

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

PATRICIA CORIA, *Applicant*

vs.

UCLA MEDICAL CENTER, permissibly self-insured, *Defendants*

**Adjudication Number: ADJ10940653
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration in order to further study the factual and legal issues in this case. This is our Opinion and Decision After 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. Based on our review of the record and for the reasons discussed below, we will amend the WCJ's decision as recommended in the Report and otherwise affirm the decision of December 1, 2020. We adopt and incorporate the following from the WCJ's Report:

I.
INTRODUCTION

The applicant sustained admitted injuries to her left wrist on September 24, 2015 while working as a patient transport at UCLA Medical Center.

The matter proceeded to trial before the undersigned. The undersigned issued the Findings and Award, dated December 1, 2020.

The applicant filed a timely verified Petition for Reconsideration, dated December 21, 2020, asserting that the evidence does not justify the findings of fact and/or that the findings of fact do not support the order, decision, or award.

The defendant filed an Answer to Petition for Reconsideration, dated December 29, 2020.

II.
DISCUSSION

**START DATE FOR PAYMENT OF PERMANENT DISABILITY
BENEFITS**

At trial, the parties raised the issue of the applicant's permanent and stationery date. The applicant claimed October 2, 2018, based upon the reporting of PTP Dr. Emmanuel, and the employer claimed August 6, 2018, based upon the reporting of PQME Dr. Graham (MOH, August 20, 2020, page 3, lines 7 through 10). The undersigned found the permanent and stationary date to be October 2, 2018, and ordered that permanent disability payments were to commence as of that date. (F & A, page 1, Findings of Fact 7.)

The Petitioner asserts that the start date for the applicant's permanent disability benefits should have been the day after the last payment of temporary disability benefits on July 10, 2018, pursuant to Labor Code §4650 (b). The parties stipulated at trial that the applicant was paid for temporary disability through July 9 2018. (MOH, August 20, 2020, page 32, lines 23-24).

The undersigned is in agreement with the Petitioner that permanent disability advances must commence from the last date that temporary disability indemnity was paid, pursuant to Labor Code §4650 (b). Accordingly, the undersigned would recommend that the Petition be partially granted in this regard, and that the Findings and Award be amended to order that permanent disability payments are to commence as of July 11, 2018.

LABOR CODE §5813 AND §5814

Utilization Review (UR) is the statutorily defined process by which an employer reviews and approves, modifies, delays or denies a physician's request for authorization (RFA). (See, Labor Code §4610) Under the UR process, a request for treatment cannot be denied by a claims adjustor, and must be approved unless a clinician determines that the treatment is medically unnecessary. This ensures that a physician, rather than a claims adjuster, with no medical training, makes the decision to deny, delay, or modify treatment. (See, *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (2008) 44 Cal.4th 230, 241 [79 Cal. Rptr. 3d 171, 186 P.3d 535] (Sandhagen).*)

Disputes over an employer's UR decision are governed by Labor Code §4610.5 et seq., which details the independent medical review (IMR) process.

In the case at hand, the defendant followed required the statutory procedures and obtained UR of the RFA. UR denied the RFA. IMR upheld the denial of the RFA. The Petitioner could have appealed the IMR decision, but chose not to do so.

...

In the opinion of the undersigned, the defendant did not act in bad faith, or utilize tactics that were frivolous or solely intended to cause unnecessary delay by following the UR determination and the IMR decision to deny the request for surgery. The Petitioner failed to introduce substantial evidence at trial to the contrary. Accordingly, the Petitioner did not sustain her burden of

proof. Therefore, the undersigned denied the Petition for Labor Code §5813 Sanctions Dated December 1, 2017.

...

Lastly, it is noted that the Petitioner cites a scene from the movie Austin Powers to support the Petitioner's arguments. (Petition, page 3, lines 5 through 18.) Movie scenes are not citable authority. In the opinion of the undersigned, this is frivolous, improper, and it is a waste of the court's time.

In addition, the Petition fails to comply with Title 8 California Code of Regulations §10205.12(a). It is difficult to read many of the petitioner's improper "cut and paste" segments of Exhibits/documents that are pasted throughout the Petition. Moreover, the Petitioner failed to properly and clearly identify all of the "cut and paste" segments of Exhibits/documents with sufficient specificity (such as page numbers, etc.) to allow the court to review the information in the record, assuming that the "cut and paste" segments are even in the record. The Petition is in violation of Title 8 California Code of Regulations §10945 (a) and (b).

In the opinion of the undersigned, the Commissioners may wish to consider admonishing and/or sanctioning the Petitioner accordingly.

III. **RECOMMENDATION**

The undersigned would respectfully recommend that the Petition be partially granted regarding the commencement date for permanent disability advances, and that the Findings and Award be amended to order that permanent disability payments are to commence on July 11, 2018.

(Report, January 4, 2021, pp. 1-5.)

The WCJ recognized in the Report that applicant's permanent disability benefits start date should be after the last day of temporary disability benefits, which the parties stipulated was paid through July 9, 2018. Therefore, we will amend the decision to reflect a permanent disability benefits start date of July 10, 2018 (Finding of Fact No. 7). (Lab. Code, § 4650(b).)

Applicant requested penalties under Labor Code section 5814 in relation to utilization review (UR) decisions issued by defendant. Section 4610.1 precludes "an increase in compensation under Section 5814 for unreasonable delay in the provision of medical treatment for periods of time necessary to complete the utilization review process in compliance with Section 4610." (Lab. Code, § 4610.1.) However, an employee may be entitled to an increase in compensation under section 5814 where "the employer has unreasonably delayed or denied medical treatment due to an unreasonable delay in completion of the UR process." (*Id.*) The

record in this matter does not reflect an unreasonable delay in completion of the UR process.

Applicant also sought sanctions under section 5813, which requires a showing of “bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.” (Lab. Code, § 5813(a).) It is acknowledged that the UR and independent medical review (IMR) processes do not abrogate the claims administrator’s duty to investigate whether benefits are due. (Cal. Code Regs., tit. 8, § 10109.)¹ However, applicant has not met her burden of showing that defendant acted in bad faith or engaged in tactics that are frivolous or solely intended to cause unnecessary delay. (Lab. Code, §§ 3202.5, 5705.) Therefore, the record supports the WCJ’s order denying applicant’s August 23, 2017 Petition for Sanctions and Penalties.

In conclusion, we will amend the WCJ’s decision as outlined herein and otherwise affirm the decision.

¹ See *Braewood v. Workers’ Comp. Appeals Bd.* (1983) 34 Cal.3d 159, 161 [48 Cal.Comp.Cases 566]; *Romano v. The Kroger Co.* (April 16, 2013, ADJ1372133) 2013 Cal. Wrk. Comp. P.D. LEXIS 125; see also *State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230, 244 [the employer has “engaged in utilization review” when it reviews a treatment request and approves it as reasonably required without sending the request to be processed through its UR].

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award and Order issued by the WCJ on December 1, 2020 is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

7. Applicant's injury caused permanent disability of 41%, entitling applicant to 208 weeks of disability indemnity payable at the rate of \$290 per week in the total sum of \$60,320.00. Permanent disability payments are to commence as of July 10, 2018.

* * *

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 4, 2021

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

**MASSINO LAW
PATRICIA CORIA
SHELLEY & GRAFF**

AI/pc

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