

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

ERIKA CRUZ, *Applicant*

vs.

CAPAY, INC.; BERKSHIRE HATHAWAY, *Defendants*

**Adjudication Number: ADJ12250535
Long Beach 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.

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

November 27, 2023

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

**NEIL J. HALBRIDGE, M.D. /ARROWHEAD EVALUATION SERVICES, INC.
LAW OFFICES OF TAPPIN & ASSOCIATES, LIEN REP.
HEFLEY LAW
PERONA LANGER**

AS/mc

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

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

I

INTRODUCTION

1. Applicant's Occupation: Order/Packer
Date of Injury: July 26, 2018
Parts of Body Injured: Low back, right knee, shoulders, and upper extremities

2. Identity of Petitioner: Cost Petitioner Neil J. Halbridge, M.D. filed the petition.
Timeliness: The petition was timely filed.
Verification: The petition was verified.

3. Date of Findings of Fact: September 6, 2023

4. Petitioner's contention: That it was improper to deny the Petition for
Determination of Medical-Legal Expense

II

FACTS

Applicant, Erika Cruz, while employed on July 26, 2018, as an order/packer, at Sacramento, California, claims to have sustained an injury arising out of an occurring in the course of employment to her back, right knee, shoulders, and upper extremities. At the time of injury, the employer's workers' compensation carrier was Redwood Fire & Casualty Insurance Company, administered by Berkshire Hathaway Homestate Companies (hereinafter "Defendant").

The case-in-chief resolved via Compromise and Release on May 12, 2021. Cost Petitioner Neil J. Halbridge, M.D. (hereinafter "Petitioner" or "Dr. Halbridge") filed a Petition for Determination of Medical-Legal Expense Dispute, along with a Declaration with Readiness to Proceed, on November 22, 2022. The cost petition was filed to obtain the balance owing on the partially paid services billed by Petitioner for the preparation of a supplemental record review report on January 19, 2020 (along with all remedies available). Unable to resolve the cost petition informally, Defendant and Petitioner proceeded to Trial on June 26, 2023.

The following issues were presented for determination at Trial (1) Standing of Dr. Halbridge as Cost Petitioner; (2) Whether the cost petition is the correct remedy as partial payment was made; (3) Whether Cost Petitioner was required to request IBR before pursuing cost petition; (4) Cost petition requesting payment to Dr. Halbridge in full; (5) Penalties and interest per Labor Code § 4622(a); (6) Attorney fees per Labor Code §§ 5813, 5814, 5814.5, and 8 Cal.Code.Reg. §§ 9794, 9795, and 10786; and (7) Sanctions. All offered exhibits were admitted into evidence without objection. Testimony was heard from Sue Choi, Defendant's bill review witness, and the matter was submitted for decision.

On September 6, 2023, this WCJ issued a Findings of Fact and Order and Opinion on Decision, wherein it was found, in pertinent part, that: (1) Dr. Halbridge has standing to Pursue the Petition for Determination of Medical-Legal Expense Dispute; (2) The Petition for Determination of Medical-Legal Expense Dispute is not the correct remedy in this matter; and (3) Dr. Halbridge was required to request IBR before pursuing the Petition for Determination of Medical-Legal Expense Dispute. The Petition for Determination of Medical-Legal Expense Dispute was denied via Order and it was noted that the remaining issues are moot.

On September 27, 2023, Petitioner filed a lengthy Petition for Reconsideration, with the overarching theme being that it was improper to deny the Petition for Determination of Medical-Legal Expense Dispute. To date, no Answer to the Petition for Reconsideration has been received on behalf of Defendant.

III

DISCUSSION

Petitioner sets forth three grounds upon which the Petition for Reconsideration is based: that the evidence does not justify the findings of fact, the findings of fact do not support the Order or Decision, and that this WCJ acted in excess of her powers. In support of this, Petitioner contends that the Appeals Board has jurisdiction over the Petition for Determination of Medical-Legal Expense Dispute, as opposed to IBR, based on the following: (1) The billing codes (which have also been referred as Explanation, Reduction and Reasoning Codes) used in Defendant's Explanation of Review ("EOR") and second bill review are defective; and (2) A threshold issue of standing was raised by Defendant at Trial.

