

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

NATIVIDAD CAMACHO CHINO, *Applicant*

vs.

**STONE BRIDGE CELLARS, INC. insured by NATIONAL UNION FIRE INSURANCE
and adjusted by GALLAGHER BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ12837159
Santa Rosa District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration of the August 2, 2021, Findings and Award to further study the factual and legal issues. This is our decision after reconsideration.¹

The workers' compensation administrative law judge (WCJ) found that applicant, while working as a laborer on August 23, 2019, sustained an injury to his left knee and low back and the injury caused temporary disability from September 5, 2019 to September 9, 2019 and from November 4, 2019 to May 18, 2020. The WCJ found that applicant did not sustain permanent disability and that applicant may require future medical treatment. The WCJ also found that applicant is entitled to self-procured medical treatment.

Defendant contends that the award of temporary disability indemnity is not supported by the medical evidence. Defendant also contends that the WCJ erred in finding that applicant may require future medical treatment and that applicant is entitled to reimbursement for self-procured medical treatment.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the WCJ with respect thereto. Based on our review of the record, as our decision after reconsideration, we will rescind the August 2, 2021, Findings, Award and Order and return this matter to the trial level for further proceedings and a new decision.

We will briefly summarize the relevant facts. At trial on June 8, 2021, the WCJ admitted into evidence applicant's Exhibit 1, a May 11, 2021 medical report from Brian Mitchell, D.O., and

¹ Commissioner Sweeney, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panel member has been assigned in her place.

defendant's exhibits A through F. As part of the August 2, 2021 Findings, Award and Order, the WCJ ordered that applicant's deposition be admitted into evidence as exhibit G. Exhibit A is a report issued by panel qualified medical evaluator (PQME) David Chittenden, M.D., dated October 6, 2020.

In the report, the WCJ explained that he relied on the PQME's summary of medical records to identify "the onset and duration of medical temporary disability status." (Report, p. 4.) The WCJ also relied on the PQME's summary of the Concentra physicians to find that applicant is entitled to reimbursement for self-procured medical expenses and to find that applicant may require future medical care. (Report, p. 6.) The Concentra medical reports were not in the record.

A WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-622.) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) The WCJ's determination "must be based on admitted evidence in the record". (*Hamilton, supra*, p. 477; *Hernandez v. Staff Leasing* (2011) 76 Cal.Comp.Cases 343 (Appeals Board Significant Panel Decision) (clarifying that *Hamilton* applies to a record created and maintained in EAMS.)

In this case, the WCJ's decision is not based on admitted evidence because the reports from Concentra he relied on to find applicant entitled to medical care and temporary disability were not in the record. The PQME's summary of records is not substantial medical evidence. Therefore, to provide the parties with due process and a decision that does substantial justice, we will rescind the WCJ's decision and return this matter to the trial level to create a complete record.

Finally, we note that an award of medical care "reasonably required to cure or relieve the injured employee of the effects of his or her injury" is not an award of a specific treatment. Labor Code section 4600 requires the employer to provide reasonable medical treatment to cure or relieve from the effects of an industrial injury. (Lab. Code, § 4600(a).)

Whether a specific treatment is reasonable and necessary is typically determined through utilization review (UR). Employers are required to establish a UR process for treatment requests received from physicians. (Lab. Code, § 4610; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230, 236.) In *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298, 1299 (Appeals Bd. en banc) (*Dubon II*), the Appeals Board held that if a UR decision is untimely, the UR decision is invalid and not subject to independent medical review (IMR). The *Dubon II* decision further held that the Appeals Board has jurisdiction to determine whether a UR decision is timely. (*Id.*) If a UR decision is untimely, the determination of medical necessity for the treatment requested may be made by the Appeals Board. (*Id.* at p. 1300.) However, “where a UR decision is timely, IMR is the sole vehicle for reviewing the UR physician’s expert opinion regarding the medical necessity of a proposed treatment.” (*Id.* at pp. 1310-1311; see also Lab. Code, §§ 4062(b), 4610.5.)

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration that the August 2, 2021, Findings, Award and Order is **RESCINDED**, and this matter is **RETURNED** to the trial level for further proceedings and a new decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 15, 2023

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

**NATIVIDAD CAMACHO CHINO
LAW OFFICES FOR THE INJURED WORKERS
WILLIAMS FRANK**

MWH/pc

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