant initially began treatment with Dr. Wilson, a Board-certified orthopedic surgeon, who performed surgery on January 24, 2003. Dr. Wilson referred appellant to Dr. Pier who has acted as her treating physician since 2003. In February 2006, appellant expressed dissatisfaction with Dr. Pier's medical care, stating that her husband had filed a complaint with the State of Maine which was pending. She also expressed disagreement with his diagnosis, decision of work capabilities and alleged inadequate treatment. She advised that any future contact with Dr. Pier would be uncomfortable. The Board finds that the Office did not abuse its discretion in this case.

Appellant generally alleged that Dr. Pier's diagnosis and findings of her work capabilities were improper and that he provided inadequate treatment. However, she has failed to provide any medical evidence to support her contentions. Appellant's general assertions that Dr. Pier's treatment has been inadequate is not evidenced by the medical record. She asserted that because her husband filed a complaint against Dr. Pier, the physician would be unlikely to cooperate with her. However, there is no evidence in the record that Dr. Pier failed to cooperate with appellant or refused to treat her. The Board finds that the Office adequately explained its reasons for not approving the change in treatment. It advised appellant that she was under the care of a qualified specialist and her treatment had been appropriate. The Office advised that appellant could arrange, at her own expense, an examination with another specialist and, when a report was received, her request for a change in physicians would be further considered. Appellant has failed to provide medical evidence that Dr. Pier's diagnosis or treatment was inadequate. Therefore, she has not demonstrated that the Office abused its discretion in denying her request. Appellant has failed to establish that the Office abused its discretion by refusing to authorize a change of physicians on the basis of inadequate treatment or improper care. Based on the evidence of record, the Office acted reasonably in determining that a change of physicians was not necessary to treat appellant's accepted condition.

### CONCLUSION

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated February 14, 2006 is hereby affirmed.

Issued: September 12, 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