

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

ALICE RIVERA PASILLAS, *Applicant*

vs.

**DURHAM D M; OLD REPUBLIC INSURANCE
COMPANY, administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ9915005
Santa Ana District Office**

**OPINION AND DECISION AFTER
RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and the Opinion on Decision 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 affirm the August 3, 2022 Findings of Fact.

For the foregoing reasons,

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 3, 2022 Findings of Fact is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 13, 2023

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

**ALICE RIVERA PASILLAS
LAW OFFICE OF JAMIE A. BLUNT
LLARENA, MURDOCK, LOPEZ & AZIZAD**

PAG/abs

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

**I
INTRODUCTION**

Applicant, Alice Rivera Pasillas, filed a timely, verified, petition for reconsideration on the standard statutory grounds, from the trial court's August 1, 2022 Findings and Order and Opinion on Decision where the WCJ found applicant did not meet her burden of proof that she suffered a denial of care. To date, defendant has not filed an Answer to the Petition for Reconsideration. The Petition for Reconsideration pleads that:

1. The evidence does not justify the findings of fact.

**II
STATEMENT OF FACTS**

Alice Rivera Pasillas, born [], while employed on December 17, 2014, as a bus driver, at Santa Ana, California, by Durham D M, sustained injury arising out of and in the course of employment to cervical spine, lumbar spine, left shoulder, and left upper extremity. Defendants filed a Declaration of Readiness to Proceed to an Expedited Hearing indicating that, despite numerous requests, applicant continued to treat outside the defendant's Medical Provider Network (MPN). The parties appeared before the undersigned where documentation was received and testimony heard. Applicant argued that, due to a failure of defendants to comply with their request for authorization to treat with their selected MPN physician, applicant was denied medical treatment, thus prompting their scheduling treatment with a non-MPN physician. Defendants argued that treatment authorization, in the form of a letter, was timely provided to the doctor's office and sent to applicant's attorney, a proof of service accompanying the letter evidencing their compliance.

**III
DISCUSSION**

Petitioner's claims are unsupported based on a failure to provide evidence rebutting the presumption that a mailed document was received. As referred to in the opinion, Applicant has an accepted injury which resolved with a Stipulations with Request for Award and an Award of open future medical care. The WCJ noted in the opinion the change of attorneys and applicant's ongoing care provided by defendants since the initial settlement. Following her current attorney's selection of a new MPN physician, the issues regarding treatment authorization began and the WCJ reviewed both documentary evidence and testimony from applicant and applicant's attorney's staff member. The WCJ noted that communications between the parties appeared to show an effort at coordinating authorization for treatment. Through this process, the disagreement between the

parties is an alleged failure of defendants to provide the authorization letter upon request and follow-up. However, the presumption of proper service is based on the accepted concept that, as Evidence Code §641 indicates, a letter correctly addressed and properly mailed is presumed to have been received. Further, a letter duly directed and mailed was received in the regular course of the mail. (See Code Civ. Proc., §1963, par. 20, *Idaho Maryland Mines Corp. v. Industrial Acci. Com.*, 24 Cal.Comp.Cases 238, 1959 Cal. Wrk. Comp. LEXIS 189, 174 Cal.App.2d 693, 345 P.2d 109.) Once there is a production of the proper proof of service, the burden will shift to the opposing party to show the contrary. (See *Suon v. California Dairies* (2018) 83 CCC 1803, 1817; *Castro v. WCAB* (1996) 61 CCC 1460; *Catalan v. WCAB* (1988) 53 CCC 191).

The WCJ respectfully disagreed with applicant's claim that they failed to timely receive the letter, thus resulting in a denial of care allowing them to implement their own remedy of seeking a non-MPN physician for treatment. Petitioner's assertion relies heavily on communication logs and notes coupled with Mr. Galicia's testimony; however, the WCJ refers to case law which indicates that simply claiming the recipient did not receive the mailed document is insufficient to rebut the presumption (*Northrop Grumman Corp. v. WCAB (Clark)* (1999) 64 CCC 1416 (writ denied); *Pryal, International Imaging v. WCAB (Kalla)* (1995) 60 CCC 529 (writ denied); *City of Los Angeles v. WCAB (Opolak)* 48 CCC 89 (writ denied); *Paul B. Baker & Sons v. WCAB (Crumph)* (1981) 46 CCC 396 (writ denied); *Flores v. United California Bank aka Sanwa Bank*, 2012 Cal. Wrk. Comp. P.D. LEXIS 341; *Arruda v. Goodwill Industries of Santa Clara*, 2012 Cal. Wrk. Comp. P.D. LEXIS 551; *Casasola v. ABM Industries*, 2013 Cal. Wrk. Comp. P.D. LEXIS 8; *Camacho v. Nick's Doors, Inc.*, 2013 Cal. Wrk. Comp. P.D. LEXIS 297). The WCJ emphasizes the point that applicant's counsel's office did in fact receive the February 8, 2022 authorization letter, albeit even following the communication log and notes as described by the witness, there is no rhyme or reason as to how it appeared in their office on March 28, 2022, again without a proof of service to point one way or the other as to when it was mailed. The WCJ noted in her opinion that the witness was forthcoming in his testimony and credible to the extent that he did not indicate a yes or a no when asked about receipt of the proof of service that defendants indicate was included with their authorization letter. Recall in the Minutes of Hearing/Summary of Evidence that Mr. Galicia indicated he recalled receiving the February 8, 2022 letter, but could not recall if there was a proof of service attached (MOH/SOE, July 14, 2022, page 5, lines 12-14.)

The WCJ observed the witness's demeanor and presentation and noted that he quite easily referred to specific dates, emails, conversations, notes, and the business practice for applicant's attorney's firm; however, his testimony is also self-serving, because despite being the person in charge of receipt of mail and scanning into their system, he could not recall if a Proof of Service was included with the February 8, 2022 letter he acknowledged receiving sometime around March 28, 2022. Petitioner is reminded that because the witness presents as credible, does not mean he is also persuasive.

The WCJ requests that the Board extend to the WCJ's finding on credibility the great weight to which it is entitled (*Garza v Workers' Comp. Appeals Bd* (1970) 35 Cal.Comp.Cases 500). Pursuant to case law, this WCJ weighed the denial of timely receipt against the inference of

receipt arising from proof of mailing and decided that the letter was received and the presumption un rebutted. Again, we note that the letter was in fact received by applicant's attorney's office.

Finally, the Appeals Board is directed to the Fax Confirmation page dated February 9, 2022 at 9:30am which identifies a notification of 124 pages of a "fax received successfully" to the selected treating physician (Dr. Dorsey) (Defense Exhibit B, February 9, 2022). Thus, the WCJ relied heavily on both the actual receipt of the letter, the confirmation and Proof of Service, and assessment of the testimonial evidence in determining that the presumption remained un rebutted.

IV
RECOMMENDATION

For the reasons stated above, it is respectfully submitted that the Petition for Reconsideration be denied.

Date: September 7, 2022

Jennifer Kaloper-Bersin
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE
SANTA ANA DISCTRICT OFFICE