

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

SARA VILLEGAS, *Applicant*

vs.

**CALIFORNIA ELWYN INSTITUTE; ZENITH INSURANCE COMPANY,
*Defendants***

**Adjudication Number: ADJ352576 (MON 0295270)
Marina Del Rey District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of applicant's Petition for Reconsideration, defendant's answer and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto.¹ 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.

It is further noted that in his January 16, 2020 report, the psychiatric agreed medical evaluator (AME) Dr. Howard Greils stated:

The other authorization responses that I am asked to address today are in regard to denied requests for: aquatic therapy three to four times per week for two weeks and for Percocet 10/325 mg four times per day for 30 days. Unfortunately, these requests for pain management therapy and medications are outside of my area of expertise, and I must defer to the appropriate specialists for the related determinations.

(Exhibit XXX, Agreed Medical Examination Report of Dr. Greils, January 16, 2020, p. 6.)

Dr. Greils, per his own admission, is not qualified to address the reasonableness and necessity of treatment modalities recommended in relation to applicant's orthopedic condition.

Therefore, we will deny applicant's Petition.

For the foregoing reasons,

¹ Commissioner Frank M. Brass, who was previously on the panel in this matter, no longer serves on the Appeals Board. Another panel member was assigned in his place.

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings of Fact issued by the WCJ on June 3, 2021 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 23, 2021

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

**BERKOWITZ & COHEN
CHERNOW & LIEB
SARA VILLEGAS**

AI/pc

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

**I
INTRODUCTION**

1. Applicant's Occupation: Account Rep/Group 110
Date of Injury: August 13, 2002
Parts of Body Injured: Back and Psyche
2. Identity of Petitioner: **Applicant** filed the Petition.
Timeliness: The petition was timely filed.
Verification: The petition was properly verified.
3. Date of issuance of Findings and Orders: June 3, 2021
4. Petitioner's contention:
 - A. The WCJ incorrectly found that non-psychiatric treatment disputes that would have been forwarded to Dr. Sohn, but for his death, will now have to follow the procedures outlined in Labor Code Section 4610 (IMR/UR process)
 - B. The WCJ incorrectly found that Dr. Griels cannot be used as an alternative or bypass of the IMR/UR process as outlined in Labor Code section 4610 for non-psychiatric treatment.
 - C. Applicant has been deprived of procedural due process.
 - D. The Court incorrectly framed the issues.

**II
FACTS**

Applicant, Sara Villegas, born December 17, 1973, sustained an injury to her back and psyche while employed by the California Elwyn Institute on August 13, 2002. The Honorable Jorja Frank (retired) approved a Stipulations with Request for Award on February 27, 2006. Subsequently, a timely Petition to Re-open was filed by Applicant. A Findings of Fact and Orders issued on April 26, 2016 regarding the Petition to Re-open. Petitions for Reconsideration regarding the Petition to Re-open and other issues were denied by the Board.

The parties appeared for trial on March 29, 2017 regarding medical treatment. The parties framed the issues as follows:

1. Need for further medical treatment.
 - a. Are all treatment requests subject to the IMR process?
 - i. Does the language on the Stipulated Award approved by WCJ Frank (retired) on February 27, 2006, constitute a contract that waives the IMR process and requires Defendants to refer requests to Dr. Sohn and/or Dr. Greils for review?
2. Attorney's fees (deferred, jurisdiction reserved).
3. Costs and sanctions (deferred, jurisdiction reserved).

Neither party presented any additional evidence. Instead, the parties relied upon the relevant evidence from prior proceedings in this matter. There was no testimony. Defendant was permitted until April 13, 2017 to file a response to Applicant's trial brief dated March 29, 2017. This matter was submitted for decision on April 14, 2017. A Findings of Fact issued on May 16, 2017.

