WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ALICIA RODRIGUEZ, ***Applicant***

vs.

DYNAMIC EDGE CONSULTING; TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, ***Defendants***

Adjudication Number: ADJ10884813
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact and Order issued by the workers' compensation administrative law judge (WCJ) in this matter on July 26, 2023. In that decision, the WCJ found that the May 23, 2023 Health Assessment Report from Sue Coleman, R.N., was self-procured by applicant outside of defendant's Medical Provider Network (MPN). Further, applicant was ordered to participate in a Home Health Assessment with a provider selected by defendant from its MPN. All other issues were deferred.

Applicant contends that: 1) the WCJ erred in allowing the defendant to obtain a home health assessment because the defendant had already approved the medical treatment; and 2) the applicant has the right to choose her service provider and control her own medical treatment.

We received an Answer from defendant.

We received a Report and Recommendation (Report) from the WCJ, recommending that reconsideration be denied.

We have reviewed the allegations in the Petition for Reconsideration and the Answer, and the contents of the Report. Based upon our review of the record, and for the reasons discussed below, we will grant applicant's Petition for Reconsideration, rescind the F&O and substitute a

new F&O that does not include the order compelling applicant to attend the home health care assessment.

I.

Preliminarily, with respect to the timeliness of the petition having been filed more than 25 days after service of the Findings and Order and Opinion on Decision, we observe that there are 20 days allowed within which to file a petition for reconsideration from a "final" decision plus 5 calendar days if a party has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) In addition, if a party to be served is outside of California but within the United States, the time in which to act is 10 calendar days from the date of service, or 30 days total. (Cal. Code Regs., tit. 8, § 10605(a)(2).)

This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd*. (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650, 656]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008, 1011]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com.* (*Hinojoza*) (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73, 75-76].)

In this case, the Findings and Order of the WCJ was served on July 26, 2023, on all interested parties, including defendant Travelers, and their counsel Wolford & Associates, whose mailing addresses are Dallas, Texas, and St. Paul, Minnesota. Thus, applicant had until August 25, 2023 to file her petition. We therefore conclude that applicant's petition is timely.

II.

Here, the facts are not in dispute. As stated above, applicant seeks reconsideration of the findings of the WCJ wherein he found that the home health assessment performed by Sue Coleman, R.N., which was requested on March 14, 2023 by applicant's treating physician, Roger Bertoldi, M.D., and authorized by defendant on April 20, 2023 (Joint Exhibits H, I), was self-procured by applicant, and ordered applicant to undergo another home health assessment within the MPN.

Labor Code section 4050 states:

> Whenever the right to compensation under this division exists in favor of an employee, he shall, upon the written request of his employer, submit at reasonable intervals to examination by a practicing physician, provided

> and paid for by the employer, and shall likewise submit to examination at reasonable intervals by any physician selected by the administrative director or appeals board or referee thereof.

If there is an objection to the treating physician's opinion as to the issues of medical diagnosis, either party may obtain a qualified medical examination pursuant to section 4062. As noted by the Supreme Court in *Sandhagen*, if there is an objection to the treating physician's opinion as to the reasonableness or necessity of retroactive, concurrent, or prospective medical treatment, the employer's sole avenue for objection is to utilize section 4610. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd*. (*Sandhagen*) (2008) 44 Cal.4th 230, 79 Cal. Rptr. 3d 171, 186 P.3d 535.) Here, defendant authorized the assessment, and there is nothing in the record to indicate that defendant objected to Dr. Bertoli's request. Thus, the issue is not whether applicant must undergo a medical legal evaluation pursuant to Labor Code section 4050, and Labor Code section 4050, and Labor Code section 5701, do not apply.

An industrially injured worker is entitled, at an employer's expense, to medical treatment that is reasonably required to cure or relieve the effects of the industrial injury. (Lab. Code, § 4600(a).) Home health care services, including housekeeping services, have long been held to be subject to reimbursement under section 4600 as medical treatment reasonably required to cure or relieve from the effects of the injury, if there is a medical recommendation or prescription that certain housekeeping services be performed, i.e., that there is a "demonstrated medical need" for such services. (*Smyers v. Workers' Comp. Appeals Bd.* (1984) 157 Cal.App.3d 36, 203 [49 Cal.Comp.Cases 454].) "The coverage of section 4600 extends to any medically related services that are reasonably required to cure or relieve the effects of the industrial injury, even if those services are not specifically enumerated in that section." (*Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910, 916-917; see also *Hodgman v. Workers' Comp. Appeals Bd.* (2007) 155 Cal.App.4th 44, 54 [72 Cal.Comp.Cases 1202]; and *Henson v. Workmen's Comp. Appeals Bd.* (1972) 27 Cal.App. 452 [37 Cal.Comp.Cases 564].)

