

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

JULIE WYATT, *Applicant*

vs.

**SODEXHO; THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,
ADMINISTERED BY GALLAGHER BASSETT SERVICES, INC, *Defendants***

**Adjudication Number: ADJ3670956
Stockton District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration 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 stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 13, 2023

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

**JULIE WYATT
CENTRAL VALLEY INJURED WORKER LEGAL CLINIC, INC
YRULEGUI & ROBERTS**

PAG/mc

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

INTRODUCTION

Date of Injury: April 19, 2002
Body Parts Injured: Back
Date of Findings
and award: 12/20/2022
Petitioner: Defendant
Timeliness of Petition: Timely
Verification of Petition: Yes

INTRODUCTION

Petitioner, filed a timely and verified Petition for Reconsideration of Findings and Award issued on 12/20/2022.

PETITIONER'S CONTENTION(S)

Petitioner contends that[:]

1. That the evidence does not justify the findings of fact.
2. That the Findings of Fact do not support the Order, Decision, or Award.

RESPONSE TO PETITIONER'S CONTENTION

Petitioner is incorrect in its assessment of the law and facts. Reconsideration should be denied.

SUMMARY OF FACTS

Applicant Julie Wyatt, was 42 years old on the date of her underlying stipulated injury in 2002 which settled in 2004. The applicant was awarded future medical treatment to the back.

The parties stipulated that an RFA was done on 4-29-22 and that the Utilization Review denial of the medication Zanaflex was untimely. IMR was sent to timely appeal and IMR upheld the UR denial of Zanaflex on 6-22-22. The court determined that the Applicant was entitled to the medication and that the Applicant's Attorney was entitled to fees for the need to pursue a future medical award medication.

DISCUSSION

The Appeals Board held that if a UR decision is untimely, the UR decision is invalid and not subject to independent medical review (IMR). The Dubon II decision further held that the appeals board has jurisdiction to determine whether a UR decision is timely. If a UR decision is untimely, the determination of medical necessity for the treatment requested may be made by the appeals board.

The court found that there was a medical necessity for the requested use of the muscle relaxant Zanaflex. The IMR was provided incorrect facts and analysis of the Applicant's current medical status and treatment issues. The applicant reported, to Dr. Fine, severe low back pain radiating into her upper thigh and was having an exacerbation of her low back disc herniation. Dr. Fine's analysis indicated that a disc herniation was impinging upon the nerve root of the L5 spine. The applicant was also having active muscle spasms upon examination. IMR only indicated some degenerative disc disease in their clinical case summary.

Pursuant to MTUS Guidelines below;

“Muscle Relaxants for Moderate to Severe Acute Low Back Pain

Moderately Recommended. Muscle relaxants (not including carisoprodol) are moderately recommended as a second-line treatment in moderate to severe acute low back pain that has not been adequately controlled by NSAIDs.

Strength of Evidence – **Moderately Recommended, Evidence (B)**

Level of Confidence – [“**Moderate**”]

Pursuant to (*Dubon v World Restoration Inc. (2014)*, 79 CCC 1298 (appeals board en banc).) If a utilization review decision is untimely, the determination of medical necessity may be made by the Worker’s Compensation Appeals Board based on substantial medical evidence consistent with Labor Code Section 4604.5. Dr. Fine completed a thorough examination of the applicant, reviewed her medical records, and had a cogent discussion with the applicant regarding what treatments thus far were effective for her. The court found that the report of Dr. Fine was substantial evidence. As such, the court found that the treatment was medically necessary.

The requested treatment of Zanaflex falls within the presumptively correct medical treatment utilization schedule (MTUS). As well, the substantial reporting of Dr. Fine indicated that the medication was very helpful for the applicant’s pain level and aided her return to functioning ADL’s and a consistent exercise regime.

Based upon the fact that this is an enforcement of a future medical award action, and the stipulated fact that the UR denial was untimely, it was found that the defendant unreasonably delayed treatment to applicant of medical benefits. Further, in the absence of a satisfactory excuse or genuine doubt from a medical or legal standpoint as to liability for future medical benefits, and in light of the case law and stipulated late denial, it was found that applicant was entitled to a penalty of 25% of the delayed prescription cost and Attorney fees as documented by the evidence.

RECOMMENDATION

Based on the foregoing, it is respectfully recommended that the Petition for Reconsideration be denied.

Dated: 1/24/202[3]