



## **FACTUAL HISTORY**

On March 21, 2012 appellant, then a 60-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she tripped and fell on an uneven sidewalk and landed on her left wrist while in the performance of duty. OWCP accepted the claim for closed fracture, lower end of radius left. It subsequently expanded the acceptance of the claim to include: face, scalp, and neck contusions; right knee contusion; complete left rotator cuff rupture; sprain of left shoulder and upper arm; superior glenoid labrum lesion; derangement of right meniscus; chronic maxillary sinusitis; and chronic ethmoidal sinusitis. Appellant stopped work on March 22, 2012 and has not returned. OWCP paid compensation benefits on the supplemental rolls as of May 6, 2012, and on the periodic rolls as of September 23, 2012. Appellant underwent several OWCP approved surgeries, including multiple sinus procedures.

On February 27, 2014 appellant elected FECA benefits in lieu of any benefits to which she may be entitled to under either the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS).

In an April 24, 2015 letter, appellant alleged that her treating physician, Dr. Sarah A. Whelan, a Board-certified family practitioner, was noncommittal on all issues related to her work injury. She indicated that she had originally changed physicians from Dr. Jamil Hussain, a family practitioner, when her insurance stopped covering the Rockford Health Systems and treatment from Dr. Hussain. However, appellant's insurance coverage changed and again covered the Rockford Health Systems and Dr. Hussain. Dr. Hussain's office indicated that he would resume treating appellant.

In a November 2, 2015 letter, appellant formally requested that her primary physician be changed from Dr. Whelan to Dr. Hussain. She indicated that Dr. Hussain was her prior physician, he had better office hours than Dr. Whelan, and he was willing to support her on her workers' compensation issues from her March 21, 2012 work injury.

By November 9, 2015 letter decision, OWCP denied appellant's request to change her treating physician, noting that she had not provided a compelling reason to do so. It noted that both her current treating physician and the physician she wished to transfer to were both family practitioners. OWCP also noted that her reasons to change physicians were because of better office hours and willingness to support her on her claim. It found no evidence that appellant was receiving improper or inadequate medical care and explained that her attending physician was authorized to refer her to another appropriate specialist for an evaluation.

On December 4, 2015 OWCP received appellant's request, through her then counsel, for a telephonic hearing before an OWCP hearing representative, which was held on August 17, 2016. Counsel stated that appellant had seen various physicians for her multiple conditions. Counsel asserted that Dr. Whelan was unwilling to comply with OWCP's rules and requirements, and wanted to submit everything through private health insurance first, which placed an unnecessary burden on appellant by leaving her to resolve any problems including report submission and other issues. As a result of Dr. Whelan's lack of cooperation, counsel argued that there were delays in treatment and potentially delayed compensation. Counsel further explained that Dr. Whelan had been very uncooperative with providing information. Appellant indicated that she treated with

Dr. Whelan for approximately one year for her work-related conditions. She further testified that she has been treating with Dr. Hussain since late 2015.

By decision dated November 1, 2016, OWCP's hearing representative affirmed OWCP's November 9, 2015 decision denying appellant's request to change her treating physician. The hearing representative found no evidence of record reflecting a problematic doctor-patient relationship. There was no evidence that Dr. Whelan's medical care was inappropriate, improper, or that there have been problems with referrals for treatment or unanswered requests from OWCP. Thus, contrary to the argument presented at the hearing, there was no evidence of issues with Dr. Whelan's medical management as the authorized physician. There was also no evidence that Dr. Whelan had released appellant from her care.

### **LEGAL PRECEDENT**

The payment of medical expenses incidental to securing medical care is authorized 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.<sup>3</sup>

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 or her 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.<sup>4</sup>

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. An employee who wants to change attending physicians must explain his or her 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.<sup>5</sup>

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 his or her injury to the fullest extent possible in the shortest amount of time. It, therefore, has broad administrative discretion in

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<sup>3</sup> 5 U.S.C. § 8103.

<sup>4</sup> 20 C.F.R. § 10.316.

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

choosing the 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.<sup>6</sup>

### ANALYSIS

The Board finds that OWCP appropriately exercised its discretion in denying appellant's request to change her treating physician.

In a letter dated April 24, 2015, appellant alleged that Dr. Whelan was noncommittal on all issues related to her work injury. On November 2, 2015 she submitted a written request to change her primary physician from Dr. Whelan to Dr. Hussain. Appellant indicated that Dr. Hussain had previously been her family physician, he had better office hours than Dr. Whelan, and he was willing to support her on her workers' compensation issues arising from her March 21, 2012 work injury. During the August 17, 2016 OWCP telephonic hearing, appellant's then counsel noted that appellant began treating with Dr. Whelan as a family physician after her treating doctor retired. She asserted that Dr. Whelan was unwilling to comply with OWCP's rules and requirements and he explained that Dr. Whelan wanted to submit all bills through appellant's private insurance carrier and have them figure out if the bill should go to OWCP. Counsel alleged that this placed unnecessary burden on appellant regarding bill processing. She also asserted that Dr. Whelan was uncooperative in providing information, which resulted in delays in obtaining reports and potentially delayed compensation. However, no evidence was submitted to support counsel's arguments that Dr. Whelan was uncooperative. OWCP denied appellant's request as there was no evidence to indicate that the medical care appellant received from Dr. Whelan was anything other than proper and adequate. It concluded that appellant's reasons for requesting a change of treating physician were insufficient.

The Board finds that OWCP properly exercised its discretion to deny appellant's request to change treating physicians. The Board found that she had not provided sufficient reasons for changing her physician and properly pointed out that both Dr. Whelan and Dr. Hussain were family practitioners. Furthermore, there was no evidence that Dr. Whelan's medical care was inappropriate, improper or that there had been problems with referrals for treatment or unanswered requests from OWCP. While appellant offered reasons for changing physicians to Dr. Hussain, OWCP provided sufficient reason for denying her request. The Board notes that absent any evidence of issues with Dr. Whelan's medical management, a change in physicians is not necessary as they are both family practitioners.

As noted above, OWCP has broad administrative discretion in choosing the means to achieve the goal of providing treatment to a claimant. The only limitation on its authority is that of reasonableness and 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>7</sup> The Board finds that, under these standards, appellant

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<sup>6</sup> *J.W.*, Docket No. 13-1852 (issued January 23, 2014); *Rosa Lee Jones*, 36 ECAB 679 (1985).

<sup>7</sup> *Id.*

has not established that OWCP abused its discretion in denying her request to change her treating physician.<sup>8</sup>

On appeal appellant's current counsel argues that the change in physician should be easily granted as appellant had a problem with her doctor. However, as discussed above, no evidence of any problems was presented. Appellant has not demonstrated that OWCP's decision to deny the change in physicians was an abuse of discretion.

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 properly exercised its discretion in denying appellant's request to change her treating physician.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 1, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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<sup>8</sup> See *K.T.*, Docket No. 15-1202 (issued August 19, 2015).