

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

**JOSE QUINTANA, *Applicant***

**vs.**

**BMC; LM INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ12495318  
Sacramento 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 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, and discussed below, we will affirm the WCJ's decision.

It is noted that it is the responsibility of applicant or his attorney to contact the medical access assistant (MAA) to request assistance with obtaining treatment. (See Lab. Code, § 4616; Cal. Code Regs., tit. 8, § 9767.5.)

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact issued by the WCJ on May 5, 2021 is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

I CONCUR,

**/s/ DEIDRA E. LOWE, COMMISSIONER**

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



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

**SEPTEMBER 17, 2021**

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

**DOSS & BRAR  
JOSE QUINTANA  
KNOPP PISTIOLAS**

*AI/pc*

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

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

**I**

**INTRODUCTION**

<u>Date of Injury:</u>	May 13, 2019
<u>Age on DOI:</u>	42
<u>Occupation:</u>	Framer
<u>Parts of Body Injured:</u>	Low back accepted. Neck and right shoulder claimed.
<u>Identity of Petitioners:</u>	Applicant
<u>Timeliness:</u>	The petition was timely
<u>Verification:</u>	The petition was verified.
<u>Date of Order:</u>	May 5, 2021
<u>Petitioners Contentions:</u>	Applicant contends that it was error to find that he failed to demonstrate noncompliance with the medical access assistant requirement and to deny his request to treat outside of the MPN.

**II**

**FACTS**

Applicant sustained injury to his low back on May 13, 2019, while working as a framer. On August 28, 2019, applicant filed an Application for Adjudication of Claim along with associated forms, including a Notice of Representation of applicant attorney. On that day applicant also sent an opening letter to defendant. (Exhibit 1.) Within that seven page document there is a request for the claims professional to instruct the Medical Access Assistant to schedule a medical appointment.

On June 16, 2020, applicant requested a change of PTP, designating a particular facility with a salutation to a "claims professional" but with the defense attorney's address. (Exhibit 2.) Applicant stated that, if that facility was not is defendant's MPN, the claims professional was to instruct the Medical Access Assistant to schedule an appointment.

Defendant had provided the contact information of the Medical Access Assistant by way of letter dated May 22, 2019. (Exhibit E.) It provided that information again by way of email dated June 23, 2020. (Exhibit A.) It provided that information once again by way of letter on August 17, 2020. (Exhibit B.)

On November 5, 2020, defendant filed a Declaration of Readiness to Proceed contending that applicant continued to treat outside of the MPN and requesting board assistance. The case went to trial on February 10, 2021, with the sole issue submitted being the question of whether applicant must treat within the MPN. A

determination was issued on May 5, 2021, finding that there had been no demonstrated failure of the MPN and, as such, applicant was required to treat within it.

It is from this Finding that applicant seeks reconsideration.

**III**

**DISCUSSION**

**1. Applicant has not demonstrated that he has made any direct attempts to contact the Medical Access Assistant**

The Labor Code requires that a MPN must be staffed with one or more persons available by toll-free phone within certain specified hours to respond to injured workers, contact physician's offices, and schedule appointments. (Labor Code section 4616(a)(5).) The promulgating regulations provide instructions on exactly how a defendant shall provide access, including specifications that medical access assistant's contacts be logged accurately and separately from that of the claims adjuster. (8 Cal.Code.Reg. 9767.5(h)(2).)

Applicant made no attempt to contact the medical access assistant. He has not demonstrated that there is any deficiency in their compliance with the statute and regulation. For two years he has had the required access information and he has not shown any attempt to use it.

In his petition, applicant asserts that it would be "unprovable" to show that the access assistant is not available. On the contrary, there could be a wide range of potential evidence showing that an attempt to reach the medical access professional had been made within the designated hours without success. Alternatively, there could be a wide range of potential evidence that the medical access assistant had been reached but had been unable to fulfill their duties.

Because applicant did not demonstrate any attempts to reach the medical access assistant, it was inferred that he made no attempt to access that assistant.

**2. Applicant may not delegate his responsibilities to the defense attorney**

Applicant's primary argument is that his opening letter to the claims administrator, and a subsequent letter to the defense attorney, demanding that these persons "instruct the medical access assistant" to set appointments is sufficient to show that the MPN is deficient.

The statutes and regulations show that the defendant must have a medical access assistant available. They are detailed enough to show that if a claims person acts in this role, they must accurately and separately log contact to them as a medical

access assistant. It is not logical to require defendant to staff a role, provide separate contact information, and separately and accurately log contacts to the medical access assistant, but then allow applicant to assert that any contact with anyone in any capacity with defendant satisfies his responsibilities.

Just as a letter to a defense attorney instructing them to object to a Declaration of Readiness to Proceed, or instructing them to file a Petition for Reconsideration, or to perform any of a host of applicant attorney duties, is not sufficient to meet the applicant's statutory duties, a letter asking a defense attorney to contact the medical access assistant is not sufficient to demonstrate that the medical access assistant has not performed their role.

Applicant is relying on a hyper-technical argument in an attempt to invalidate an MPN. As such, he must show detailed and specific deficiencies. He has not shown any. From all appearances, the MPN and the access assistant are there should he ever decide to use them.

It is remarkable that after two years, applicant has not made any attempt to schedule an appointment within the MPN or to contact the medical access assistant for help in this regard, and yet can still claim that there have been delays in his case.

#### IV

#### **RECOMMENDATION**

It is respectfully recommended that applicant's Petition for Reconsideration be denied.

Date: June 3, 2021

Michael Geller

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE