

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

STACEY GREEN, *Applicant*

vs.

**MOUNTAIN SHADOWS SUPPORT GROUP;
ZENITH INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ9060925
Riverside 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/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 28, 2022

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

**WILLIAM TAPPIN & ASSOCIATES
DAVID H. DOTY, M.D.
CHERNOW & LIEB**

PAG/abs

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

INTRODUCTION

Date of injury:	April 30, 2013
Age on date of injury	45
Identity of Petitioner:	William Tappin, attorney for cost petitioner, Panel QME David Doty, M.D.
Parts of body claimed:	Lower back; left shoulder, and left knee.
Date of Filing of Petition for Reconsideration:	09/26/2022
Timeliness:	The petition is timely.
Verification:	The petition was verified by an attorney.
Petitioner's Contentions:	The Petitioner contends that the evidence does not justify the findings of fact, the findings of fact do not support the decision, order, or award, and the trial judge acted in excess of its powers. The petitioner also contends that the Panel QME, Dr. Doty, was underpaid, that the explanation of review was timely but not proper, that Dr. Doty should be awarded the full amount of his billing, \$2,000.00 with penalties, interest, costs, sanctions, and attorney fees.

The petitioner argues that the trial is entirely related to the appropriateness of the reductions taken by Zenith, and this represents a legal and factual issue and not a bill review issue. Dr. Doty was the Panel QME and was requested by Zenith in their advocacy letter to address the issue of causation. It is a complexity factor based upon that request. Zenith paid according to a ML 102 that it unilaterally determined was appropriate. The petitioner argued that Dr. Doty clearly discussed causation and should have a complexity factor of ML-104.

Cost petitioner argues that Zenith asked the doctor to address causation in a cover letter. The cost petitioner argues that the defendant used a reason, other than the amount payable, which would be a legal issue decided by a WCALJ versus decided in Independent Bill Review.

The cost-petitioner also asks that equitable considerations be implemented to allow further payment to Dr. Doty.

There has been no response to date by defendant.

It is recommended that reconsideration be denied.

II

FACTS AND PROCEDURAL HISTORY

Stacey Green, born [], (45 years age at time of injury), while employed on April 30, 2013, as a Caregiver, at San Marcos, California, by Mountain Shadows Support Group, Inc., sustained injury arising out of and in the course of employment to the lower back, left shoulder and left knee. The application for adjudication was filed on August 22, 2013.

Dr. Doty examined the applicant, issued a report, and billed for date of service February 16, 2017. It was billed as Arrowhead Evaluation Services, Inc., as ML-104, and totaled \$2,000.00. The cost petitioner was not paid for a claimed 5.5 hour record review.

The cost-petitioner filed a Petition to Resolve Non-IBR Med-Legal dispute on November 17, 2021 (EAMS DOC ID 39062441), requesting that the billing be paid in full, that it receive a 10% penalty and 7% interest, costs and sanctions issue, attorney fees issue pursuant to Labor Code section 5813, 5814, and 5814.5.

The cost-petitioner filed a declaration of readiness to proceed on the same date, November 17, 2021. The case was initially set for a hearing on January 5, 2022. After several continuances the trial was started and completed on July 6, 2022 on AT&T and was considered submitted on 08/03/2022 (See MOH and SOE, EAMS DOC ID 75683423).

The cost petitioner filed briefs on July 5, 2022 and August 4, 2022 (EAMMS DOC ID 42129715 & 42543371). The defendant filed a brief on July 19, 2022 (EAMS DOC ID 42319294).

The undersigned issued Findings and Orders and Opinion on Decision on September 1, 2022 (EAMS DOC ID 75888468) in which the cost-petitioner took nothing. The cost petitioner filed a timely Petition for Reconsideration on September 26, 2022 (EAMS DOC ID 43227252).

III

DISCUSSION

Pursuant to Labor Code 5705, "The burden of proof rests upon the party or lien claimant holding the affirmative of the issue." The applicant has the affirmative on proving injury arising out of employment and in the course of employment (AOE/COE).

Labor Code 3202.5 requires all parties and lien claimants to meet the evidentiary burden of proof on all issues by a "preponderance of the evidence." This means "evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth."

The cost-petitioner argues that Zenith performed an Explanation of Review on April 19, 2017, that was improper. The charges from Dr. David Doty were \$2,000.00. Pursuant to the review by Zenith the med-legal billing was reduced and Zenith paid \$625.00. It was explained in the

review that the services were best described as being a ML-102 category rather than what was billed, ML-104. The dispute is essentially over the balance of \$1,375.00, plus penalties and interests, costs, sanctions, and attorney fees.

