

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

**LILIANA PEREZ, *Applicant***

**vs.**

**E&J GALLO WINERY, permissibly self-insured, *Defendants***

**Adjudication Number: ADJ6877517  
Stockton District Office**

**NOTICE OF INTENTION  
TO ADMIT EVIDENCE**

We previously granted applicant's Petition for Reconsideration in order to further study the factual and legal issues in this case. This is our Notice of Intention to Admit Evidence.

Applicant seeks reconsideration of the Findings of Fact, Orders and Opinion on Decision (F&O) issued by the workers' compensation administrative law judge (WCJ) on January 10, 2020. By the F&O, the WCJ found that a surgical consultation is a form of treatment and is therefore subject to utilization review (UR). The parties were ordered to proceed with independent medical review (IMR) to resolve any disputes regarding the appropriateness of the UR decision.

Applicant contends that a request for a surgical consultation is not treatment and is not subject to UR.

We did not receive an answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of applicant's Petition for Reconsideration 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 issue a notice of our intention to admit the February 10, 2020 IMR determination into evidence as "Applicant's Exhibit 2." The parties shall have twenty (20) days after service of this Notice (plus an additional five (5) days for mailing) to object. (Cal. Code Regs., tit. 8, former 10507(a)(1), now § 10605(a)(1) (eff. Jan. 1, 2020).)

The matter proceeded to an expedited hearing on January 7, 2020 on the following issue:

Request for an authorization for an orthopedic surgical consult that was made by Dr. Annu Navani, M.D. with a report written by physician's assistant Corey

Tremblay specifically requesting an orthopedic surgical consultation for the right shoulder. There were other items requested at the same time, but we're only dealing with the authorization request for the orthopedic surgical consult for the right shoulder which was non-certified by the Utilization Review company Genex on December 3, 2019.

(Minutes of Hearing, January 7, 2020, p. 2.)

The WCJ issued the resulting F&O as outlined above.

Subsequent to issuance of the F&O, applicant sent a letter dated February 20, 2020 to the WCJ enclosing a copy of an IMR determination letter dated February 10, 2020 and requesting that he take into consideration the determination that allows the surgical consult that was at issue. The record does not indicate that any action was taken in response to this request.

The sole issue at trial was the request for authorization for the orthopedic surgical consult. There are indications that subsequent developments after the F&O may have rendered the dispute between the parties to be moot. It is respectfully requested that if the disputed issue has been resolved, applicant withdraw her Petition for Reconsideration from the Appeals Board to mitigate futile use of sparse judicial resources.

Therefore, unless good cause to the contrary is shown in writing and is received within twenty (20) days of service of this notice plus an additional five (5) days for mailing, the Appeals Board will admit the February 10, 2020 IMR determination into evidence as "Applicant's Exhibit 2." Upon expiration of the twenty-five (25) day period, the matter will be deemed submitted for decision after reconsideration without further notice.

For the foregoing reasons,

**NOTICE IS HEREBY GIVEN** that the February 10, 2020 IMR determination will be admitted into evidence as "Applicant's Exhibit 2" twenty (20) days after service of this decision plus an additional five (5) days for mailing, unless good cause to the contrary is shown in writing and is received within that twenty-five (25) day period at the Workers' Compensation Appeals Board. Objections to the Notice of Intention shall be filed (received) at the Office of Commissioners of the Workers' Compensation Appeals Board at its street address (455 Golden Gate Avenue, Suite 9328, San Francisco, CA 94102); its Post Office Box address (P.O. Box 429459, San Francisco, CA 94142-9459); its e-mail address [WCABEmergencyBox@dir.ca.gov](mailto:WCABEmergencyBox@dir.ca.gov); **or** e-filed in the Electronic Adjudication Management System (EAMS). Thereafter, the matter will be deemed submitted for decision after reconsideration without further notice.

**IT IS FURTHER ORDERED** that pending the issuance of a Decision After Reconsideration in the above case, all further correspondence, objections, motions, requests and communications, other than objections to this Notice of Intention, shall be filed only with the Office of the Commissioners of the Workers' Compensation Appeals Board at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102) or its Post Office Box address (P.O. Box 429459, San Francisco, CA 94142-9459), and shall not be submitted to the district office from which the WCJ's decision issued or to any other district office of the Workers' Compensation Appeals Board, and shall not be e-filed in EAMS.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**May 25, 2021**

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

**LILIANA PEREZ  
HARBINSON & HARBINSON  
OCCUPATIONAL INJURY LAW CENTER**

***AI/pc***

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