

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

SCOTT EMERSON RAY, *Applicant*

vs.

**SUPER MEDIA;
AMERICAN ZURICH INSURANCE, *Defendants***

**Adjudication Number: ADJ7191443
Riverside District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

Applicant, Scott Emerson Ray, petitioned for reconsideration of the Findings and Order issued by the workers' compensation administrative law judge (WCJ) in this matter on July 9, 2021. In that decision, the WCJ denied applicant's appeal of the July 13, 2020 Independent Medical Review (IMR) final determination denying the request for authorization for extended Nucynta, finding, in part, that the applicant had not shown clear and convincing evidence sufficient to set aside the IMR determination, and that the determination of the Administrative Director dated July 13, 2020 remained in effect.

Applicant contends in his petition that the rationale in the *Patterson* decision (*Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910, 2014 LEXIS 98) applies in this case, and that the WCJ failed to address applicant's assertion to that effect in his decision.

Defendant filed a response stating that the WCJ acted within his power and that the findings of fact supported the decision of the WCJ who found the *McCool* case (*McCool v. Monterey Bay Mediacar*, 2014 Cal. Wrk. Comp. P.D. LEXIS 578) controlling as to the applicant's claim.

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.¹

¹ Commissioner Marguerite Sweeney signed the Opinion and Order Granting Petition for Reconsideration dated September 27, 2021. 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 case by Stipulations with request for Award. The parties further requested a return 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 July 9, 2021 Findings and Order from which reconsideration is sought and return this matter to the WCJ to consider the Stipulation of the parties. 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 and Order issued in this matter on July 9, 2021, be **RESCINDED**, and that this matter is **RETURNED** to the workers' compensation administrative law judge to consider the Stipulations with Request for Award and for such further proceedings as is deemed appropriate.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 19, 2023

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

**SCOTT EMERSON RAY
HEITING & IRWIN
LAW OFFICES OF TRACEY LAZARUS**

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