

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

LUCILA HERNANDEZ, *Applicant*

vs.

**REGENTS OF THE UNIVERSITY OF CALIFORNIA,
LOS ANGELES, permissibly self-insured
administered by SEDGWICK, *Defendants***

**Adjudication Number: ADJ17142305
Los Angeles District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

The employer is required to provide reasonable medical treatment to cure or relieve from the effects of an industrial injury. (Lab. Code, § 4600.) Employers are further required to conduct utilization review (UR) of treatment requests received from physicians. (Lab. Code, § 4610; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230.) Labor Code¹ section 4610.5 mandates Independent Medical Review (IMR) for "[a]ny dispute over a utilization review decision if the decision is communicated to the requesting physician on or after July 1, 2013, regardless of the date of injury." (Lab. Code, § 4610.5(a)(2); see also Lab. Code, § 4062(b) [an employee's objection to a UR decision to modify, delay or deny an RFA for a treatment recommendation must be resolved through IMR].)

Section 4610.6(h) authorizes the Appeals Board to review an IMR determination of the Administrative Director (AD). The section explicitly provides that the AD's determination is

¹ All further statutory references are to the Labor Code, unless otherwise noted.

presumed to be correct and may only be set aside by clear and convincing evidence of one or more of the following: (1) the AD acted without or in excess of his or her powers, (2) the AD's determination was procured by fraud, (3) the independent medical reviewer had a material conflict of interest, (4) the determination was the result of bias based on race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, or (5) the determination was the result of an erroneous finding of fact not subject to expert opinion. (Lab. Code, § 4610.6(h).)

In upholding a challenge to the constitutionality of section 4610.6, the Court of Appeal held that IMR determinations are subject to meaningful review, even if the Appeals Board cannot change medical necessity determinations:

The Board's authority to review an IMR determination includes the authority to determine whether it was adopted without authority or based on a plainly erroneous fact that is not a matter of expert opinion. (§ 4610.6, subd. (h)(1) & (5).) These grounds are considerable and include reviews of both factual and legal questions. If for example, an IMR determination were to deny certain medical treatment because that treatment was not suitable for a person weighing less than 140 pounds, but the information submitted for review showed the applicant weighed 180 pounds, the Board could set aside the determination as based on a plainly erroneous fact. Similarly, the denial of a particular treatment request on the basis that the treatment is not permitted by the MTUS would be reviewable on the ground that the treatment actually is permitted by the MTUS. An IMR determination denying treatment on this basis would have been adopted without authority and thus would be reviewable.

(Stevens v. Workers' Comp. Appeals Bd. (2015) 241 Cal.App.4th 1074, 1100-1101 [194 Cal. Rptr. 3d 469, 80 Cal.Comp.Cases 1262].)

As noted by the WCJ in the Report "[t]he basis of the Applicant's Petition for Reconsideration is the finding [that] the report of Dr. Miller of March 22, 2023 was not admissible. This report was not admitted as it was obtained POST review. This report was not included in the IMR request and thus should not be included in the appeal on determination. The most recent reporting pre IMR review was considered in reaching the IMR determination." (Report at p. 2.) Accordingly, we are not persuaded that the IMR determination was the result of a plainly erroneous finding of fact that is a matter of ordinary knowledge, based on the information submitted for review, and not a matter subject to expert opinion.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 12, 2023

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**LUCILA HERNANDEZ
SOLOV AND TEITELL
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

PAG/abs

I certify that I affixed the official seal of the
Workers' Compensation Appeals Board to this
original decision on this date. *abs*

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

PROCEDURAL HISTORY

On May 3, 2023, the Applicant filed an appeal of the April 4, 2023 Independent Medical Review Determination of the Administrative Director, alleging the following:

“The determination was the result of a plainly erroneous express or implied finding of fact, provided that the mistake of fact is a matter of ordinary knowledge based on the Information submitted for review pursuant to Section 4610.5 and not a matter that is subject to expert opinion.”

On May 24, 2023, this matter was submitted on the record at Expedited Trial and, on June 19, 2023, a Finding and Order with Opinion on Decision was issued with the following findings:

1. *The underlying Utilization Review Determination dated February 17, 2023 non-certified for a request for one left knee Monovisc injection. An Appeal to this Determination was filed by Applicant on April 4, 2023.*
2. *Applicant’s exhibit 2 (Dr. Miller February 9, 2023) is deemed admitted. Applicant’s exhibit 1 (Dr. Miller March 22, 2023) is post review and is not admitted.*
3. *The Administrative Director’s Independent Medical Review Determination dated April 4, 2023 (Joint Exhibit C) was based on most recent medical reporting of Dr. Miller February 9, 2023 (Applicant Exhibit 2); Orthomed February 16, 2023, Paradigm September 14, 2022 - February 10, 2023, and UCLA Health dated June 25, 2022-February 1, 2023.*

Based on findings (2) and (3), the Determination was the result subject to expert opinion.

On this basis, the Petition appealing the administrative Director’s Independent Medical Review of April 4, 2023 determination was denied and the determination is sustained. Applicant filed a timely verified Petition for Reconsideration on July 14, 2023.

RECOMMENDATION ON RECONSIDERATION

The basis of the Applicant’s Petition for Reconsideration is the finding the report of Dr. Miller of March 22, 2023 was not admissible. This report was not admitted as it was obtained POST review. This report was not included in the IMR request and thus should not be included in the appeal on determination. The most recent reporting pre IMR review was considered in reaching the IMR determination.

It is Recommended that the Applicant's Petition for Reconsideration be denied in its entirety, as Applicant's proper remedy is to seek medical care based on the reporting of Dr. Miller of March 22, 2023.

DATED: July 24, 2023

Jay W. Downey
Workers' Compensation Administrative Law Judge