

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

**JUAN CARLOS RUIZ, *Applicant***

**vs.**

**McCARTHY BUILDING COMPANIES, INC.,  
OLD REPUBLIC INSURANCE  
CORPORATION/BITCO, administered by  
GALLAGHER BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ16590361  
San Francisco District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the contents of the Report and the Opinion on Decision of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report and Opinion on Decision, which are both adopted and incorporated herein, and for the reasons stated below, we will deny reconsideration.

Labor Code section 4600(a) provides that:

Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. In the case of the employer's neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.

(Lab. Code, § 4600(a).)

If an employer has established an MPN, injured workers are generally limited to treating with a physician from within the employer's MPN. (Lab. Code, §§ 4600(c), 4616 et seq.) However, if the employer neglects or refuses to provide reasonably necessary medical treatment, whether

through an MPN or otherwise, then an injured worker may self-procure medical treatment at the employer's expense. (Lab. Code, § 4600(a); see also *McCoy v. I.A.C.* (1966) 64 Cal.2d 82, 87 [31 Cal.Comp.Cases 93] ["the employer is required to provide treatment which is reasonably necessary to cure or relieve the employee's distress, and if he neglects or refuses to do so, he must reimburse the employee for his expenses in obtaining such treatment"].)

The Appeals Board has held en banc that "a defendant may satisfy its obligation under Labor Code section 4600 to provide reasonable medical treatment by transferring an injured worker into an MPN in conformity with applicable statutes and regulations regardless of the date of injury or the date of an award of future medical treatment." (*Babbitt v. Ow Jing* (2007) 72 Cal.Comp.Cases 70, 71 (Appeals Board en banc).)

For the reasons stated by the WCJ in the Opinion on Decision and Report, we agree that defendant neglected to provide medical treatment resulting in applicant's entitlement to treat outside of defendant's Medical Provider Network (MPN). We also agree with the WCJ that defendant's failure to cite to the record with specificity is an additional ground for denial. (Cal. Code Regs., tit. 8, § 10945.)

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER**

**I CONCUR,**

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

**/s/ NATALIE PALUGYAI, COMMISSIONER**



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

**October 16, 2023**

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

**JUAN CARLOS RUIZ  
FARNSWORTH LAW GROUP  
KARLIN, HIURA & LaSOTA**

**PAG/abs**

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

# REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

## Introduction

On August 15, 2023, defendant filed a petition for reconsideration of my August 2, 2023 Findings of Fact, Order, and Opinion on Decision, served on August 4, 2023.

Defendant asserts that that the evidence does not justify the findings of fact and that the findings of fact do not support the order, decision or award.

Defendant's petition was timely filed and accompanied by the verification required under Labor Code section 5902 and Regulation 10940(c). Defendant alleges that I erred in finding that the defendant neglected to provide medical treatment, and ordered that the applicant could treat outside the defendant's Medical Provider Network (MPN) at defendant's expenses.

To date, I am not aware of an answer having been filed by applicant.

## Facts

Juan Ruiz sustained an admitted injury to the head on January 20, 2018 and claims to have sustained injury arising out of and in the course of employment to the neck.

The matter proceeded to an expedited hearing on July 10, 2023 on applicant's contention that he was entitled to treat outside defendant's Medical Provider Network ("MPN") as the MPN did not meet the access standards pursuant to Title 8, California Code of Regulations 9767.5. I issued my Finding and Order on August 2, 2023 where I found that applicant had not provided sufficient evidence to establish that defendant's MPN did not meet the access standards, however, I found that the defendants had neglected to provide medical treatment in this case. It was on that basis that I found the applicant was entitled to treat outside the MPN at defendant's expense. It is from this Finding and Order that defendant has filed a petition for reconsideration.

## Petitioner's Contentions

Petitioner contends that there is not sufficient evidence to find that the MPN was invalid, and that defendant did provide medical treatment.

For the reasons discussed below, petitioner's contentions are without merit, and do not provide sufficient basis to grant reconsideration.

