

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

EPIFANIO MEDINA, *Applicant*

vs.

**MATTHEW WILSON SPECIALTY CONTRACTOR'S, INC., dba SECOND NATURE,
and MID-CENTURY INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ1413052 (STK 0170134), ADJ4567871 (STK 0173676)
Stockton District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (prior Opinion), issued by the Workers' Compensation Appeals Board (Appeals Board) on August, 2, 2021, wherein we granted reconsideration and affirmed the 2nd Amended Findings of Fact, Award, and Order, except that we amended it regarding case number ADJ1413052, to find that the reports from QME Dr. Hutchinson were not substantial evidence (Finding of Fact 9) and to defer the issue of the permanent disability caused by the July 9, 2001 injury (Finding of Fact 6); and we returned the matter to the WCJ for further proceedings consistent with the prior Opinion.

Applicant contends that the statement in the prior Opinion, that the issue of applicant being referred to a specialist to evaluate his left knee was not raised at trial, was "incorrect" ... and "...the issues regarding Applicant's 'ongoing care' were never addressed in the Court's decision."

We have considered the allegations in the Petition for Reconsideration (Petition). Based on our review of the record, for the reasons stated in our prior Opinion, which we adopt and incorporate by this reference thereto, and for the reasons discussed below, we will deny reconsideration.

DISCUSSION

The issues raised by applicant in the Petition were previously raised in his June 2, 2021 Petition and we addressed them in our prior Opinion.

Applicant argues that the medical reports in the trial record, "... discussed ongoing care to the knee and the request to see a specialist" and that the issue had previously been brought to the attention of defendant and the Appeals Board, so it was an issue submitted for decision. (Petition, p. 3.) Having again reviewed the trial record, it is clear that the issue of whether applicant should be referred to a specialist to evaluate his left knee, was not raised at trial and in turn was not submitted for decision. (See MOH/SOE, May 8, 2019, pp. 3 – 4; and MOH/SOE, March 4, 2021, p. 2.) There is no legal support for applicant's argument that because his need for left knee treatment was discussed by the reporting doctors that makes it an issue submitted for decision. The fact that an issue is discussed by doctor, in a report that was received into evidence, does not mean that the issue was raised and/or submitted for decision. "[T]he record of proceedings in a case submitted for decision on the record must be properly organized and must contain at the minimum: a list of the issues submitted to the WCJ for decision; the stipulations of the parties, if any; and the admitted evidence." (*Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473, 474 (Appeals Board *en banc*)). The MOH/SOE in this matter clearly identify the stipulations and the issues. Again, the issue of whether applicant should be referred to a specialist to evaluate his left knee, was not raised and was not submitted. It is well established that an issue that could have been raised at trial, but was not raised, cannot be raised for the first time in a petition for reconsideration. (*Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1265 [54 Cal.Comp.Cases 145, 148]; *Davis v. Interim Health Care* (2000) 65 Cal.Comp.Cases 1039, 1044 (Appeals Board *en banc*). Further, as noted in our prior Opinion, although the record contains numerous requests for authorization (see e.g. App. Exh. 22, Frank Fine, D.C., M.D.), none of the requests for authorization are for applicant to be seen by an orthopedic specialist. Absent a request for authorization and the subsequent utilization review, there is no basis for applicant's argument that he is wrongfully being denied treatment to which he is entitled. (See Lab. Code, §§ 4610 et seq.; and Cal. Code Regs., tit. 8, §§ 9792.6 et seq.)

As to the argument that the Appeals Board did not address the issue of applicant's ongoing care; in our prior Opinion we stated, that pursuant to the WCJ's June 26, 2019 Findings of Fact, Award and Order, applicant had been awarded future medical treatment to cure or relieve the effects of the industrial injury. (Prior Opinion, p. 4.) Based thereon, our prior Opinion was correct that there is no need to make another award of the same benefits. However, it is important to note that in order to obtain medical treatment that is paid for by defendant, applicant and his providers

must follow the applicable code sections and regulations. (See for example: Lab. Code, §§ 4600, 4610, and 4616.3, et seq.; Cal. Code Regs., tit. 8, §§ 9780 et seq.) Thereafter, if applicant believes that defendant did not authorize or pay for treatment that applicant believes that he was entitled to, applicant may then seek a hearing before the WCJ.

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration issued by the Workers' Compensation Appeals Board on August, 2, 2021, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 27, 2021

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

**EPIFANIO MEDINA
SCHWARTZ & WILLIAMS-ABREGO**

TLH/pc

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