The May 16, 2017 Findings of Fact determined the following:

1. The handwritten language of the Stipulated Award approved by WCJ Frank (retired) on February 27, 2006 ("per AME reports of Doctors Sohn and Griels only") is a lawful and knowing stipulation by the parties.
2. The stipulation was approved by WCJ Frank (retired) when the Award issued.
3. The stipulation is an agreement/contract to bypass the Independent Medical Review process in favor of a determination of any medical treatment dispute to either Dr. Sohn or Dr. Greils as appropriate.
4. After submission of a request for medical treatment pursuant to the Utilization Review process, Defendant must refer any dispute over the medical treatment to either Dr. Sohn or Dr. Greils as appropriate.

Defendant filed a Petition for Removal and Reconsideration from this decision. An Opinion and Order Dismissing Petition for Removal and Denying Petition for Reconsideration issued on July 26, 2017. The Board noted that the decision was a final order and dismissed the Petition for Removal. The Board denied reconsideration for the reasons stated in the Report and Recommendation, adopting and incorporating same into their Denial of the Petition for Reconsideration.

On June 25, 2020, this matter was set for trial. At that trial the issues were framed as follows:

1. Need for further medical treatment.
 - a. Are all treatment requests subject to the IMR process?
 - i. Whether in light of AME Roger Sohn's passing, any non-psyche Requests for Authorization will have to follow the procedure set out in Labor Code section 4610 subject to the UR/IMR process.
2. Attorney's fees are deferred with jurisdiction reserved.
3. Costs and sanctions are deferred with jurisdiction reserved.

Judicial notice was taken of the prior Stipulated Award approved by Jorja Frank (retired) and the April 26, 2016 Award issued by this judge. The Minutes of Hearing notes that no additional evidence was required to determine the issue and judicial notice of the prior proceedings, including the Findings of Fact dated May 16, 2017.

On July 8, 2020, a Findings of Fact issued. Applicant filed a timely Petition for Reconsideration, primarily on the assertion that Applicant was not allowed to place exhibits into evidence. The July 8, 2020 Findings of Fact was rescinded.

On the March 9, 2021 trial date, via separate Order of Submission, the Agreed Medical Examination Report of Dr. Griels dated January 16, 2020 was admitted into evidence on behalf of Applicant and the case was re-submitted for decision. The decision issued on June 3, 2021. It is from this decision that Applicant is agreed. Defendant has filed a response.

III DISCUSSION

Applicant asserts that Court improperly framed the issue for trial. Applicant asserts that the issue is whether the wording of the stipulation as well as the qualifications and type of care needed by Applicant is within the purview of Dr. Greils. Applicant also asserts that the decision limits Applicant's review of chronic pain solely to an orthopedic specialist and this deprives her due process. In addition, Applicant asserts that the Stipulation with Request for Award approved by the now retired Judge Jorja Frank, allows both Dr. Sohn (now deceased) and Dr. Griels to review a denial of medical care from utilization review, regardless of the type of medical care sought.

It should be noted that the Opinion on Decision clearly states the basis for each issue decided. All medical reporting, transcript and documentary evidence relied upon is clearly identified. However, to the extent that the

Opinion on Decision may seem skeletal, pursuant to Smales v. WCAB (1980) 45 CCC 1026, this Report and Recommendation cures that defect.

When Applicant filed the Petition for Reconsideration of the July 8, 2020 Findings of Fact, it was asserted that Applicant was not allowed to present additional evidence at the June 25, 2020 trial. Review of the June 25, 2020 Minutes of Hearing confirmed that there was no indication that the parties stated that all evidence was in the record. Instead, the Minute reflection, as correctly stated in Applicant's Petition of the July 8, 2020, was a determination made by the Court that no additional evidence was warranted. That is the reason the July 8, 2020 decision was rescinded and Applicant was allowed to place into evidence the medical report of Dr. Griels.

Absence in Applicant's Petition for Reconsideration of the July 8, 2020 Findings was any assertion that the trial issue(s) was improperly framed. It is raised for the first time in this Petition.

It is my practice to make sure the record accurately reflects the stipulations and issues raised by the parties. On page three of the Minutes of Hearing of the June 25, 2020 it reads as follows:

“LET THE MINUTES ALSO REFLECT THAT the parties agree that the Stipulations and Issues have been properly read into the record.”

Prior to this reflection, the parties are asked if the stipulations and the issues are correct after I recite same. It is not unusual for parties to request changes or clarifications of the Stipulations and Issues when asked. This notation is not made until there is complete agreement by the parties that the Stipulations and Issues are correct.

In addition, after the service of the Minutes of Hearing and Summary of Evidence, although it usually for clerical errors or clarification, parties can request corrections or clarification of the Minutes of Hearings. No correction or clarification was requested.

It is noted that Defendant also appears to be surprised by the assertion that the issue(s) was/were not properly framed. Defendant's answer notes that the proceedings that took place on March 9, 2021 not only addressed the evidence, but the framing of the issues. Although I cannot confirm the length of time spent with the parties as noted by Defendant, the manner in which the Defendant's describes the events is consistent with this Judge's handling of all cases to insure that the issues are properly framed and evidence is marked identified and/or admitted. And, if the case has returned to trial after a rescinded Decision, this Judge makes sure the record is clear on all aspects

- evidence and issues – before resubmitting a case. In this case, Applicant only requested the admission of an exhibit.

Applicant's assertion that Stipulation with Request for Award approved by the now retired Judge Jorja Frank, allows both Dr. Sohn (now deceased) and Dr. Griels to review a denial of medical care from utilization, regardless of the type of medical care sought or the treating doctor that requests it ignores the earlier decision in this matter that addressed the use of the Independent Medical Review process. This assertion is inconsistent with the prior determinations.

Applicant's specific injury of August 13, 2002 involves two parts of body – back (orthopedic) and psyche. As noted above, the May 16, 2017 Decision specifically found that the determination of disputed medical treatment by either Dr. Sohn or Dr. Greils as appropriate. (emphasis added) It also required Defendant to refer any dispute over the medical treatment to either Dr. Sohn or Dr. Greils as appropriate. (emphasis added) It did not state that either doctor could address any medical treatment in the area of specialization by the other Agreed Medical Examiner as asserted by Applicant. As noted above the Petition for Reconsideration of the May 16, 2017 filed by Defendant was denied. No Petition for Reconsideration was filed by Applicant challenging the Findings to include a determination that any medical treatment dispute could go to both doctors.

Applicant also asserts that the decision limits Applicant's review of chronic pain solely to an orthopedic specialist and this deprives her due process. It is this WCJ understanding from the record/argument, that only the Applicant's orthopedic doctor requested the treatment of Applicant's chronic pain. (No treatment requests were placed in the record) This decision only determined that non-psyche disputes are now subject to Independent Medical Review.

Applicant's award includes psychiatric treatment. No evidence from Applicant's treating psychiatric doctor was identified or offered regarding the need for chronic pain treatment or any other treatment. The record is void of any Utilization Request by Applicant's treating psychiatric doctor for treatment of chronic pain or any other type of treatment. The record is void of any denial of a Utilization Request by Applicant's treating psychiatric doctor for treatment of chronic pain or any other type of treatment. As indicated, only in the event of dispute of psychological treatment request for authorization, will the parties bypass IMR and proceed to Dr. Griels.

Dr. Griels is not the treating doctor. It is not a question of his qualifications. No disputed psychological treatment requests by Applicant's treating psychiatric doctor was established. Applicant was not deprived of

due process. Her remedy for the denied orthopedic treatment is IMR, due to the death of the orthopedic AME.

**IV
RECOMMENDATION**

It is respectfully recommended that Applicant's Petition for Reconsideration be denied for the reasons stated above.

DATED: 7/16/2021
JACQUELINE A. WALKER
Workers' Compensation Judge