

OWCP accepted the claim for bilateral carpal tunnel syndrome. It subsequently expanded acceptance to include right causalgia.

On November 21, 2007 Dr. Hongshik Han, a Board-certified plastic surgeon, performed a right carpal tunnel release. Appellant stopped work on November 21, 2007. In a report dated January 2, 2008, Dr. Frank L. Cantrell, a Board-certified neurologist, recommended physical therapy and medication to treat his right hand to prevent further development of complex regional pain syndrome.

On May 1, 2008 Dr. Han referred appellant to Dr. Robert G. Salazar, a Board-certified anesthesiologist, for pain management. In a report dated July 11, 2008, Dr. Salazar diagnosed reflex sympathetic dystrophy and carpal tunnel syndrome. He recommended an intrathecal opioid trial.

On August 1, 2008 OWCP referred appellant to Dr. Alice M. Martinson, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated August 27, 2008, Dr. Martinson diagnosed causalgia of the right hand due to a median nerve injury. She recommended a clonidine patch and stellate ganglion block and noted that an intrathecal opioid block was a “last resort-type treatment.” Dr. Martinson stated:

“In light of the severity of his symptoms, the delay in institution of appropriate treatment and [appellant’s] lack of confidence in the physicians who have managed him so far, I would strongly urge that he be referred for evaluation to a neurologist or pain management specialist at an academic center who has special expertise in the management of these kinds of clinical problems.”

By letter dated September 11, 2008, OWCP requested that Dr. Han review Dr. Martinson’s report and, if he concurred with the findings, request authorization for the recommended treatment.

On September 17, 2008 appellant notified OWCP by telephone that Dr. Han did not want to see him.

In a report dated September 22, 2008, Dr. Salazar reviewed Dr. Martinson’s opinion. He again recommended an intrathecal opioid trial.

On January 30, 2009 OWCP advised that it would approve Dr. Salazar’s treatment plan. Appellant requested a copy of the medical reports to pursue more treatment options.

In a report dated February 20, 2009, Dr. Randi A. Galli, a Board-certified plastic surgeon, diagnosed probable moderately severe-to-severe right carpal tunnel syndrome with complex regional pain syndrome developing after a November 21, 2007 carpal tunnel release and moderate, chronic left carpal tunnel syndrome. For future medical care, he recommended a rerelease of the right carpal tunnel and a release of the left carpal tunnel.

On June 22, 2009 appellant returned to full-time modified employment.

In a report dated July 24, 2009, Dr. Galli noted that appellant had sent a long letter questioning the contents of his prior report finding that he could work with limitations. He opined that he showed symptom magnification and asserted that he no longer wanted to perform his surgery or act as his treating physician.

In a report dated November 17, 2010, Dr. Michael E. Hebrard, a Board-certified physiatrist, practicing in Oakland, CA, performed an impairment evaluation.² He diagnosed bilateral carpal tunnel syndrome and causalgia. Dr. Hebrard recommended a possible neurostimulator pain pump and “access to a sympathetic block or chain to help with his pain.”

On August 1, 2011 appellant requested that OWCP authorize Dr. Hebrard as his attending physician, who stated that he was “unable to find any other physician that is willing to take on a patient with [c]ausalgia.”

On August 3, 2011 OWCP advised appellant that it had updated its acceptance to include bilateral carpal tunnel syndrome and causalgia of the right upper limb.

Appellant continued to obtain treatment from Dr. Hebrard. On November 1, 2011 Dr. Mathias Masem, a Board-certified orthopedic surgeon, located in Oakland, CA, evaluated him at Dr. Hebrard’s request. He diagnosed complex regional pain syndrome, Type 2 and bilateral carpal tunnel syndrome, symptomatic on the right. Dr. Masem recommended a stellate nerve block and further surgery if symptoms continued.

By letter dated November 11, 2011, appellant requested that OWCP authorize Dr. Hebrard as his attending physician. He noted that Dr. Cantrell, Dr. Han and Dr. Salazar refused to act as his attending physician. Appellant telephoned physicians in his area but no one would agree to treat him. He stated, “Either they would not take a patient that already had surgery, they no longer worked with DOL, they would not take patients with RSD (causalgia) or my claim was too old.” Appellant related that OWCP previously refused his request to have Dr. Martinson act as his attending physician. It told him that he could obtain a specialist opinion for consultation as recommended by Dr. Martinson but not for treatment, which seemed “pointless.” After Dr. Galli dismissed him from care he called all physicians on OWCP’s website and repeatedly asked OWCP for assistance in finding a physician. Appellant asserted that Dr. Hebrard was “the closest physician that I could find that would be [my] primary treating physician that would take an OWCP patient that has had prior surgery and has RSD.” He related that it was an 11- to 12-hour roundtrip to see Dr. Hebrard because he and his wife had to stop frequently. Appellant requested reimbursement for mileage and hotel expenses.

In a telephone call dated January 24, 2012, OWCP informed appellant that he needed to document which physicians he called and why they refused to treat him. On February 1, 2012 appellant provided a list of physicians that declined to act as his physician. He stated:

“As I had said in our call, it has been 2 and 3 years since I contacted these physicians so I may not be 100 percent accurate but these are the names that

² By decision dated July 19, 2011, OWCP granted appellant a schedule award for a 25 percent permanent impairment of the right upper extremity.

looked very familiar. I cannot remember what office had made what statement as to why they would not take me on, with the exception of Dr. Cantrell's office who had stated that they no longer took DOL cases. I do believe that the other neurologist(s) in Visalia, Fresno and Bakersfield all stated that I needed to be referred to them by the primary care physician as they would not be the primary."

Appellant related that he would accept lower mileage reimbursement or no reimbursement in order to have Dr. Hebrard as his attending physician.

By decision dated March 21, 2012, OWCP denied appellant's request to change physicians to Dr. Hebrard. It noted that the physician was outside his commuting area and that it was not medically reasonable to obtain treatment 215 to 225 miles away from his location. OWCP also indicated that a search showed eight neurologists not on his list that were within his commuting area. It advised him to look for another physician within a 50-mile radius.

On April 2, 2012 appellant, through his attorney, requested a telephone hearing before an OWCP hearing representative. In a letter dated May 11, 2012, his attorney asked that OWCP provide a list of physicians within 100 miles in the pertinent area of expertise who would accept OWCP patients.

At the telephone hearing, held on July 16, 2012, appellant's attorney asserted that it was difficult for injured workers to find attending physicians within their geographical area who would treat OWCP patients. He asked that OWCP provide him with a physician as he was unable to locate one. Appellant related that he lived 45 to 50 minutes south of Fresno. He asserted that he had telephoned "pretty much most all neurologists, hand specialists, and orthopedic surgeons in the Fresno and Visalia area." Appellant estimated that he had called around 20 doctors. He could not find anyone closer than Dr. Hebrard with the expertise to treat causalgia. Appellant maintained that he would not request reimbursement for travel if he could get approved care. His attorney argued that his request to seek treatment in Oakland from Fresno was reasonable and noted that he lived in a rural area.

By decision dated September 12, 2012, OWCP's hearing representative affirmed the March 21, 2012 decision. He found that appellant had not shown there were no specialists within his geographical area that would treat him. The hearing representative noted that Fresno had a population of over 500,000 people and that carpal tunnel syndrome and causalgia could be treated by several specialties. He thus concluded that OWCP acted reasonably in denying his request to change physicians.

LEGAL PRECEDENT

The payment of medical expenses incident to securing medical care is provided for under section 8103 of FECA. 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.³

³ 5 U.S.C. § 8103(a).

When the physician originally selected to provide treatment for a work-related injury refers the employee to a specialist for further medical care, the employee need not consult OWCP for approval. In all other instances, however, the employee must submit a written request to OWCP with his reasons for desiring a change of physician. OWCP 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

Any transfer of medical care should be accomplished with due regard for professional ethics and courtesy. No transfer or termination of treatment should be made unless it is in the best interest of the claimant and the government. Employees who want to change attending physicians must explain their reasons in writing and OWCP must review all such requests. OWCP may approve a change when: the original treating physician refers the claimant to another physician for further treatment; the claimant wants to change from the care of a general practitioner to that of a specialist in the appropriate field or from the care of one specialist to another in the appropriate field; or the claimant moves more than 50 miles from the original physician (since OWCP has determined that a reasonable distance of travel is up to a roundtrip distance of 100 miles). It must use discretion in cases where other reasons are presented.⁵

The Board has recognized that OWCP, acting as the delegated representative of the Secretary of Labor, has broad discretion in approving services provided under FECA. OWCP has the general objective of ensuring that an employee recovers from her injury to the fullest extent possible in the shortest amount of time. It, therefore, has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness. 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 show merely that the evidence could be construed to produce a contrary conclusion.⁶

ANALYSIS

Following his work injury, appellant received treatment from Dr. Cantrell, Dr. Han and Dr. Salazar. OWCP referred him to Dr. Martinson for a second opinion examination, who recommended that he receive treatment from a pain management specialist at an academic center. Appellant indicated that OWCP would authorize a consultation by a specialist per Dr. Martinson's recommendation but not treatment, which he found not helpful. He obtained treatment in 2009 from Dr. Galli, who recommended further surgery. On July 24, 2009 Dr. Galli advised that he would no longer act as appellant's attending physician.

⁴ 20 C.F.R. § 10.316; *see also P.M.*, Docket No. 12-1212 (issued January 24, 2013).

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.5c (February 2012).

⁶ *See R.G.*, Docket No. 12-811 (issued June 15, 2012); *Daniel J. Perea*, 42 ECAB 221 (1990).

On August 1, 2011 appellant submitted a written request to change his attending physician to Dr. Hebrard. In a statement dated November 11, 2011, he asserted that he had called the physicians in his area and they refused to treat him as he was an OWCP patient who had previously had surgery. On February 1, 2012 appellant listed the physicians that he had telephoned two or three years earlier. He indicated that he could not remember all the reasons for refusal but that most required a referral from another treating physician. At the hearing, appellant related that he had called almost all neurologists and orthopedic surgeons in his geographical area.

The Board finds that OWCP did not abuse its discretion by denying appellant's request to change attending physicians to Dr. Hebrard whose office is located 215 to 225 miles away from appellant's home. Therefore, a roundtrip would be 430 to 450 miles, which far exceeds the 100-mile roundtrip radius that OWCP has found to be reasonable.⁷ The Board finds this is an unnecessary distance to travel, especially as OWCP located physicians not on appellant's list within his geographical area. Further, he resides within 50 miles of Fresno, a large metropolitan area. Such a long distance to travel for care does not appear necessary and reasonable or in the best interest of appellant. In a similar case, the Board found that OWCP acted within its discretion in denying a claimant's request to see a physician in San Francisco, CA, which was 102 miles away from his home near Sacramento, CA.⁸

OWCP noted that there was an extension list of physicians, qualified to treat appellant's condition and within a reasonable distance from his home. Thus, while appellant offered some reasons for requesting to see Dr. Hebrard, OWCP provided sufficient reason for denying his request.

The Board thus finds that OWCP properly exercised its discretion in denying authorization for a change of physician to Dr. Hebrard. There is no proof of manifest error, clearly unreasonable judgment or illogical action. Appellant failed to submit any evidence or explanation to demonstrate that OWCP's decision to deny the change in physicians was unreasonable. The Board finds that OWCP did not abuse its discretion by refusing to authorize Dr. Hebrard as appellant's attending physician.

CONCLUSION

The Board finds that OWCP properly denied appellant's request to change treating physicians.

⁷ See *supra* note 5.

⁸ See *D.L.*, Docket No. 10-318 (issued September 8, 2010).

ORDER

IT IS HEREBY ORDERED THAT the September 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 28, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board