

**United States Department of Labor
Employees' Compensation Appeals Board**

S.M., Appellant)	
)	
and)	Docket No. 20-1059
)	Issued: December 23, 2020
DEPARTMENT OF VETERANS AFFAIRS,)	
BALTIMORE VETERANS AFFAIRS)	
MEDICAL CENTER, Baltimore, MD, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 22, 2020 appellant, through counsel, filed a timely appeal from a March 18, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the March 18, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP abused its discretion in denying appellant's request to change her treating physician.

FACTUAL HISTORY

On March 20, 2014 appellant, then a 50-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on March 14, 2014 she suffered a hand sprain and bilateral knee contusions after tripping over floor mats when delivering linen to a resident while in the performance of duty. She initially stopped work on March 15, 2014. On July 8, 2015 OWCP accepted appellant's claim for bilateral knee contusions and bilateral hand sprains.

OWCP paid appellant wage-loss compensation on the supplemental rolls from March 10 through September 15, 2018, and on the periodic rolls, commencing September 16, 2018.

In a letter dated August 12, 2019, appellant requested approval to change her attending physician from Dr. Hassan Nasser, a Board-certified specialist in internal medicine, to Dr. Robert Macht, a specialist in general surgery. She asserted that Dr. Macht was more experienced in working with injury cases and noted that he had previously examined her for her knee and hand conditions.

By decision dated September 11, 2019, OWCP denied appellant's request to change her treating physician as there was no evidence to indicate that she was receiving improper or inadequate medical treatment. It informed her that her attending physician, however, was authorized to refer her to another appropriate specialist for an evaluation.

On October 10, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Thereafter, appellant submitted notes, dated August 27 and November 19, 2019, from Dr. Seyed Hootan Forghani, a Board-certified specialist in rheumatology, who confirmed that he treated her.

A telephonic hearing was held before an OWCP hearing representative on January 3, 2020. During the hearing, appellant testified that she was not receiving adequate treatment from Dr. Nasser. She noted that she felt that Dr. Macht was more experienced and qualified in treating her knee and hand conditions. Appellant indicated that Dr. Macht performed the impairment evaluations and ratings that provided the basis of her schedule award.⁴ She stated that she still experienced knee pain and flare-ups of her arthritic condition. Appellant noted that she was not receiving regular treatment for her knees or hands. Counsel indicated that, while Dr. Macht regularly performed impairment evaluations, she was unaware if he worked as a treating physician. She noted that she would consult with Dr. Macht to see if he would accept appellant as a patient.

⁴ On November 2, 2018 OWCP granted appellant a schedule award for 1 percent permanent impairment of the right upper extremity, 1 percent permanent impairment of the left upper extremity, 11 percent permanent impairment of the right lower extremity, and 11 percent permanent impairment of the left lower extremity. The period of the award ran for 69.6 weeks from March 10, 2018 through July 10, 2019.

OWCP subsequently received an x-ray of appellant's cervical spine, dated February 15, 2019, which revealed no acute fractures or dislocations. A magnetic resonance imaging (MRI) scan of her cervical spine of even date revealed mild spondylosis at C4-5 and C5-6 and stenosis of the left neural foramen at C5-6.

On a July 10, 2019 referral form Dr. Nasser referred appellant to Dr. Forghani for a consult related to fibromyalgia.

On a July 23, 2019 form Dr. Forghani ordered x-rays for appellant's feet and hands and listed assessments of pain in the bilateral ankles and bilateral hands.

By decision dated March 18, 2020, OWCP's hearing representative affirmed the September 11, 2019 decision.

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.⁵

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.⁶ 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.⁷ OWCP will approve the request if it determines that the reasons submitted are sufficient.⁸ 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.⁹

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

⁵ 5 U.S.C. § 8103.

⁶ 20 C.F.R. § 10.316(a).

⁷ *Id.*

⁸ *Id.* at § 10.316(b).

⁹ *Id.*, see also *P.M.*, Docket No. 16-1139 (issued April 20, 2018).

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.¹⁰

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 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.¹¹

ANALYSIS

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

In a letter dated August 12, 2019, appellant requested approval to change her attending physician from Dr. Nasser to Dr. Macht, because Dr. Macht was more experienced in working with injury cases. During a January 3, 2020 telephonic hearing, she testified that she was not receiving adequate treatment from Dr. Nasser. Appellant indicated that she felt Dr. Macht was more experienced and qualified in treating her knee and hand conditions than Dr. Nasser.

The Board finds that OWCP did not abuse its discretion in denying appellant's request to change treating physicians. In its March 18, 2020 decision, OWCP found that she had been receiving ongoing and appropriate medical treatment from Dr. Nasser. It further found that there was no evidence that Dr. Macht would provide superior medical care or that he would even be willing to take over appellant's medical care. The Board finds that, absent any evidence of issues with Dr. Nasser's medical management, a change in physicians is not necessary. Dr. Nasser has properly referred appellant to Dr. Forghani, an appropriate specialist, for evaluation and pain management treatment.¹²

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.¹³ The Board finds that, under these standards, OWCP has not abused its discretion in denying appellant's request to change her treating physician.

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Authorizing Examination and Treatment*, Chapter 3.300.6c(1) (February 2012).

¹¹ *M.D.*, Docket No. 17-0377 (issued April 12, 2018); *A.H.*, Docket No. 16-1835 (issued May 4, 2017); *R.G.*, Docket No. 12-811 (issued June 15, 2012); *Daniel J. Perea*, 42 ECAB 221 (1990).

¹² *See A.H., id.*

¹³ *See M.D., supra* note 11.

On appeal counsel argues that choice of physician is “fundamental to FECA.” However, as explained above, 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 did not abuse its discretion in denying appellant’s request to change her treating physician.

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2020 decision of the Office of Workers’ Compensation Programs is affirmed.

Issued: December 23, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees’ Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees’ Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees’ Compensation Appeals Board