

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

**DARRYL SHELMIRE, *Applicant***

**vs.**

**KINECTA FEDERAL CREDIT UNION;  
AFFINITY INSURANCE, administered by GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ9218482  
Oxnard District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the contents of the Report and the Opinion on Decision 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 and Opinion on Decision, which are both adopted and incorporated herein, we will deny reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**AUGUST 7, 2023**

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

**EDWIN HARONIAN M.D.  
LIENING EDGE  
DORMAN & SUAREZ**

**PAG/cs**

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**

Darryl Shelmire, born [], while employed on June 8, 2012, as a mortgage loan consultant, at Manhattan Beach, California, by Kinecta Federal Credit Union, sustained injury arising out of and occurring in the course of employment to his lumbar spine, left shoulder, left wrist, left knee and psyche. Petitioner defendant seeks reconsideration of the 05/18/2023 award of reimbursement of the lien of Edwin Haronian, M.D.

**II. CONTENTIONS**

Petitioner contends that lien claimant’s failure to request second bill review pursuant to Cal. Code of Reg. Sec. 9792.5.5 of petitioner’s explanations of review (EOBs) required a finding that the bill was to be “deemed satisfied” and that defendant is not “liable for any further payment.”

**III. FACTS**

Petitioner does not contest the finding that applicant suffered the industrial injury alleged.

Petitioner does not contest the finding that treatment furnished by primary treating physician Edwin Haronian, M.D. for spine, left shoulder, left wrist, left knee was reasonably required to cure or relieve from the effects of that industrial injury, or the finding that the charges for treatment for treatment denied by Utilization Review and not appealed through the Independent Medical Review process are disallowed.

The decision under reconsideration, in a nutshell, is that EOBs based on a lack of necessity of treatment and allowed no “amount” do not entirely defeat any claim for those services.

**IV. DISCUSSION**

The Section 9792 EOB/SBR process is designed to address the proper valuation of services reasonably required to cure or relieve from the effects of an industrial injury.

The reasonable necessity of those services is to be preliminarily addressed by the regulatory scheme for the request for authorization/utilization review (RFA/UR) process.

Here, the services that were denied by UR (as evidenced only by the reports placed in evidence by lien claimant, Lien Claimant’s Exhibits 42, 27, 53 and 9) were disallowed for

failure to proceed to independent medical review (IMR). Only the treatment supported by the RFAs and not subject to denials was allowed.

That treatment and the charges therefor moved on to the next level, the EOB/SBR process.

Petitioner was not free to deny reimbursement by using an EOB to declare the treatment unreasonable and “zero-out” any payment -- which does not lead to a dispute of “the amount of payment” since no “amount” was paid. To permit this would allow a second bite at the proverbial apple for employers, carrier or administrators to contest the necessity of treatment after either authorizing it or failing to contest it through the UR process.

#### V. RECOMMENDATION

Based on the foregoing the undersigned Workers' Compensation Judge recommends that the petition for reconsideration be denied.

DATED AT OXNARD, CALIFORNIA

DATE: 06/14/2023

WILLIAM M. CARERO  
WORKERS' COMPENSATION JUDGE

## **OPINION ON DECISION**

### **PARTS OF BODY**

Applicant admittedly suffered industrial injury to his lumbar spine, left shoulder, left wrist, left knee, and psyche.

Based on the opinion of Ray L. Creamer, M.D., agreed medical examiner, (report of 04/25/2018, Lien Claimant's Exhibit 4) it is found that applicant did not suffer industrially caused injury to his right knee or right shoulder or legs (other than his left knee) or neck as claimed.

In the absence of evidence of this accident causing injury to nervous system (other than psyche) gastritis, stress (other than psyche) sleep disorder or headaches, it is found that these parts of body were not industrially injured.

### **LIEN OF DR. HARONIAN**

#### **Necessity of Services**

In light of the findings above, it is found that the treatment furnished by primary treating physician Edwin Haronian, M.D. for spine, left shoulder, left wrist, and left knee was reasonably required to cure or relieve from the effects of the industrial injury.

However, any treatment for the right knee, right shoulder, legs (other than the left knee) or neck was not reasonably required on an industrial basis.

#### **Reasonableness of Charges**

The value of the allowed medical treatment services provided by lien claimant is governed by the Official Medical Fee Schedule and are to be reimbursed based on the Schedule. Jurisdiction is reserved over any dispute as to how to apply the OMFS.

Charges for treatment to parts of body not found industrially injured, and charges for treatment for treatment denied by Utilization Review and not appealed through the Independent Medical Review process are disallowed.

#### **Applicability of the 24-Visit Cap**

Applicant did undergo surgical care. The physical therapy was not limited by the 24-visit cap.

#### **Compliance with RFA/UR Procedures**

Lien claimant issued a number of requests for authorization by report (Lien Claimant's Exhibits 6, 13, 17, 21, 49, 15, 24, 12, 18, 45, 47, 16 and 23 – listed chronologically).

No UR denials were offered in evidence, however denials are documented in various Dr. Haronian reports (Lien Claimant's Exhibits 42, 27, 53 and 9 – again listed chronologically). There is no evidence of appeal through the IMR process.

The treatment charges supported by the RFAs and not subject to denials is allowed.

The charges for treatment acknowledged as UR denied and not submitted to IMR is disallowed.

Compliance with EOB/ SBR Process

Defendant's Exhibits B and C are explanations of review demonstrating that billings were processed by defendant. However certain charges were disallowed altogether on grounds other than proper application of the OMFS.

The EOB-disallowed charges that are based on the finding of reasonableness herein are not allowed by this decision.

The EOB-disallowed charges that are based on other grounds and not based on proper application of the OMFS are allowed in amounts pursuant to the Schedule, less credit for sums paid.

Penalty and Interest

Statutory penalty and interest is to be applied to any remaining balance of the charges allowed by this decision after credit for sums paid.

DATED AT OXNARD, CALIFORNIA

DATE: 05/18/2023

WILLIAM M. CARERO

WORKERS' COMPENSATION JUDGE