

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

LILIANA PEREZ, *Applicant*

vs.

E&J GALLO WINERY, permissibly self-insured, *Defendants*

**Adjudication Number: ADJ6877517
Stockton District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration in order to further study the factual and legal issues in this case. On May 25, 2021, we issued a Notice of Intention to Admit Evidence (NIT) and provided the parties with 25 days within which to respond. We did not receive a response from either party to the May 25, 2021 NIT. We now issue our Opinion and Decision After Reconsideration.

We will admit the February 10, 2020 independent medical review (IMR) determination into evidence as Applicant's Exhibit 2. Based on our review of the record, including the IMR determination, applicant is not aggrieved by the F&O and applicant's Petition will therefore be dismissed.

As previously discussed, the sole dispute between the parties was outlined as follows at the January 7, 2020 expedited hearing:

Request for an authorization for an orthopedic surgical consult that was made by Dr. Annu Navani, M.D. with a report written by physician's assistant Corey Tremblay specifically requesting an orthopedic surgical consultation for the right shoulder. There were other items requested at the same time, but we're only dealing with the authorization request for the orthopedic surgical consult for the right shoulder which was non-certified by the Utilization Review company Genex on December 3, 2019.

(Minutes of Hearing, January 7, 2020, p. 2.)

The WCJ issued the resulting January 10, 2020 Findings of Fact, Orders and Opinion on Decision (F&O) finding that a surgical consultation is a form of treatment and therefore subject to utilization review (UR). The parties were ordered to proceed with IMR to resolve any disputes

regarding the appropriateness of the UR decision.

Subsequent to issuance of the F&O, applicant sent a letter dated February 20, 2020 to the WCJ enclosing a copy of an IMR determination letter dated February 10, 2020 and requesting that he take into consideration the determination that allows the surgical consult that was at issue. The record does not indicate that any action was taken in response to this request.

We issued our NIT to admit the February 10, 2020 IMR determination into evidence as “Applicant’s Exhibit 2” on May 25, 2021. Since neither party has responded to the NIT or submitted an objection to admission of this evidence into the record, the IMR determination will be admitted into the record.

The F&O ordered the parties to proceed with IMR of the UR decision regarding the surgical consultation. Review of the subsequent IMR determination reveals that defendant’s December 3, 2019 UR decision was overturned. Defendant is consequently obligated to provide the recommended surgical consultation irrespective of whether this treatment recommendation was subject to UR. Therefore, applicant is not aggrieved by the F&O since she is entitled to the surgical consultation per the IMR determination and her Petition will be dismissed. (Lab. Code, § 5903.)

In our May 25, 2021 NIT, we respectfully requested that the parties advise the Appeals Board if the disputed issue had been resolved by subsequent developments after the F&O in order to mitigate the futile use of sparse judicial resources. Despite this request, there was no response from either party to the NIT. In the future, it is again respectfully requested that the parties be cognizant of the Appeals Board’s limited capacity, which would more usefully be directed at addressing issues between parties that still require adjudication.

In conclusion, we will admit the February 10, 2020 IMR determination and dismiss applicant’s Petition.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the February 10, 2020 IMR determination is admitted into evidence as Applicant's Exhibit 2.

IT IS FURTHER ORDERED that the Opinion and Order Granting Petition for Reconsideration issued by the Workers' Compensation Appeals Board on March 17, 2020 is **VACATED** and applicant's Petition for Reconsideration of the Findings of Fact, Orders and Opinion on Decision issued by the WCJ on January 10, 2020 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 4, 2021

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

**LILIANA PEREZ
HARBINSON & HARBINSON
OCCUPATIONAL INJURY LAW CENTER**

AI/pc

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