

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

LINDA BANKS, *Applicant*

vs.

**WELLS FARGO;
CALIFORNIA INSURANCE GUARANTEE ASSOCIATION by its servicing facility,
INTERCARE HOLDINGS INSURANCE SERVICES, INC.
for INDUSTRIAL INDEMNITY/FREMONT COMPENSATION INSURANCE, in
liquidation, *Defendants***

**Adjudication Number: ADJ3198078 (WCK 0019108)
Sacramento District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of applicant's Petition for Reconsideration, defendant's answer 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. Resolving discrepancies between the medical treatment utilization schedule (MTUS) and the Official Disability Guidelines (ODG) is outside the scope of an appeal of an independent medical review (IMR) determination under Labor Code section 4610.6(h). (Lab. Code, § 4610.6(h).)

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings of Fact issued by the WCJ on December 8, 2020 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 1, 2021

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

**LINDA BANKS
METZINGER & ASSOCIATES
PATRICO HERMANSON GUZMAN**

AI/pc

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

I

Date of injury:	December 17, 1992
Age on DOI:	54 years old
Parts of Body Injured:	Back and lower extremities
Petitioners:	Applicant
Timeliness:	Petition was filed timely
Verification:	Petition was verified
Date of Order:	December 8, 2020

Petitioners Contentions: Applicant contends the Appeals Board/Workers' Compensation Judge acted without or in excess of power, the evidence does not justify the findings of fact, and the findings of fact do not support the order, decision, or award. Specifically, Applicant contends there is a dichotomy between the MTUS Guidelines and the ODO Guidelines, and that the treatment request was for posture changes due to long-term use of a walker citing Exhibit 8.

II
FACTS

Applicant appealed IMR determination CM20-0082231 regarding one bilateral lumbar medial branch block at L3-4, L4-5 and L5-S 1. The issue was submitted for decision at trial. A Findings with Opinion on Decision issued that found Applicant did not prove by clear and convincing evidence one or more of the grounds to set aside IMR determination. In response, Applicant filed a Petition for Reconsideration.

III
DISCUSSION

APPEAL OF IMR DETERMINATION NO. CM20-0082231

On May 12, 2020, Applicant saw Dr. David Miller at Napa Pain Institute where she complained of low back pain that occasionally radiates down the left lower extremity to the ankle. Applicant had steroid injections in the past that were very helpful. Her diagnoses included failed back surgery syndrome with left lower extremity radiculopathy, altered gait from kyphotic posture,

and posture changes due to long-term use of a walker. The treatment plan listed medial branch blocks at L3, L4, and LS bilaterally as item number one of five. Under item number two, the treatment plan listed transforaminal epidural steroid injections due to posture and noted Applicant is at risk of falling. The other items under the treatment plan include a walker, Percocet refill, and follow up visit. (Exhibit 8) Of note, the IMR determination at issue relates a medial branch block and not an epidural steroid injection or another treatment.

On May 28, 2020, utilization review denied a request for one bilateral lumbar medial branch block at L3-4, L4-5, and LS-S 1. The clinical rationale indicates Applicant sustained a low back injury in 1992 and previously received an epidural injection which was helpful. On May 12, 2020 Applicant complained of low back pain that occasionally radiates down the left lower extremity. Applicant reported the spinal cord stimulator was working and that she had an epidural injection in the past. She reported a pain level of three to four out of 10 with medications and 10 out of 10 without medications. She reported having difficulty standing and walking, which she tolerated for 5 minutes, and being able to sit for 30 minutes. The decision referenced the MTUS indicating medial branch blocks are not recommended for acute or subacute low back pain or radicular pain syndromes. The decision also referenced the Official Disability Guidelines indicating medial branch blocks are recommended before considering a facet neurotomy for patients with lower back pain *without* radiculopathy, spinal stenosis, or a prior fusion (emphasis added). (Exhibit AA) There does not appear to be an inconsistency within the utilization review as contended by Applicant. The ACOEM Guidelines Low Back Disorders is consistent with the utilization review which indicates radiofrequency neurotomy, neurotomy, and facet rhizotomy are recommended for patients who have chronic low back pain without radiculopathy, failed conservative treatment, and have had medial branch blocks (Page 135).

On July 6, 2020, IMR upheld the utilization review decision. The clinical case summary provides that Applicant sustained an industrial injury in 1992 and received treatment for failed back syndrome, lumbar spine spondylosis, and altered gait due to kyphotic posture from using a walker. On May 12, 2020, Applicant complained of lower back pain radiating into the left lower extremity. The provider reported that an epidural steroid injection helped in the past. The IMR rationale cited MTUS Low Back Disorders 2019 Guidelines and indicated diagnostic lumbar facet injections are not recommended. (Exhibit BB)

Applicant appealed the IMR Determination contending the administrative director acted without or in excess of his powers and/or the determination was the result of a plainly erroneous express or implied finding of fact. Applicant contends IMR did not fully consider the report of May 12, 2020 or Applicant's altered gait due to long term use of the walker. Applicant contends the treatment request is meant to address Applicant's posture and risk of falling.

(Exhibit 1) As noted above, the epidural steroid is the treatment request that references Applicant's posture however that treatment not at issue here.

The treatment request at issue and as listed in IMR determination number CM20-008223 1 is medial branch blocks at 13, 14, and 15 bilaterally. The DIR Website provides the ACOEM Guidelines Low Back Disorders Guideline (ACOEM March 7, 2019) under the title of Evidence-Based Updates to the Medical Treatment Utilization Schedule (MTUS). In those Guidelines under Diagnostic Facet Joint Injections (Intraarticular And Nerve Blocks), it provides that medial branch blocks are not recommended for acutelsubacute low back pain or radiculopathy pain syndromes (Page 128). At trial, Applicant testified that she has lower back pain that goes into her hip and legs.

The determination of the administrative director regarding IMR is presumed correct. Labor Code section 4610.6(h). In order to set aside a determination, the aggrieved party must prove at least one of the grounds for appeal by clear and convincing evidence. The grounds for appeal are as follows:

- (1) The administrative director acted without or in excess of his or her powers.
- (2) The determination was procured by fraud.
- (3) The independent medical reviewer was subject to a material conflict of interest.
- (4) The determination was the result of bias based on race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability.
- (5) The determination was the result of a plainly erroneous finding of fact and the mistake is a matter of ordinary knowledge based on the information submitted for review.

Applicant was diagnosed with failed back surgery syndrome with left lower extremity radiculopathy (Exhibit 8) and the Guidelines provides medial branch blocks are not recommended for radiculopathy pain syndromes and does not provide an exception related to posture or fall risks. The record and the Guidelines are consistent with the IMR determination and do not support a finding that the administrative director acted without or in excess of his powers or the determination was the result of a plainly erroneous finding of fact and the mistake is a matter of ordinary knowledge as alleged.

IV
RECOMMENDATION

For the reasons stated above, it is respectfully recommended that Applicant's Petition for Reconsideration be denied.

Respectfully submitted,
ARIEL ALDRICH
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE
DATE: January 5, 2021