The Opinion on Decision offers a comprehensive analysis in support of the Order denying of the Petition for Determination of Medical-Legal Expense Dispute. That being said, this WCJ will respond to the contentions in the Petition for Reconsideration.

A. Defective EORs and IBR

Petitioner contends that he was not required to request IBR given that Defendant's EOR and second bill review are defective. The billing codes used therein (i.e. BHAIBH and M106BH) are not found in the California Code of Regulations, and as such, Petitioner contends that he was not required to request either a second bill review or IBR before pursuing his Petition for Determination of Medical-Legal Expense Dispute. Respectfully, this argument is without merit given the law on this issue.

Labor Code § 4603.3(e) states, in pertinent part:

- (1) If the provider disputes the amount paid, the provider may request a second bill review within 90 days of the explanation of review.
- (2) If the only dispute is the amount of payment and the provider does not request a second bill review within 90 days, the bill shall be deemed satisfied and neither the employer nor the employee shall be liable for any further payment.
- (3) Within 14 days of a request for second review, the employer shall respond with a final written determination on each of the items or amounts in dispute. Payment of any balance not in dispute shall be made within 21 days of receipt of the request for second review.
- (4) If the provider contests the amount paid, after receipt of the second review, the provider shall request an independent bill review as provided for in Section 4603.6.

There is no dispute that after receipt of partial payment for the medical-legal services billed in February 2020, Petitioner (via his billing company) timely requested a second bill review under 8 Cal.Code.Regs § 9792.5.6 in compliance with Labor Code § 4603.3(e)(1). There is also no dispute that Defendant provided a timely second bill review on March 2, 2020. The dispute here involves whether or not Petitioner should have requested IBR to challenge the determination in the second bill review.

Section 4603.3(e)(4), as noted above, is quite clear that the provider shall request IBR if still contesting the amount paid after receipt of the second bill review. Section 4603.3(e) is further echoed in Section 4622(b)(4) almost verbatim, also requiring the provider to request IBR if contesting the amount paid after receipt of the second bill review. There is nothing in Section 4622(b)(4) that states a provider's requirement to request IBR is contingent on an EOR that complies with Section 4063.3. Further, Section 4603.6(a) states that the bill shall be deemed satisfied if the provider does not timely request an IBR. Accordingly, requesting IBR is mandatory.

There is no leeway written into the statute allowing a bypass of the IBR process because of a defective EOR. Further, Petitioner offers no case law on this issue in his Petition for Reconsideration that would allow (or disallow) such a bypass. That said, this WCJ was able to locate a few panel decisions that appear to be on point, with persuasive reasoning.¹

In *Green v. Mountain Shadows Support Group*, 2022 Cal. Wrk. Comp. P.D. LEXIS 347, a cost petitioner filed a Petition to Resolve Non-IBR Med-Legal dispute for partially unpaid services, claimed for a 5.5 hour record review in connection with the preparation of a panel QME report. The cost petitioner alleged that the defendant's EOR was improper and the dispute was essentially over the balance owing to the doctor. *Id.* at 5. A second bill review had been requested, additional reviews were performed, and the petitioner did not request IBR. *Id.* at 6-7. At trial, the cost petitioner argued that the bill reviewer made a legal determination in the EOR (i.e. that the record review was not performed by the QME provider) and this made it a legal issue for the court, not IBR. *Id.* at 8. The WCAB rejected this argument because the issue was one of reimbursement amount and as such, it is a bill review issue subject to IMR. *Id.* Since the petitioner did not request IBR, the bill was deemed satisfied. *Id.* at 9.²

Just as in the *Green* case, the issue in the matter at hand is really one of amount to be paid. Petitioner has pointed out deficiencies in the initial and second bill review EORs, including the billing codes used and the lack of explanation for the adjustment under ML106 regarding time spent reviewing information previously available. However, the real issue here has always been that Dr. Halbridge wants to be paid the balance on his billed services. This is an issue for IBR.³

¹ Although panel decisions are not binding precedent on other Appeals Board panels and WCJs, they are citable and are considered to the extent that their reasoning is found to be persuasive. Such is the case with the panel decisions cited to herein.

