

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

ARTHUR ORCUTT, *Applicant*

vs.

**OAK HILL LOGISTICS;
SERVICE AMERICAN INDEMNITY CO., administered by SEDGWICK CLAIMS
MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ14941977
San Diego 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.

There are 20 days allowed within which to file a petition for reconsideration from a "final" decision. (Lab. Code, §§ 5900(a), 5903.) This time is extended by 10 calendar days if service is made to an address outside of California but within the United States. (Cal. Code Regs., tit. 8, § 10605(a)(1).) Here, defendant's Petition was filed on January 24, 2023. The WCJ's Findings and Award (F&A) was served, via email to counsel, and via regular mail to applicant and the defendant's third party administrator, on December 30 2022. The Petition was filed 25 days after the F&A was served. Per WCAB Rule 10605, the time to file would be extended by 5 days (equaling 25 days total) if all parties were in California, and 10 (equaling 30 days total) if not. (Cal. Code Regs., tit. 8, § 10605(a)(1).) Therefore, even without taking into account the third party administrator's Kentucky address, the petition was timely.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 27, 2023

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

**ARTHUR H. ORCUTT
LAW OFFICES OF MANUEL RODRIGUEZ
SIEGEL, MORENO AND STETTLER**

HAV/pc

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

STATE OF CALIFORNIA
Division of Workers' Compensation Workers' Compensation Appeals
Board

CASE NUMBER: ADJ14941977

ARTHUR ORCUTT

vs.

OAK HILL LOGISTICS; SEDGWICK 14779 SAN DIEGO;

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE:
Alicia D. Hawthorne

DATE: January 27, 2023

REPORT AND RECOMMENDATION FOR PETITION FOR
RECONSIDERATION
EXPEDITED HEARING DETERMINATION

Workers' Compensation Administrative Law Judge: Alicia D. Hawthorne

Counsel:

Petition for Reconsideration Filed By: Defendant, Service American Indemnity Company administered by Sedgwick Claims Management Services

Attorney for Petitioner: Siegel, Moreno, Stettler, APC.; Joshua Goldsmith, Esq.

Attorney for Applicant: Law Offices of Manuel Rodriguez; Andrew Rodriguez, Esq.

INTRODUCTION

Defendant, Service American Indemnity Company administered by Sedgwick Claims Management Services, has filed an *untimely*, verified, petition for reconsideration, on the standard statutory grounds, from the trial court's December 30, 2022, Findings and Award, served via email pleading that:

1. The evidence does not justify the Findings of Fact;
2. The Findings of Fact do not support the Order, Decision or Award;
3. By the Decision and Award, the Board acted without or in excess of its powers.

Specifically, defendant contends that this WCJ's Findings and Award as it pertains to the timeliness of the UR denial, the violation of Labor Code §4600.4,

and the finding of the medical treatment to be reasonable and necessary are not justified nor are these findings supported by the Award.

FACTUAL BACKGROUND

Applicant, Arthur Orcutt, while employed as a driver sustained injury arising out of and in the course of employment to his head, neck, right shoulder, wrists, hands, fingers, mid and low back, right leg, right hip, knees, right ankle and foot, psyche, sleep, memory, concentration, light sensitivity, double vision, dizziness/balance, dental, and loss of appetite,

This is an accepted claim. A dispute arose as to applicant's entitlement to medical treatment in the form of a left total knee arthroscopy, along with the additional requested treatment in the September 21, 2022, RFA of Dr. McCandless. Applicant alleged an untimely review of the RFA submitted by Dr. McCandless as well as the need for such treatment. Defendant argued that the RFA was timely denied and if the Court found it was not timely, applicant did not establish the medical treatment was reasonable or necessary,

DISCUSSION

It should be noted that this WCJ finds defendant's Petition for Reconsideration to be untimely. Defendant was served the Findings and Award/Opinion on Decision via email on December 30, 2022. The timeframe in which to file a Petition for Reconsideration is 20 days. Defendant is an e-filer in EAMS. Even if defendant is granted additional 2 days to file the Petition for Reconsideration due to the ability to e-file their petition, defendant did not file the petition until January 24, 2023, This is a total of 25 days. It should be noted that service was done electronically, therefore the petition is untimely, However, if the Board finds the Petition for Reconsideration is timely, for the reasons set forth below, this WCJ respectfully requests defendant's petition be denied.

Consistent with the Opinion on Decision to be reviewed, this WCJ reiterates her position and respectfully requests that defendant's Petition for Reconsideration be denied.

Defendant argues that they timely responded to the September 21, 2022, Request for Authorization. Defendant contends that since they requested further information in accordance with Labor Code §4610(g)(1), their timeframes should have been extended. Defendant does concede that there was no box checked on their "Request for Medical Documentation", but they would still like the Court to take the position that the letter itself is enough to trigger the delay of determination. Defendant further takes the position that the contents of the letter would speak for itself. This WCJ disagrees and opines that this approach lacks a certain competence and thoroughness for an appropriate administration of treatment. If this WCJ allows the simple issuance of a letter without the

specificity of what exactly is needed, then the purpose behind the Labor Code would be frustrated. Allowing skeletal letters to be issued, without the clarity needed, would encourage defendants to simply delay determinations. This is not the intent behind Labor Code §4610(g)(l). Although defendant is correct that there is no required WCAB or DIR form to request further information, defendant would then argue that the burden should be shifted to the reader for the information. However, this WCJ takes the position that defendants must carefully construct and review their letters requesting whatever is necessary for a competent review. Then there would have been no dispute or issues with the requested information or the right to delay a determination.¹

Defendant states that there was no violation of Labor Code §4600.4 in this matter. Defendant states that their peer reviewer indicated that he did not receive a return call by the time of the denial on October 4, 2022. However, this WCJ finds the reporting of Dr. McCandless to be in direct contradiction of this assertion. Dr. McCandless in his report dated October 4, 2022, (Joint Exhibit 108) states he attempted to call at 4:45 pm on October 3, 2022, only to find out that the office closed at 4:00 pm. Dr. McCandless attempted to call on October 4, 2022 at 8:45 am as he believed his timeframe expired at 9:00 am on October 4, 2022 only to find out that the office did not open until 9:00 am. Dr. McCandless could only believe at that point that after 9:00 am on October 4, 2022, he could no longer engage in a peer to peer with the reviewer as the timeframe to do so had expired. Dr. McCandless further noted he would be in surgery on October 4, 2022. This WCJ has determined that Dr. McCandless did, in fact, attempt to reach the peer reviewer to discuss the Request for Authorization during the time in which Labor Code §4600.4 indicates the physician reviewer shall be available and was unable to reach anyone. Again, on the bottom of the UR denial (Joint Exhibit 117), in bold, the letter clearly indicates "**A decision to modify, delay, or deny the treatment authorization on this claim has been made by the physician reviewer noted on the determination letter. You may reach the physician reviewer@S00-706-8427, Monday through Friday, between the hours of 6:00 am and 5:30 pm Pacific time.**" Despite this unambiguous language, the physician reviewer was not available.

Defendant appears to read the Opinion on Decision to state that due to the violation of Labor Code §4600.4, the UR denial is untimely. That is not the case. Rather, this WCJ found that the timeframe to make a determination under Labor Code §4610 had not been tolled such that defendant only had 5 working days to do so. This WCJ agrees that any violation of Labor Code §4600.4 would result in a general and administrative remedy.

¹ Defendant requests the Board to look at the documents in question without pointing where exactly the Board should look. For clarification, in Defendant's petition for reconsideration, defendant references the October 4, 2022, UR denial letter, which, for the WCAB, is Joint Exhibit 116. It should be noted that defendant has failed to reference exactly what Exhibits the Board should be looking at throughout their petition.

Defendant appears to read the Opinion on Decision to state that due to the violation of Labor Code §4600.4, the UR denial is untimely. That is not the case. Rather, this WCJ found that the timeframe to make a determination under Labor Code §4610 had not been tolled such that defendant only had 5 working days to do so. This WCJ agrees that any violation of Labor Code §4600.4 would result in a general and administrative remedy.

Finally, defendant argues the medical treatment requested by Dr. McCandless is not reasonable or necessary. This WCJ strongly disagrees. For clarity, on the first date of trial both the Applicant Attorney and Defense Attorney noted there were psychological concerns with applicant proceeding with the requested surgery. Due to such concerns, parties proceeded to obtain supplemental reports from applicant's psyche treating physicians. Both Dr. Takamura and Dr. Ray have cleared applicant for surgery. (Joint Exhibits 113, 114, and 115) At the time of the Expedited Hearing, defendant raised their concern about applicant's balance issues. Applicant credibly testified to his discussions with Dr. McCandless about this same concern. Defendant stated in their Petition for Reconsideration, "Applicant conceded in his own testimony that his falls were due to dizziness and not leg weakness." (Petition for Reconsideration, page 7, lines 16-18) A thorough review of the Minutes of Hearing does not indicate such testimony from the applicant. Rather, the testimony does indicate that applicant believes the falls were due to his dizziness, but nowhere in the testimony did applicant state it was NOT due to his leg weakness or in any way contributory to weakness nor was such question ever asked of the applicant for clarification. Defendants mischaracterized the testimony presented to the Board. Furthermore, the MOH are clear that applicant and his treating physician have distinctly addressed the balance/dizziness concerns with regards to proceeding with the surgery. Applicant has worked hard to get off his crutches and put railing up in his house in preparation for such surgery.

It is noted that applicant's credible testimony indicates that Dr. McCandless's request for different injections for treatment for his knee have been denied. Applicant further noted that his participation, or lack thereof, with physical therapy was not due to his dizziness, but rather due to the scheduling issues with physical therapy. Applicant credibly testified that he acknowledges dizziness issues, but it is not as bad as it used to be. This WCJ would like to point out that while defendant would take the position that the surgery is not indicated due to balance/dizziness issues, this WCJ takes the opposite approach. Labor Code §4600 indicates applicant is entitled to medical treatment to cure or relieve the effects of the injury. Applicant's left knee has failed all other conservative, approved medical treatment. His knee is weak and needs to be replaced. In fact, this WCJ strongly believes that by replacing the knee as requested by his treater will help with not only his balance and stability causing less of a fall risk but as noted by his psych treaters, an improvement in his overall mental health. Furthermore, defendant's overreaching assessment that applicant

will inevitably fall does not override the CA MTUS/ ACOEM guidelines that knee arthroplasty has been long used for treatment of end-stage knee degenerative joint disease wherein outcomes have generally been excellent with 5 to 10 years survival rates of 95-99%. Finally, as noted in the Opinion on Decision, knee arthroplasty is strongly recommended for severe arthritis and such treatment is strongly recommended if there is severe knee degenerative joint disease that is unresponsive to non-operative treatment. The case at hand falls exactly into this scenario.

RECOMMENDATION

Based on the record itself, the Finding and Award and Opinion on Decision, and this Report and Recommendation, it is respectfully recommended that applicant's Petition for Reconsideration be denied.

DATE: January 27, 2023

Alicia D. Hawthorne

WORKERS' COMPENSATION JUDGE