## Discussion

- 1. The petition for reconsideration should be dismissed for failing to cite to the evidentiary record.*

A petition for reconsideration must support its evidentiary statements with specific references to the records (Title 8, California Code of Regulations section 10945(b).) A petition for reconsideration may be dismissed or denied if it is not supported by specific references to the record. (Title 8, California Code of Regulations section 10972.) Petitioner failed to cite to the specific portions of testimony or exhibits admitted into evidence which support its arguments and therefore should be dismissed.

2. *Petitioner was not aggrieved by my Finding that applicant did not prove the MPN failed to meet the access standards.*

Applicant did not meet their burden of proof establishing that the defendant's MPN failed to meet the access standards under Labor Code section 4616(a)(1) and Title 8, California Code of Regulations 9767.5. As I did not find that applicant was able to treat outside the MPN because he proved defendant's MPN did not have sufficient physicians within the MPN, petitioner was not aggrieved by my finding.

3. *The evidence supports my finding that the defendant delayed or neglected to provide medical care.*

If the employer neglects or refuses to provide medical treatment, the injured worker may self-procure medical treatment at the employer's expense. (Labor Code section 4600(a).) "Generally, an employer neglects or refuses to provide medical treatment when it has notice of the industrial injury and notice of the need for treatment as well as the opportunity to furnish such treatment and fails to do so." (*Galicia v. Search, Inc.* 2015 Cal. Wrk. Comp. P.D. LEXIS 710, 8-9.) When an injured employee files a claim for workers compensation, the employer or insurer shall arrange an initial medical evaluation with a MPN physician. (Title 8, California Code of regulations 9767.6(a).)

An application for adjudication of claim was filed on the applicant's behalf on August 22, 2022. (EAMS Document ID 42770059.) A DWC-1 claim form was signed by the applicant on December 21, 2021, and filed and served on defendants at the same time as the application. (EAMS Document ID 42770061.) Applicant designated a treating physician, Dr. Goldin, on September 30, 2022 by letter to both defense counsel and the third-party administrator. (Applicant's Exhibit 5.) Defendant belatedly authorized that treatment more than two months later. (Defendant's Exhibit C.) However, defendant apparently did not arrange for the initial appointment. Applicant designated two additional physicians as treating doctors between January and February, 2023. (Applicant's Exhibit 3 and 4.) Defense counsel, in a March 8, 2023 email to applicant's counsel, admitted that they have authorized several doctors that were not accepting patients but it was "not our delay." (Applicant's Exhibit 1, page 5.) Defendant's apparent position was that applicant was not able to receive medical care within their "it was not our delay." (Id.) Knowing that the applicant was having difficulty obtaining medical care within the MPN, defendant took the position that they were under no obligation to assist.

In addition, applicant designated Dr. Centeno as his primary treating physician on February 23, 2023. (Applicant's Exhibit 3.) Applicant's counsel reminded defense counsel by email of the request, and that authorization had not been received on March 8, 2023 and April 6, 2023.

(Applicant's Exhibit 1.) There is nothing in evidence indicating that Dr. Centeno was sent authorization.

Defendant took no affirmative steps to arrange for the initial medical treatment within their MPN. Although defendants did authorize each physician designated by applicant, they did not arrange for an initial appointment. Defense, by its own admission, knew that there were difficulties in getting a doctor within their MPN who was accepting patients. (Exhibit 1, page 5.) Despite this knowledge, defendant did not arrange for an initial appointment with a physician within the MPN or assist applicant in establishing care. As defendant neglected to provide medical treatment, I found that the applicant is entitled to treat outside the defendant's MPN at defendant's expense.

### **Recommendation**

For the foregoing reasons, I recommend that the August 15, 2023 Petition for Reconsideration be denied.

DATE: August 23, 2023

**Elizabeth Dehn**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

## **OPINION ON DECISION**

This matter proceeded to an expedited hearing on whether applicant is entitled to treat outside defendant's Medical Provider Network at defendant's expense. Documentary evidence was submitted, and the applicant testified on his own behalf.

### **Stipulated facts**

Juan Ruiz, born [], while employed on January 20, 2018 as a construction laborer at Greenbrae, California by McCarthy Builders, sustained injury arising out of and in the course of employment to the head and claims to have sustained injury arising out of and in the course of employment to the neck. At the time of injury, the employer was insured for workers' compensation purposes by Old General Insurance Corporation/BITCO. The employer has furnished some medical treatment.