A home healthcare assessment is medical treatment, and as discussed below, it is clear from the record here that the parties followed the statutory framework for obtaining authorization for medical treatment in the form of a home health care assessment.

Labor Code section 4061.5 states that:

> The treating physician primarily responsible for managing the care of the injured worker or the physician designated by that treating physician shall, in accordance with rules promulgated by the administrative director, render opinions on all medical issues necessary to determine eligibility for compensation.

Here, applicant's treating neurologist Dr. Bertoldi submitted a request for authorization for a home health care evaluation, which defendant then authorized.

Pursuant to Labor Code section 4610 et seq., an employer may establish an MPN, and here, there is no dispute that defendant had an MPN. In fact, when defendant issued its authorization for the home health care assessment, it noted that the home health care assessment should be obtained within its MPN. Under the circumstances here, the issue is not whether applicant sought to have defendant pay for the assessment by Sue Coleman, R.N. It is clear that defendant had the right to insist that medical care for which it was paying was obtained through the MPN. Instead, the issue is whether defendant can compel applicant to receive medical treatment in the form of an assessment.

Labor Code section 4056 states that:

> No compensation is payable in case of the death or disability of an employee when his death is caused, or when and so far as his disability is caused, continued, or aggravated, by an unreasonable refusal to submit to medical treatment, or to any surgical treatment, if the risk of the treatment is, in the opinion of the appeals board, based upon expert medical or surgical advice, inconsiderable in view of the seriousness of the injury.

Under section 4056, an employee's unreasonable delay or refusal to accept or undergo medical treatment is supported when the employer makes a showing that (1) there is an unequivocal tender of adequate treatment by the employer; and (2) the risk of the treatment is inconsiderable in the light of the employee's medical condition. (See *Gallegos v. Workers' Comp. Appeals Bd.* (1969) 273 Cal.App.2d 569 [34 Cal.Comp.Cases 322] and *White v. Workers' Comp. Appeals Bd.* (1969) 270 Cal.App.2d 447 [34 Cal.Comp.Cases 168]. See also, *Coca-Cola Enterprises, Inc. v. Workers' Comp. Appeals Bd.* (*Bendanillo*) (2009) 74 Cal.Comp.Cases 1180 (writ den.).)

Here, there has been no showing that "the risk of the treatment is inconsiderable in the light of the employee's medical condition." Accordingly, there is no basis to compel applicant to undergo another home health care assessment.

Labor Code section 4605 states:

> Nothing contained in this chapter shall limit the right of the employee to provide, at his or her own expense, a consulting physician or any attending physicians whom he or she desires. Any report prepared by consulting or attending physicians pursuant to this section shall not be the sole basis of an award of compensation. A qualified medical evaluator or authorized treating physician shall address any report procured pursuant to this section and shall indicate whether he or she agrees or disagrees with the findings or opinions stated in the report, and shall identify the bases for this opinion.

Under this section, an employee remains responsible for the expense of this report. However, it also directs a qualified medical evaluator or authorized treating physician to address such reporting and indicate whether they are in agreement with such findings or opinions. Accordingly, the assessment obtained by applicant should have been forwarded to treating neurologist Dr. Bertoldi.

We observe that if Dr. Bertoldi then opines that home health care treatment is reasonable and necessary, the parties can then follow the appropriate procedures in Labor Code sections 4610 et seq. and 4614 et seq., as to whether defendant should authorize and pay for the recommended treatment.

Accordingly, we grant applicant's Petition for Reconsideration, rescind the F&O and substitute a new F&O that does not include the order compelling applicant to attend the home health care assessment.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings of Fact and Order issued on July 26, 2023 by a workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration that the Findings of Fact and Order issued on July 26, 2023 by a workers' compensation administrative law judge are **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. ALICIA RODRIGUEZ while employed on 04-27-2017 as an account executive at Oxnard, California, by DYNAMIC EDGE CONSULTING, whose workers' compensation insurance carrier was TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, sustained injury arising out of and occurring in the course of employment to her brain.

2. The May 23, 2023 Home Health Assessment Report from Sue Coleman, R.N., was self-procured by applicant outside of defendant's Medical Provider Network.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 20, 2023

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

ALICIA RODRIGUEZ
SOLOV AND TEITELL, A.P.C.
WOOLFORD ASSOCIATES

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