

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

PETER SEVILLANO, *Applicant*

vs.

LMS TRANSPORT; NATIONAL INTERSTATE INSURANCE, *Defendants*

**Adjudication Number: ADJ10649854
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

Defendant National Interstate Insurance Company, the workers compensation insurance carrier for defendant LMS Transport, petitioned for reconsideration of the Findings of Fact and Orders issued by the workers' compensation administrative law judge (WCJ) in this matter on March 9, 2022. In that decision, the WCJ made findings and orders that the applicant is entitled to home health care in the form of LVN level care, as well as certified nurse's assistant care for 12 hours per day, 7 days per week.

Defendant contends in its petition that the WCJ erred in finding entitlement to this care based upon the existing medical evidence, including a subsequent request for authorization (RFA) by Dr. Wogensen that superseded the initial RFA issued by Dr. Miller.

The WCJ issued a report in which he recommended that the petition for reconsideration be denied. We granted reconsideration to further study the factual and legal issues presented.¹

Subsequently, the parties participated in a commissioners' settlement conference at our request and thereafter agreed to resolve this matter by Compromise and Release as to all issues.

Since the District Office is precluded from acting on a case while it is pending on reconsideration (Cal. Code Regs., tit. 8, § 10961), in order to permit review by the workers' compensation administrative law judge (WCJ) of the proposed settlement, we will rescind the

¹ Commissioner Deidra E. Lowe signed the Opinion and Order Granting Petition for Reconsideration dated May 11, 2022. As Commissioner Lowe is no longer a member of the Appeals Board, a new panel member was appointed in her place.

March 9, 2022 Findings of Fact and Orders from which reconsideration is sought and return this matter to the WCJ to consider the Compromise and Release. The WCJ may conduct such further proceedings as he deems appropriate.

Our decision should not be construed as a ruling on the merits of the petition for reconsideration. If the WCJ does not approve the settlement, he can issue an order reinstating his decision and any aggrieved party may timely seek reconsideration from the reinstated decision.

Finally, we commend the parties for successfully resolving this matter without the need of further litigation.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Orders issued in this matter on March 9, 2022, be **RESCINDED**, and that this matter is **RETURNED** to the workers' compensation administrative law judge to consider the Compromise and Release and for such further proceedings as he deems appropriate.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 11, 2023

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

**ASVAR LAW
PEARLMAN, BROWN & WAX, LLP
PETER SEVILLANO**

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