### **Documentary Evidence**

Applicant designated Dr. Goldin as his primary treating physician on September 30, 2020. (Applicant's Exhibit 5. Letter from applicant attorney to defendants dated September 30, 2022)

Defense counsel wrote to Michael Goldin, M.D. on December 27, 2020 advising that he has been designated by the applicant as the primary treating physician, requested service of medical records and advised of his obligations as a primary treating physician under California Code of Regulations section 9785. The doctor's business address was in Fremont, California. (Defendant's Exhibit C, Letter from defense attorney to Dr. Goldin dated December 27, 2022.)

Applicant designated Dr. Shaw as the primary treating physician on January 10, 2023. (Applicant's Exhibit 4, Letter from applicant attorney to defendants dated January 10, 2023.)

Gallagher Bassett wrote to Dr. Kairav Shah on February 13, 2014 authorizing him to serve as the primary treating physician, and advised of his obligations as a primary treating physician under California Code of Regulations section 9785. The business address for Dr. Shah on the letter was in Fremont, California. (Defendant's Exhibit B. Letter from Gallagher Bassett to Dr. Kairev Shah dated February 14, 2023.)

Applicant designated Dr. Joseph Centeno at Concentra in San Leandro as the primary treating physician on February 23, 2023. (Applicant's Exhibit 3, Letter from applicant attorney to defendants dated January 10, 2023.)

Catherine Morales prepared an affidavit under penalty of perjury. She stated she is a legal assistant at Farnsworth Law. She obtained an MPN list in neurology on April 6, 2023. She contacted Dr. Gail Kang, Dr. Joy Mend and Dr. Charles Skommer and was advised by the offices that they do not treat workers' compensation patients. She called Concentra as well and was advised that Dr. Howard Belfer was not accepting workers' compensation patients at that time. The affidavit was signed on June 12, 2023. (Applicant's Exhibit 2, affidavit of Catharine Morales dated June 12, 2023.)

On March 8, 2020, applicant's counsel emailed defense counsel asking about the authorization for Dr. Centeno. Defense counsel replied that day advising that medicals were sent to him. In another email that day, defense counsel replied that she could not issue authorization but had sent it to her client. She advised that several doctors have been authorized that were not accepting patients and argued it was not defendant's delay. She also asked if applicant attorney's office had called Dr. Centeno for an appointment. On April 6, 2023 applicant's counsel followed up with defense counsel saying that she had not yet received authorization for the change of treater. She also advised that her client contacted Concentra and was advised that Dr. Centeno does not treat at that location. She stated her office called each office on the list and none of the doctors listed in the MPN were at the locations listed in the MPN and some of the doctors do not take workers compensation patients. She asked for authorization to treat outside of the MPN and designated Dr. Timothy Lo. Applicant's counsel followed up with defense counsel on May 5, 2023 again requesting authorization with Dr. Lo as none of the doctors the MPN are located as listed. Defense counsel replied on May 8 demanding a list of MPN doctors who had been contacted. (Applicant's Exhibit 1, emails between Vanessa Aguilar and Michelle Kral, with a date range of March 8, 2023 through May 8, 2023.)

Applicant wrote to defense counsel on April 6, 2023 advising there were no doctors within a 15 mile radius and requested authorization with Dr. Timothy Lo. Attached to the letter was a list of providers in neurology. A total of five doctors as well as Concentra were listed, however there were numerous locations listed or Dr. Belfour, Kang, and Concentra. In another page, a total of nine doctors were listed for physiatry. (Joint Exhibit 101, Letter from applicant attorney to defendants, with an attachment of a Medical Provider Network list, dated April 6, 2023.)

Defendant provided a spreadsheet of doctors, purportedly within their Medical Provider Network. The names are listed, along with partial addresses. More than 75 names are listed although there are some duplicates. Beginning on page 4 of the exhibit are phone numbers and specialties listed, which may correspond with the names of the doctors on the earlier portion of the spreadsheet although it is not clear. The specialties are only partially listed as the column appears to be cut off. (Defendant's Exhibit D, Spreadsheet of MPN doctors dated June 9, 2023.)

Dr. Gupta evaluated the applicant as a Panel Qualified Medical Evaluator on April 11, 2023. The applicant reported that on January 20, 2028 he was making a panel and using a hammer to pull a nail when he fell backwards into a trench, hitting his upper back and head against some rocks. He had bleeding on the left side of the head and suffered a blow to the upper back. He went to the emergency room on the day of injury and returned to work full duty but was assigned light duty work. He treated with a chiropractor from February 2018 through August, 2021. He was referred to Dr. Behravan for injections and then Dr. Talwar, who performed a one level fusion on January 4, 2023. He was complaining of headaches and has not had any medical care for them. He was taken off work on August 15, 2021. Dr. Gupta noted that he was taken to the emergency room on the date of injury and there was no further treatment. She diagnosed him with a closed head injury with posttraumatic headache and dizziness, cervical and upper back pain that is post T1-2 decompression and fusion with probable cervical radiculopathy. She opined that the applicant suffered a closed head injury on January 20, 2018 which had resulted in headaches and dizziness. She believed the mechanism of injury for the cervical spine was consistent with the January 2018 injury and the neck pain was most likely due to the work-related incident, but deferred a final



decision pending review of additional records. She recommended additional medical care for the headaches and cervical spine. She did not believe the applicant was at maximum medical improvement. (Applicant's Exhibit 6, Report from Panel QME Pramila Gupta, M.D., dated April 11, 2023, pages 3, 4, 5, 11, 12 and 13.)

At his deposition in this matter, the applicant testified that his primary care doctor, Dr. Zandi, referred him to Dr. Behravan who gave him an injection for this injury. He also saw Dr. Talwar. (Defendant's Exhibit E, Excerpts from the deposition of the applicant dated May 15, 2023, page 36.)

The remaining exhibits are of no additional probative value.

### **Testimony of the applicant**

The applicant testified at the time of the expedited hearing that he had no treatment after the visit to Marin General Emergency Room on the day of the injury. He had surgery in February, 2023 with Dr. Talwar. He stopped treating with Dr. Talwar because he lost his insurance coverage. He was provided a therapist through Medi-Cal. (Summary of Evidence page 4). He did see Dr. Behravan who performed who gave him an acupuncture session and performed an injection. Dr. Behravan also referred the applicant to Dr. Talwar. He also saw two chiropractors for this injury. (Summary of Evidence page 5.) It was his primary care doctor, Dr. Zandi, who transferred him to Dr. Behravan. (Summary of evidence. page 6.)

He has received no treatment with Dr. Goldin because the assistant said he wasn't taking cases older than two years. He was not able to treat with Dr. Shaw because the doctor was only seeing patients in Sacramento and not in Fremont. He went to two Concentra locations and was told that Dr. Centeno was not at that those locations. He asked for another doctor and was told they did not have anyone to help him. (Summary of evidence, page 5)

### **Analysis**

A Medical Provider Network is required to have an adequate number and type of physicians to treat common injuries experienced by the types of occupations or industry of their employees. (Labor Code section 4616(a).) The MPN access standards require that:

(a) A MPN must have at least three available physicians of each specialty to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged within access standards set forth in (1) and (2).

(1) An MPN must have at least three available primary treating physicians and a hospital for emergency health care services, or if separate from such hospital, a provider of all emergency healthcare services, within 30 minutes or 15 miles of each covered employee's residence or workplace.

(2) An MPN must have providers of occupational health services and specialist who can treat common injuries experienced by the covered injured employees within 60 minutes or 30 miles of the covered employee's residence or workplace.

(Title 8, California Code of Regulations section 9767.5.)

These standards have been interpreted to state that the MPN will meet the access standards if there are three primary treating physicians in a specialty appropriate to treat the employee's injury who are available within 30 minutes for 15 miles of the employee's residence. They do not require three physicians within applicant's desired or preferred specialty if there are available doctors in other specialties that are appropriate to treat the injury. (See, e.g., *Workers Compensation Appeals Board, Gomez v. Fastenal*, 2013 Cal. Wrk. Comp. P.D. LEXIS 47; *Puente v. Napa Valley Unified Sch. Dist.*, 2017 Cal. Wrk. Comp. P.D. Lexis 100.)

