WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

TERESA ZAMUDIO, *Applicant*

vs.

STARCO ENTERPRISES; CALIFORNIA INSURANCE GUARANTEE ASSOCIATION by INTERCARE INSURANCE SERVICES for CREDIT GENERAL INDEMNITY, in liquidation, *Defendants*

Adjudication Number: ADJ3301539 (LBO 0315336)
Long Beach District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.[1]

Defendant seeks reconsideration of the Findings of Fact and Award (Findings) issued on December 27, 2021, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that per the original stipulation of the parties, issues of medical treatment shall be resolved by Richard Siebold, M.D., and that such stipulation is binding on the parties. Defendant contends that the WCJ impermissibly extended the holding in our panel decision[2] of *Bertrand v. County of Orange* [2014 Cal. Wrk. Comp. P.D. LEXIS 342] (*Bertrand*), when she found that based on the 2003 Stipulations with Request for Award (Stipulations), the parties agreed to submit post-2013 medical treatment requests to Agreed Medical Examiner (AME) Dr. Siebold.

We have received an answer from applicant. The WCJ did not file a Report and Recommendation on Petition for Reconsideration (Report).

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[1] Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board. A new panel member has been appointed in her place.

2 Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

We have considered the allegations of the Petition for Reconsideration and the Answer. Based on our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we will rescind the decision and substitute a new Findings, and we will find that the parties did not agree that future medical disputes would be submitted to Dr. Seibold in the 2003 Stipulations and defer all other issues.

FACTS

Applicant, while employed by defendant as an assembly line worker on March 9, 2000, sustained an industrial injury to his back, left hip and leg. The parties entered into Stipulations, dated July 28, 2003, for 81% permanent disability. In Paragraph 4 of the Stipulations, the parties agreed that: "There is a need for medical treatment to cure or relieve from the effects of said injury pursuant to the AME reports of Richard Siebold, MD." In Paragraph 8, stipulation 2, they agreed that: "The parties stipulate to the findings of the AME Richard Siebold, MD."

On November 19, 2003, applicant filed a petition to reopen claiming new and further disability.

On January 12, 2021, the parties appeared for trial seeking adjudication of the following issues:

> (1) Is Dr. Siebold controlling per the 2003 stipulation regarding home health?
> (2) Do the interrogatories sent to Dr. Siebold regarding home healthcare waive the jurisdictional challenge?
> (3) Does [*sic*] Labor Code [s]ection 4600(h)[2] and [*Neri-Hernandez v. Geneva Staffing, Inc. dba Workforce Outsourcing, Inc.* (2014) 79 Cal.Comp.Cases 682 (Appeals Board en banc) (*Neri-Hernandez*)] affect the jurisdiction of this case?

(Minutes of Hearing/Summary of Evidence (MOH/SOE), 01/12/2021, 2:3-7.)

On May 20, 2021, the parties added the following additional issues:

> (4) Whether or not applicant is entitled to reasonable and necessary home-health care.
> (5) Defendants are asserting that applicant sent an ex parte communication to Dr. Siebold.
> (6) Reservation of jurisdiction over penalties and sanctions.

(MOH/SOE, 05/20/2091, 2:3-7)

[2] Unless otherwise stated, all further statutory references are to the Labor Code.

On December 27, 2021, the WCJ issued her Findings, holding that "Dr. Siebold is controlling on the issue of medical care per the original Stipulation" and that section 4600(h) and *Neri-Hernandez* do not apply to alter that stipulation. The WCJ deferred the remaining issues pending further opinion by Dr. Siebold with respect to which body parts caused the need for home health care services.

It is from this decision that defendant seeks reconsideration.

DISCUSSION

Section 4600 requires a defendant to provide medical treatment "reasonably required to cure or relieve the injured worker from the effects of his or her injury" if there is a medical recommendation or prescription that there is a "demonstrated medical need" for such services. (*Smyers v. Workers' Comp. Appeals Bd.* (1984) 157 Cal.App.3d 36 [49 Cal.Comp.Cases 454].) Section 4600(h) further provides that home health care services are medical treatment, but they must be prescribed by a physician.

With respect to WCAB jurisdiction over medical treatment disputes, pursuant to *Dubon v. World Restoration, Inc*. (2014) 79 Cal.Comp.Cases 1298 (Appeals Board en banc) (*Dubon II*), we articulated the following principles regarding disputes regarding medical treatment:

> 1. A utilization review (UR) decision is invalid and not subject to independent medical review (IMR) only if it is untimely.
>
> 2. Legal issues regarding the timeliness of a UR decision must be resolved by the Workers' Compensation Appeals Board (WCAB), not IMR.
>
> 3. All other disputes regarding a UR decision must be resolved by IMR.
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> 4. If a UR decision is untimely, the determination of medical necessity may be made by the WCAB based on substantial medical evidence consistent with Labor Code [§] 4604.5.

(*Id.* at pp. 1299-1300.)

When a physician submits a request to the employer seeking authorization for a requested treatment, the employer completes the UR process by either authorizing the treatment directly or referring the matter to a UR physician to determine whether the requested treatment is medically necessary. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Sandhagen*) (2008) 44 Cal.4th

230, 241 (*Sandhagen*).)[3] In the event that the UR decision modifies or denies the requested treatment, the employee may appeal that decision to IMR, which is statutorily limited to questions of medical necessity. (Lab. Code, § 4610.6(c).) Thus, an employer's authorization of a requested medical treatment reflects a determination that the treatment is medically necessary, irrespective of whether the determination is the result of employer authorization without physician review or is the result of UR or IMR physician review. (*Sandhagen*, *supra*, 44 Cal.4th at p. 242.)

Although the IMR process is the exclusive remedy for resolving questions of medical necessity previously decided by UR, the Appeals Board retains jurisdiction over all other disputes between the employer and the employee except as otherwise provided by section 4610.5. (Lab. Code, § 4604; see also *Allied Signal Aerospace v. Workers' Comp. Appeals Board* (*Wiggs*) (2019) 35 Cal.App.5th 1077.) When *"*the UR decision is untimely or when the parties have agreed to waive their right to pursue the statutory review process … [u]nder these two circumstances, the appeals board retains jurisdiction to determine whether the requested medical treatment is reasonable and necessary based on the substantial medical evidence." (*Wiggs*, *supra*, 35 Cal.App.5th at p. 1081.) That is, the Appeals Board may decide whether the parties agreed to bypass the IMR process for reviewing a UR denial of medical treatment in favor of submitting the dispute to an AME. (*Federal Express Corp. v. Workers' Comp. Appeals Bd.* (*Payne*) (2017) 82 Cal.Comp.Cases 1014, 1017 (writ denied); *Bertrand*, *supra*, 2014 Cal. Wrk. Comp. P.D. LEXIS at pp. 7-8.)

In considering whether the parties agreed to submit their disputes to an AME, we first observe that contract principles apply to settlements of workers' compensation disputes. The legal principles governing compromise and release agreements are the same as those governing other contracts. (*Burbank Studios v. Workers' Comp. Appeals Bd*. (1982) 134 Cal.App.3d 929, 935 [47 Cal.Comp.Cases 832].) For a compromise and release agreement to be effective, the necessary elements of a contract must exist, including an offer of settlement of a disputed claim by one of the parties and an acceptance by the other. (*Id*.) The essential elements of contract include the mutual consent of the parties. (Civ. Code, §§ 1550, 1565, 1580.) There can be no contract unless

[3] When the Legislature enacted the UR process in 2004, it provided that medical treatment decisions be determined consistent with the medical treatment utilization schedule (MTUS) promulgated by the Administrative Director pursuant to section 5307.27. (Lab. Code, § 4610(c).) The IMR process was established as part of the comprehensive workers' compensation reforms contained in Senate Bill 863 (SB 863), which became effective January 1, 2013. (Stats. 2012, ch. 363, § 60.) The Legislature did not make changes to the UR process when it enacted SB 863.

there is a meeting of the minds and the parties mutually agree upon the same thing. (Civ. Code, §§ 1550, 1565, 1580; *Sackett v. Starr* (1949) 95 Cal.App.2d 128; *Sieck v. Hall* (1934) 139 Cal.App.279, 291; *American Can Co. v. Agricultural Ins. Co*. (1909) 12 Cal.App. 133, 137.) The essential elements of contract also include consideration. (Civ. Code, §§ 1550, 1584, 1595, 1605, et seq., 1659.) Since a compromise and release is a written contract, the parties' intention should be ascertained, if possible, from the writing alone, and the clear language of the contract governs its interpretation if an absurdity is not involved. (Civ. Code, §§ 1638, 1639; *TRB Investments, Inc. v. Fireman's Fund Ins. Co*. (2006) 40 Cal.4th 19, 27 (*TRB Investments*).) A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful. (Civ. Code, § 1636; *TRB Investments*, *supra*, at p. 27; *County of San Joaquin v. Workers' Compensation Appeals Bd.* (*Sepulveda*) (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].)

Here, the Stipulations clearly state in Paragraph 4 that: "There is need for medical treatment to cure or relieve from the effects of said injury pursuant to the AME reports of Richard Siebold, M.D." This is a statement that applicant will require medical treatment based on the current opinion of Dr. Siebold; the stipulation does not state that all future medical treatment issues shall be decided by Dr. Siebold. In addition in Paragraph 8, stipulation 2 states that: "The parties stipulate to the findings of the AME Richard Siebold, MD." This appears to be more likely to be an agreement as to Dr. Siebold's opinion as to applicant's permanent disability, and not a statement that disputes regarding medical treatment would be submitted to Dr. Siebold in the future. Thus, based on the plain language of the Stipulations, we do not find that the parties meant to submit their disputes regarding medical treatment to Dr. Siebold.

Moreover, there is no evidence that the parties ever intended to bypass the UR and IMR processes given that the parties drafted their Stipulations prior to the institution of UR in 2004 and IMR in 2013. While we note that the parties had previously forwarded prior medical treatment disputes to Dr. Siebold for resolution, those prior acts do not change the outcome because they do not represent a broad agreement to submit all medical treatment disputes to Dr. Siebold.

Accordingly, we rescind the decision and substitute new Findings that the parties did not agree to submit their disputes regarding medical treatment to Dr. Siebold. We defer the remaining issues.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Award issued on December 27, 2021, by the WCJ is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. The Stipulations with Request for Award dated July 28, 2003 does not bind defendant to utilize AME Roger Siebold, M.D., for the determination of medical treatment disputes in lieu of the statutory utilization review and independent medical review process.

2. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 12, 2025

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

TERESA ZAMUDIO
GRAIWER & KAPLAN LLP
GUILFORD SARVAS & CARBONARA LLP

DLP/md

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