WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

WILLIAM ARRUE CAMPOS, *Applicant*

vs.

RESEARCH METAL INDUSTRIES, INC.; STARR INDEMNITY & LIABILITY COMPANY; NOVA CASUALTY COMPANY, administered by SEDGWICK, *Defendants*

Adjudication Numbers: ADJ16846867; ADJ16849952
Los Angeles District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on January 26, 2024. By the F&O, the WCJ denied applicant's appeal of the Administrative Director's (AD) Independent Medical Review (IMR) determination, which upheld a Utilization Review (UR) decision denying applicant's request for various medical treatments. The WCJ found that applicant did not satisfy his burden to prove that the IMR determination was based on a plainly erroneous finding of fact as required by Labor Code section 4610.6(h)(5).[1] (Lab. Code, § 4610.6(h)(5).)[2]

Applicant contends that the IMR determination was the result of a plainly erroneous finding of fact because: 1) the UR and IMR reviewers overlooked or ignored medical evidence that clearly supported the requested medical treatments, and 2) the IMR reviewer failed to apply the California

[1] Labor Code section 4610.6(h)(5) provides in pertinent part as follows: "A determination of the administrative director pursuant to this section may be reviewed only by a verified appeal....The determination of the administrative director shall be presumed to be correct and shall be set aside only upon proof by clear and convincing evidence of one or more of the following grounds for appeal:...(5) The determination was the result of a plainly erroneous express or implied finding of fact, provided that the mistake of fact is a matter of ordinary knowledge based on the information submitted for review pursuant to Section 4610.5 and not a matter that is subject to expert opinion."

[2] All further references are to the Labor Code unless otherwise noted.

MTUS[3] Chronic Pain Guidelines to the medical evidence. Applicant requests that we grant reconsideration and remand the matter to the AD for a new IMR.

We received answers from defendants Starr Indemnity & Liability Company and Nova Casualty Company. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny reconsideration.

We have considered the allegations in the Petition for Reconsideration, the answers, and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons discussed below, we will deny reconsideration.

FACTS

The parties stipulated that applicant sustained a specific industrial injury to his back while working for defendant as a machine operator on August 20, 2021 (ADJ16846867). (Minutes of Hearing (MOH), September 27, 2023, p. 2.)

On June 7, 2023, applicant's primary treating physician filed a Request for Authorization for the following medical treatments: lumbar facet blocks at L5-S1 under fluoroscopy; post injection therapy; and physical therapy. (Exh. K, p. 1.) On June 14, 2023, a Utilization Review (UR) decision was issued, finding that all requested treatments were not medically necessary. (Exhs. B, K.) Applicant requested Independent Medical Review (IMR) of the UR decision. On July 14, 2023, the final IMR determination was issued, which upheld the UR decision denying the requested treatments. (Exh. J.) Applicant appealed the IMR determination, which was tried by the WCJ on November 25, 2023.

On January 26, 2024, the WCJ issued the F&O denying applicant's IMR appeal, finding that the IMR determination was based upon all available medical evidence and was not based on a plainly erroneous finding of fact in violation of section 4610.6(h)(5).

Applicant filed a timely, verified Petition for Reconsideration (Petition) of the F&O.

DISCUSSION

In the Petition, applicant contends that the IMR determination was the result of a plainly erroneous finding of fact that was a matter of ordinary knowledge in violation of section

[3] "MTUS" stands for the "Medical Treatment Utilization Schedule." The MTUS guidelines provide details on which treatments are effective for certain injuries, as well as how often the treatment should be given, the extent of the treatment, and surgical considerations. (Cal. Code Regs., tit. 8, § 9792.20 et seq.)

4610.6(h)(5). More specifically, applicant contends that the UR and IMR reviewers overlooked or ignored factual findings contained in diagnostic x-rays and other medical records provided by Congress Associates and the Panel Qualified Medical Evaluator (PQME), Dr. Rodney Gabriel, as well as the MTUS Chronic Pain Guidelines, all of which supported the requested medical treatments. Applicant contends that, had the UR and IMR reviewers considered this evidence, they could not possibly have reached the conclusions that they did.

As an initial matter, we note that, to the extent that applicant challenges the UR denial on the basis that medical records were overlooked or ignored, as made clear by the Court of Appeal in *Ramirez v. Workers' Comp. Appeals Bd*. (*Ramirez*) (2017) 10 Cal.App.5th 205, 223 [82 Cal.Comp.Cases 327], other than timeliness, any deficiency in UR is reviewed by independent medical review, and not by the WCAB. Defects in UR are not tendered directly to the WCAB. Rather, UR decisions are reviewed by IMR, which then issues its own determination subject to WCAB review for the limited grounds enumerated in section 4610.6(h). "The statutory scheme presumes that if the utilization reviewer relies on an incorrect guideline...the mistake will be corrected by the independent medical review...." (*Ramirez, supra,* at p. 224.) Regardless of any deficiency in the underlying UR decision, WCAB review is limited to whether IMR ran afoul of the limited grounds listed in section 4610.6(h); the WCAB does not review the underlying UR decision.

Section 4610.6(h) authorizes the WCAB to review an IMR determination of the Administrative Director (AD). The section explicitly provides that the AD's determination is presumed to be correct and may only be set aside by clear and convincing evidence of one or more of the following: 1) the AD acted without or in excess of their powers; 2) the AD's determination was procured by fraud; 3) the independent medical reviewer had a material conflict of interest; 4) the determination was the result of bias based on race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability; or 5) the determination was the result of a plainly erroneous finding of fact not subject to expert opinion. (Lab. Code, § 4610.6(h); see also *Stevens v. Workers' Comp. Appeals Bd*. (*Stevens*) (2015) 241 Cal.App.4th 1074, 1100-1101 [80 Cal.Comp.Cases 1262].) The burden is on the injured worker to prove the existence of one or more of these factors by a preponderance of the evidence. (Lab. Code, § 3202.5.)

