

condition on May 16, 2006 and that she first realized it was related to her employment in January 2008. OWCP accepted appellant's claim for aggravation of degenerative disc disease at C4-5 and C5-6. On September 29, 2008 appellant underwent OWCP-authorized anterior cervical discectomy and fusion at C4-5 and C5-6.

In an undated letter received on May 1, 2012, appellant requested to change her treating physician to Dr. Eustaquio Abay, a Board-certified neurosurgeon.² OWCP authorized this change in a letter dated May 7, 2012.

On July 25, 2012 Dr. Abay performed OWCP-authorized anterior cervical discectomy and fusion at C3-4. He released appellant to work on February 8, 2013 with specified restrictions. On February 18, 2013 Dr. Abay completed an order to refer her to Dr. Xavier Ng, a Board-certified physical medicine and rehabilitation physician in Wichita, KS, for epidural steroid injections and pain management as needed. In a letter dated March 4, 2013, OWCP authorized the change of treating physician to Dr. Ng.

In a March 11, 2013 letter, appellant questioned the change of physician letter, indicating that Dr. Abay had not released her from his care. By letter dated March 22, 2013, OWCP informed her that the letter effectuating the change of physician was sent based on Dr. Abay's referral form and on information given to the assigned field nurse by Dr. Abay's office that he was transferring care to Dr. Ng.

In an April 1, 2013 letter, appellant's counsel asserted that at no point did Dr. Abay and appellant agree that she would be released to Dr. Ng's care. It was noted that, at appellant's request, Dr. Abay referred her to Dr. Edward Wolski, a Board-certified family practitioner and pain management physician. A March 4, 2013 referral order from Dr. Abay referring appellant to Dr. Wolski in Denton, TX, for "Rehabilitation Referral" and a functional capacity evaluation was submitted. A March 21, 2013 report of Dr. Wolski's initial evaluation was also submitted.

Counsel communicated by telephone with OWCP and indicated that appellant wanted to see Dr. Wolski in Denton, TX, because she was not comfortable with the physicians in her area. OWCP advised counsel during these communications that a physician outside of her area would not be authorized. Counsel requested that OWCP issue a formal letter regarding appellant's request to change her treating physician.

In a May 15, 2013 letter, counsel, on behalf of appellant, made a formal request for a change of physician to Dr. Wolski. In a May 14, 2013 statement, Dr. Abay indicated that appellant was no longer under his care and that she had been referred to Dr. Wolski.

By letter dated June 10, 2013, counsel requested clarification of a June 7, 2013 conversation during which OWCP indicated that appellant's change of treating physician request would not be authorized as the requested physician was located more than 50 miles from her residence. It was noted that appellant did not have a formal decision with appeal rights on this matter.

² Appellant's treating physician at the time of the request was Dr. Nazih Moufarrij, a Board-certified neurosurgeon.

In a July 17, 2013 decision, OWCP formally denied appellant's change of physician request to Dr. Wolski noting that he was not located within a reasonable distance from her home and that Dr. Ng was an appropriate specialist to treat her work-related medical condition. It indicated that Dr. Ng's office was located less than 40 miles from her residence while Dr. Wolski's office was "approximately 334-363 miles from your residence."

Counsel, on behalf of appellant, requested a review of the written record by an OWCP hearing representative. She contended that OWCP had improperly denied her request to change her treating physician to Dr. Wolski.