The cost-petitioner argues that Zenith performed an Explanation of Review on April 19, 2017, that was improper. The charges from Dr. David Doty were \$2,000.00. Pursuant to the review by Zenith the med-legal billing was reduced and Zenith paid \$625.00. It was explained in the review that the services were best described as being a ML-102 category rather than what was billed, ML-104. The dispute is essentially over the balance of \$1,375.00, plus penalties and interests, costs, sanctions, and attorney fees.

The initial review by Zenith is dated 04/14/2017 (Exhibit 4 is substantially the same as defendant's Exhibit F). The review is dated 04/14/2017 and the check issued in the amount of \$625.00 is dated 04/19/2017. The review states that the ML-104 code that was billed was changed to ML 102 as the review indicates the services rendered were best described by this code.

Zenith's review (Exhibit F) included an extra page that explains the bill review process. With regards to Independent Bill Review the following notice was included:

After the EOR is received on the second bill review submission, a health care provider, health care facility, or billing agent/assignee that still disputes the amount paid may submit a request for an IBR within 30 days of service of the EOR. The request for an IBR must conform to the requirements of 8 C.C.R. section 9792.5.4 et seq. If the health care provider, health care facility, or billing agent/assignee fails to request an IBR within 30 days , the bill shall be deemed satisfied, and neither the employer nor the employee shall be liable for any further payment. This is pretty clear.

The cost-petitioner did request second bill review on 05/23/2017 (Exhibit 3). Zenith performed five (5) additional reviews (A-E). They all stated in some form that no more money would be paid.

A review dated 10/23/2019 or 10/28/2019 (Exhibit A) included the following (all in caps in original): ZENITH HAS DETERMINED THAT NO ADDITIONAL IS DUE PER RECONSIDERATION PROCESS. IBR WAS NOT REQUESTED WITHIN 30 DAYS OF SERVICE OF THE SECOND EOR. ZENITH OBJECTED TO YOUR BILL SOLELY BECAUSE THE CHARGES EXCEEDED THE AMOUNT TO BE PAID PURSUANT TO THE FEE SCHEDULE IN EFFECT ON THE DATE OF SERVICE. SINCE IBR WAS NOT REQUESTED TIMELY, THE BILL IS DEEMED TO BE SATISFIED PER LABOR CODE 4603.6(A).

It cannot be disputed that the cost-petitioner did not request Independent Bill Review. Pursuant to Labor Code 4603.6(a): If the only dispute is the amount of payment and the provider has received a second review that did not resolve the dispute, the provider may request an independent bill review within 30 calendar days of service of the second review pursuant to Section 4603.2 or 4622. If the provider fails to request an independent bill review within 30 days, the bill shall be deemed satisfied, and neither the employer nor the employee shall be liable for any further payment.

The cost-petitioner has argued that the trial was related to the reductions by Zenith to which the petitioner argues are legal and factual issues for a judge to decide. According to petitioner, it is not a bill review issue at all.

The cost-petitioner argues that the statement in the initial bill review (exhibit 4 and Exhibit F) stating the following should make it an issue other than being only the amount of reimbursement being at issue:

Addressing the issues of causation was conclusionary and it was based on disability. Medical records review was not performed by QME provider; therefore, we are subtracting 5.5 hours of records review.

The cost-petitioner also argues that since the bill reviewer made a legal determination in the Explanation of Review it therefore became a legal issue within the jurisdiction of the Workers' Compensation Appeals Board. It also argued that the explanation of review by Zenith was not proper, which is a necessary component contained in CCR 10451.1(f) (2) (A). This is contained in page 14 of Petitioner for Reconsideration, lines 6-16.

The undersigned disagrees with petitioner. The issue is regarding the amount of the reimbursement and it is a bill review issue, subject to independent bill review. It is not a legal issue for a WCALJ. Pursuant to Labor Code Section 4622(b)(4): If the provider contests the amount paid, after receipt of the second review, the provider shall request an independent bill review as provided for in Section 4603.6. Pursuant to Labor Code Section 4603.6 if the provider fails to request independent bill review within 30 days of receipt of second bill review the bill shall be deemed satisfied. Dr. David Doty failed to request independent bill review at all. It is deemed satisfied.

It does not appear that equitable considerations are reasonable under the circumstances.

The petitioner also appears to request legislative changes (pages 12, lines 23-26 through page 13, lines 1-3). This is something for another branch of government and this WCALJ has not authority in legislation.

Pages 15-19 appears to be appealing to the commissioners regarding more than just this case, and therefore will not be addressed. The undersigned has addressed the core issues raised by Petitioner with regards to this singular case.

V

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

Date: 10/05/2022

Eric Thompson
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE