

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

**JERRY ALBERTS, *Applicant***

**vs.**

**SUN COUNTRY BUILDERS, INC.; STATE COMPENSATION INSURANCE  
FUND, *Defendants***

**Adjudication Number: ADJ15708198  
Riverside District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

Applicant, Jerry Alberts, petitioned for reconsideration of the Findings of Fact issued by the workers' compensation administrative law judge (WCJ) in this matter on September 21, 2022. In that decision, the WCJ found that the WCAB did not have jurisdiction over the treatment recommendations of Dr. David Patterson's July 11, 2022 Request for Authorization for home healthcare services, as it was timely denied by defendant on July 18, 2022 after Utilization Review. The WCJ further found that disputes over Utilization Review determinations were subject to the exclusive remedy of Independent Medical Review.

Applicant contends in his petition that the Utilization Review was untimely and thus invalid, enabling the WCAB to have jurisdiction of the issue. Applicant further contends that the rationale in the Patterson and Zepeda decisions (*Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910, 2014 LEXIS 98 ; *Zepeda (Armando) v. Starview Adolescent Center* (BPD) 2022 Cal. Wrk. Comp. P.D. LEXIS 166) applies and that defendant could not unilaterally terminate home healthcare services without showing a change in medical circumstance.

The WCJ issued a report in which he recommended that the petition for reconsideration be denied. We granted reconsideration to further study the factual and legal issues presented.<sup>1</sup>

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<sup>1</sup> Commissioner Marguerite Sweeney signed the Opinion and Order Granting Petition for Reconsideration dated December 12, 2022. As Commissioner Sweeney is no longer a member of the Appeals Board, a new panel member was appointed in her place.

Subsequently, the parties participated in a commissioners' settlement conference at our request and agreed to resolve this matter by Compromise and Release. The parties further requested a remand to the District Office for review of such settlement.

Since the District Office is precluded from acting on a case while it is pending on reconsideration (Cal. Code Regs., tit. 8, § 10961), in order to permit review by the workers' compensation administrative law judge (WCJ) of the proposed settlement, we will rescind the September 21, 2022 Findings of Fact from which reconsideration is sought and return this matter to the WCJ to consider the Compromise and Release. The WCJ may conduct such further proceedings as he deems appropriate.

Our decision should not be construed as a ruling on the merits of the petition for reconsideration. If the WCJ does not approve the settlement, he can issue an order reinstating his decision and any aggrieved party may timely seek reconsideration from the reinstated decision.

Finally, we commend the parties for successfully resolving this matter without the need of further litigation.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact issued in this matter on September 21, 2022, be **RESCINDED**, and that this matter is **RETURNED** to the workers' compensation administrative law judge to consider the Compromise and Release and for such further proceedings as he deems appropriate.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



**KATHERINE A. ZALEWSKI, CHAIR**  
**CONCURRING NOT SIGNING**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**July 21, 2023**

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

**JERRY ALBERTS  
SOLOV AND TEITELL, A.P.C.  
STATE COMPENSATION INSURANCE FUND**

**LAS/ara**

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