In a January 13, 2014 decision, the hearing representative affirmed OWCP's July 17, 2013 decision noting that OWCP did not abuse its discretion in denying appellant's request for a change in her treating physician. She indicated that appellant's own personal preference to treat with Dr. Wolski was not sufficient reason to support a request to transfer care to a physician in another state. Dr. Abay provided no medical explanation to support this referral or to show why Dr. Wolski was specifically selected as the physician to provide follow-up treatment. The hearing representative stated that Dr. Abay did not address whether or not there were other physicians in the local area who could provide the same type of treatment or explain why Dr. Ng was unable to provide appropriate treatment for the work-related conditions. She noted that even if appellant did not wish to treat with Dr. Ng, no evidence had been presented to establish that she was unable to obtain appropriate medical care with another physician with a similar specialty within a 50-mile radius (or 100 miles roundtrip) from her residence or workplace. The hearing representative noted that appellant did not live or work in a location which would be considered geographically remote. Dr. Wolski was a family practice and pain management physician and these were not rare specialties. The hearing representative noted that appellant's accepted conditions were not so unusual that they would require an unusual specialty or treatment that only Dr. Wolski could provide.

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

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

³ 5 U.S.C. § 8103(a).

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

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

OWCP accepted appellant's claim for aggravation of degenerative disc disease at C4-5 and C5-6. On March 4, 2013 Dr. Abay, an attending Board-certified neurosurgeon, referred her to Dr. Ng, a Board-certified physical medicine and rehabilitation physician. OWCP approved this request by issuing an authorization to change treating physicians to Dr. Ng. Appellant and her counsel contended that a change of physician approval should not have been issued as Dr. Abay had not released appellant from his care. Counsel then submitted a formal request for a change of physician to Dr. Wolski, a Board-certified family practice and pain management physician located in Denton, TX, a location more than 330 miles away from appellant's home in Goddard, KS. A statement was submitted in which Dr. Abay indicated that appellant had been released from his care and referred to Dr. Wolski.

The Board finds that OWCP did not abuse its discretion by denying appellant's request to change attending physicians to Dr. Wolski, whose office is located more than 330 miles away from her home. The distance roundtrip to and from Dr. Wolski's office was more than 660 miles, which far exceeds the 100-mile roundtrip radius that OWCP generally has found to be reasonable.⁷ The Board finds that this is an unnecessary distance to travel in the absence of a compelling reason to justify travel to a physician located at a greater distance.

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).

⁷ See *supra* note 6.

The Board notes that OWCP provided multiple reasons for its denial of appellant's request. OWCP indicated that appellant's own personal preference to treat with Dr. Wolski was not sufficient reason to support a request to transfer care to a physician in another state. Dr. Abay provided no medical explanation to support this referral or to show why Dr. Wolski was specifically selected as the physician to provide follow-up treatment. OWCP indicated that Dr. Abay did not address whether or not there were other physicians in the local area who could provide the same type of treatment or explain why Dr. Ng was unable to provide appropriate treatment for the work-related conditions. No evidence had been presented to establish that appellant was unable to obtain appropriate medical care with another physician with a similar specialty within a 50-mile radius (or 100 miles roundtrip) from her residence or workplace. OWCP indicated that her accepted conditions are not so unusual that they would require an unusual specialty or treatment that only Dr. Wolski could provide.

Further, it is noted that appellant resides less than 20 miles from the center of Wichita, KS, a considerable metropolitan area. Such a long distance to travel to Dr. Wolski 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 who was located more than 300 miles from his home in Houston, TX.⁸

On appeal, appellant's counsel contends that Dr. Abay referred appellant to Dr. Wolski for treatment and noted that his clinic was capable of providing all treatments suggested by Dr. Abay. While appellant offered reasons for requesting to see Dr. Wolski, OWCP provided sufficient reason for denying his request. It has broad discretion in approving services provided under FECA and the only limitation on OWCP's authority is that of reasonableness. In this case, there is no evidence of manifest error, clearly unreasonable judgment or illogical action on the part of OWCP. Appellant's arguments on appeal do not demonstrate that OWCP's decision to deny the change in physicians was an abuse of discretion.⁹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying appellant's request to change physicians.

⁸ See *J.W.*, Docket No. 13-1852 (issued January 23, 2014). The Board notes that this case coincidentally also involves a request to change to Dr. Wolski as a treating physician.

⁹ See *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the January 13, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 8, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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