I am unable to determine, based on the evidence submitted by the parties at the time of the expedited hearing, if the defendant's MPN meets these access standards. The parties jointly submitted a list of neurologists and physiatrists within the defendant's MPN. (Joint Exhibit 101.) Based on applicant's testimony, and the declaration submitted by applicant, there are no neurologists within 15 miles of the applicant's residence who are available to serve as the primary treating physician. (Summary of Evidence, page 5, lines 9-12 and 32-35; Joint Exhibit 2.) There also do not appear to be any physiatrists within 15 miles of the applicant's residence in San Leandro. (Joint Exhibit 101.) However, the joint exhibit does not appear to be a complete listing of all physicians within defendant's MPN who are within 15 miles of the applicant's residence. Defendant's Exhibit D purports to be a list of physicians within defendant's MPN. However, as the column which may list the specialties of the physicians appears to be on a separate page from the names of the physicians (and it does not clearly state that the information on page 4 of the exhibit, for instance, is a continuation of the doctors that are listed on page 1 of the exhibit) I am unable to discern if there are sufficient available physicians to meet the access standards.

However, it is clear from the evidence submitted that the applicant is attempting to seek care within defendant's MPN and has been unable to do so. When an injured employee files a claim for workers compensation, the employer or insurer *shall* arrange an initial medical evaluation with a MPN physician. (Title 8, California Code of regulations 9767.6(a), emphasis added.) An application for adjudication of claim was filed on the applicant's behalf on August 22, 2022. (EAMS Document ID 42770059.) A DWC-1 claim form was signed by the applicant on December 21, 2021, and filed and served on defendants at the same time as the application. (EAMS Document ID 42770061.) Applicant designated a treating physician, Dr. Goldin, on September 30, 2022 by letter to both defense counsel and the third-party administrator. (Applicant's Exhibit 5.) Defendant belatedly authorized that treatment more than two months later. (Defendant's Exhibit C.) However, defendant apparently did not arrange for the initial appointment. Applicant designated two additional physicians as treating doctors between January and February, 2023. (Applicant's Exhibit 3 and 4.) Defense counsel, in a March 8, 2023 email to applicant's counsel, admitted that they have authorized several doctors that were not accepting patients. (Applicant's Exhibit 1, page 5.) Defendant's apparent position was that "it was not our delay." (Id.)

In addition, applicant designated Dr. Centeno as his primary treating physician on February 23, 2023. (Applicant's Exhibit 3.) Applicant's counsel reminded defense counsel by email of the request, and that authorization had not been received on March 8, 2023 and April 6, 2023. (Applicant's Exhibit 1.) There is nothing in evidence indicating that Dr. Centeno was sent authorization.

If the employer neglects or refuses to provide medical treatment, the injured worker may self-procure medical treatment at the employer's expense. (Labor Code section 4600(a).)

“Generally, an employer neglects or refuses to provide medical treatment when it has notice of the industrial injury and notice of the need for treatment as well as the opportunity to furnish such treatment and fails to do so.” (*Galicia v. Search, Inc.* 2015 Cal. Wrk. Comp. P.D. LEXIS 710, 8-9.) Defendant took no affirmative steps to arrange for the initial medical treatment within their MPN. Although defendants did authorize each physician designated by applicant, they did not arrange for an initial appointment. Defense, by its own admission, knew that there were difficulties in getting a doctor within their MPN who was accepting patients. (Exhibit 1, page 5.) Despite this knowledge, defendant did not arrange for an initial appointment with a physician within the MPN or assist applicant in establishing care.

In addition, there is no evidence that the last physician designated by the applicant, Dr. Centeno, has ever been authorized. It is now more than 10 months since the applicant first requested treatment within the MPN. He still has not had that initial appointment.

As defendant has neglected to provide medical treatment in this case, I find that the applicant is entitled to treat outside the defendant’s MPN at defendant’s expense.

DATE: August 2, 2023

**Elizabeth Dehn**  
WORKERS’ COMPENSATION  
ADMINISTRATIVE LAW JUDGE