Applicant first contends that the IMR determination was factually erroneous based upon his belief that the IMR reviewer ignored the contents of various medical records, including

diagnostic x-rays and medical reports provided by Congress Associates and the PQME, Dr. Rodney A. Gabriel. (Petition, p. 6.) However, upon review, this is not correct. Not only does the IMR determination explicitly list these records as reviewed,[4] but, oddly enough, applicant also admits as such further in his Petition, stating: "Exh. J [the IMR Final Determination Letter] at p 2 shows IMR reviewed the records of Congress Assoc (12/20/6/07/2),[5] as well as the rpt of PQME Dr. Gabriel who cites the lumbar spine x-ray findings on p. 16 of his 2/22/2023 rpt." (Petition, p. 6.)[6] Applicant contends, however, that the IMR's failure to explicitly reference these records in the discussion portion of the determination letter proves that the denial was the result of factual errors in violation of section 4610.6(h)(5). However, the lack of an explicit reference to each and every record in the IMR reviewer's discussion does not, in and of itself, satisfy the restrictive standards required for reversing the IMR determination, which, again, requires *clear and convincing evidence* that the determination was based upon a factual mistake of ordinary knowledge. Thus, applicant's argument to the contrary is rejected.

Applicant asserts, however, that his x-rays showed that he suffered from "facet arthropathy," and that a "simple Google search" would reveal that this condition is also called "facet arthritis" - a painful condition that he claims was treatable by the requested lumbar facet blocks. Thus, according to applicant's logic, the IMR reviewer's decision to deny the requested facet blocks was the result of a factual error that is a matter of ordinary, i.e., Googleable, knowledge that should be reversed. We disagree.

The fact that Google may render search results showing a potential link between facet arthropathy and facet arthritis/arthritic pain does not demonstrate that this is a factual matter within the ordinary knowledge of a lay person. Rather, expert medical opinion was required to diagnose applicant, to determine the source of applicant's pain, and to determine treatment(s) that were medically necessary in his specific case. (Lab. Code, § 4610.5(c) ["'Medically necessary' and "'medical necessity' mean medical treatment that is reasonably required to cure or relieve the

[4] Exh. J, IMR Final Determination Letter, p. 2 (list of records reviewed: Congress Associates Inc. [12/20/2022-06/07/2023]; Rodney A. Gabriel MD [02/22/2023-03/20/2023].)

[5] Clearly, this date range is a typographical error. Upon review, it is reasonable to infer that the intended date range is 12/20/2022-06/07/2023, as this is the range listed for these records in Exhibit J, the IMR Final Determination Letter.

[6] We note that several additional records listed in the IMR determination letter and cited by applicant that may discuss the diagnostic x-rays were not admitted into the evidentiary record before us, and we are therefore unable cite to any specific details in these records. (Petition, p. 6, citing Exhs. M, N.; Exh. J, p. 2; see also MOH, September 27, 2023, p. 4.)

injured employee of the effects of his or her injury..."].) We again stress that it was applicant's burden to rebut the IMR determination with *clear and convincing evidence* of a factual mistake of ordinary knowledge that is not a matter subject to expert opinion; applicant's reliance upon a search engine to prove his point does not suffice.

Applicant also challenges the IMR determination on the grounds that the IMR reviewer did not utilize the MTUS guidelines for chronic pain. Applicant contends that the IMR "conceded" that his condition was chronic, but failed to consult the MTUS Chronic Pain Guidelines or explain why he did not qualify for treatment suggested thereunder.

The WCAB is empowered to examine whether an IMR determination issued without authority, which the Court of Appeal has defined as including an erroneous application of the MTUS. (See, e.g., *Stevens, supra,* 241 Cal.App.4th at p. 1100.) In this case, however, applicant has failed to present clear and convincing evidence that the MTUS was erroneously applied. As explained by the WCJ in the Report,

> [A]pplicant...was diagnosed with the following conditions: Other Intervertebral Disc Degeneration, lumbar region, Other Spondylosis with radiculopathy, lumbar region, Spinal Stenosis, lumbar region without neurogenic claudication, and Facet Arthropathy, lumbar.

(Report, pp. 7-8.)

The IMR reviewer determined that the MTUS for Low Back Disorders: Low Back Pain/Radicular Pain were most relevant to applicant's diagnoses and the requested treatments, and the reviewer explained the medical reasoning underlying each of their conclusions. (Exh. J, pp. 3-6; Exh. K, p. 8.) The IMR reviewer was required to exercise their expert medical judgment in choosing which sections of the MTUS were most germane to the disputed treatments. Although, according to applicant, there may be several MTUS provisions regarding his conditions, the determination as to which of those provisions were most relevant to the specific treatment requests is not a matter within the ordinary knowledge of a lay person. It is a matter for expert opinion. Applicant did not present substantial expert evidence to demonstrate that a variance from the specific guidelines applied by the IMR reviewer is appropriate in this case. Accordingly, applicant has failed to demonstrate that the IMR determination was issued in violation of section 4610.6(h) as a result of the MTUS guidelines used.

Based upon the foregoing, we deny applicant's Petition for Reconsideration and affirm the WCJ's decision denying the IMR appeal.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the January 26, 2024 Findings and Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 22, 2024

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

WILLIAM ARRUE CAMPOS
SOLOV & TEITELL
LAW OFFICES OF STOODY & MILLS
LAW OFFICES OF BRADFORD & BARTHEL

AH/*cs*

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