² See also *Hinojosa v. Santa Rosa Berry Farms*, 2019 Cal. Wrk. Comp. P.D. LEXIS 491, wherein the WCAB held that arguments regarding the coding used in the second bill review are not within the purview of the Court because the petitioner waived the issue by failing to request IBR.

³ It should also be pointed out that, as noted in this WCJ's Opinion on Decision, 8 Cal.Code.Reg. § 10786 (which governs the determination of a medical-legal expense dispute) does not even apply to the instant proceeding given that the requirements of Labor Code § 4622(c) to institute proceedings under Section 10786 have not been met. Defendant did not deny the balance of Petitioner's bill for any reason other than the amount to be paid pursuant to the fee schedule. Additionally, no evidence was provided at trial to show that Petitioner issued an objection under Section 4622(c) within 90 days of service of either the initial EOR or the second bill review.

Petitioner also argues that because of the defective EOR, he did not even need to proceed to a second bill review, let alone IBR. Such is not the standard in the law and proceeding to a second bill review here was just as mandatory as IBR.

In *Argueta v. La Brea Dining*, 2018 Cal. Wrk. Comp. P.D. LEXIS 522, a cost petitioner argued that the defendant's EORs did not comply with Labor Code § 4603.3 and as such, the petitioner was not required to request a second bill review and could proceed directly to the filing of a cost petition. The Appeals Board held that any issues or deficiencies in the EOR should have been raised in a request for second review pursuant to Labor Code § 4622(b)(1). *Id.* at 3-4. The Appeals Board reasoned that purpose of the process established in 8 Cal.Code.Reg. § 4603.3 and Labor Code § 4622 is to allow parties to resolve medical-legal billing disputes and this is only accomplished by informing the other party of any issues or deficiencies through objections. *Id.* at 4.

Just as in *Green* and *Argueta*, the bill review process in the instant matter was mandatory, at both the second review and IBR levels. Petitioner's billing company apparently understood this, as they properly requested the second bill review. This is further supported by the credible testimony from Sue Choi, Defendant's bill review witness. According to Ms. Choi, while the codes used in the EORs are not billing codes per se, she understood them and opined that a bill reviewer in the industry would also understand them. [See Minutes of Hearing and Summary of Evidence, June 26, 2023, p. 7, lns. 14.5-21.] Ergo, while it does appear that EORs are defective given the coding and lack of explanation, they do contain enough information that they would be understood within the bill reviewing industry and should have been submitted to IBR after receipt of the second bill review.

In sum, IBR was mandatory here and the failure to request same bars Petitioner from any further recovery. Accordingly, the Petition for Reconsideration should be denied.

B. WCAB Jurisdiction Given The Threshold Issue of Standing

Petitioner argues that because Defendant raised a threshold issue at Trial (i.e. standing of Dr. Halbridge to file a Petition for Determination of Medical-Legal Expense Dispute), the Appeals Board has jurisdiction over the defective EORs, rather than IBR. Respectfully, this argument fails in light of the fact that the standing issue did not exist at the time of the second bill review and IBR process in February and March of 2020. Standing was not raised as an issue until Petitioner (in lieu of his

billing company) filed his Petition for Determination of Medical-Legal Expense Dispute over two and a half years later.

Simply put, there were no threshold issues present in early 2020 that would warrant removing this matter from the IBR process. As such, the Petition for Reconsideration should be denied.

IV

RECOMMENDATION

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

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

Respectfully submitted,

Diana L. Marsteiner

WORKERS' COMPENSATION JUDGE

DATE: 10/10/2023