WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ROBERT HARLOW, *Applicant*

vs.

STEINY AND COMPANY; TRANSPORTATION INSURANCE COMPANY, administered by CNA CLAIMS PLUS, INC., *Defendants*

Adjudication Numbers: ADJ808475 (PAS 0016590), ADJ2068035 (PAS 0016590)
Van Nuys District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION AND PETITION FOR DISQUALIFICATION

Applicant seeks reconsideration/removal of the Findings of Fact & Orders (F&O) issued by a workers' compensation administrative law judge (WCJ) on June 1, 2023, wherein the WCJ ordered that defendant's petition to transfer applicant to its Medical Provider Network (MPN) was granted and defendant's liability for further payment for medical treatment and other services outside the MPN was terminated.

Applicant contends that 1) the trial should have been continued; 2) that the defendant had lost medical control; 3) the record should have been further developed; 4) the WCJ improperly advocated for defendant; and 5) applicant lost confidence in defendant's physicians.

As an initial matter, we consider applicant's Petition as one for Reconsideration as it seeks review of final orders. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc); see also *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd*. (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Further, we additionally consider applicant's fourth contention regarding the WCJ's alleged advocacy for defendant as a Petition for Disqualification.

We have considered the allegations of the Petition and the contents of the report of the 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 and disqualification.

I. Transfer to MPN

The Labor Code provides that,

> Medical, surgical, chiropractic, acupuncture, licensed clinical social worker, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. In the case of the employer's neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.

(Lab. Code, § 4600(a).) "An insurer, employer, or entity that provides physician network services may establish or modify a medical provider network for the provision of medical treatment to injured employees." (Lab. Code, § 4616(a)(1).)

The injured employee may be transferred into the MPN for medical treatment unless certain exceptions apply. (Cal. Code Regs., tit. 8, § 9767.9(a).) One exception allows an additional year of treatment outside the MPN when the injured employee has a serious chronic condition. (Cal. Code Regs., tit. 8, § 9767.9(e)(2).) Applicant was provided with an additional year of treatment outside of the MPN due to his serious chronic condition. (Report, pp. 3-4.)

Applicant contends that defendant should have transferred him to the MPN much earlier. (Petition, pp. 4-5.) However, there is no time limit or deadline for a transfer to an MPN. (Cal. Code Regs., tit. 8, §§ 9767.9, 9767.12; see also *Babbitt v. Ow Jing* (2007) 72 Cal.Comp.Cases 70, 75-80.) Therefore, the Petition is denied.

II. Disqualification

To the extent that applicant claims the WCJ improperly advocated on behalf of the defendant, we treat applicant's Petition as one for disqualification. Labor Code section 5311 provides that a party may seek to disqualify a WCJ upon any one or more of the grounds specified in Code of Civil Procedure section 641. (Lab. Code, § 5311; see also Code Civ. Proc., § 641.) Among the grounds for disqualification under section 641 are that the WCJ has "formed or expressed an unqualified opinion or belief as to the merits of the action" (Code Civ. Proc., § 641(f)) or that the WCJ has demonstrated "[t]he existence of a state of mind … evincing enmity against or bias toward either party." (Code Civ. Proc., § 641(g).)

Under WCAB Rule 10960, proceedings to disqualify a WCJ "shall be initiated by the filing of a petition for disqualification supported by an affidavit or declaration under penalty of perjury stating in detail *facts* establishing one or more of the grounds for disqualification … ." (Cal. Code

Regs., tit. 8, § 10960, italics added.) It has long been recognized that "[t]he allegations in a statement charging bias and prejudice of a judge must set forth specifically the *facts* on which the charge is predicated," that "[a] *statement containing nothing but conclusions and setting forth no facts* constituting a ground for disqualification may be ignored," and that "[w]here no *facts* are set forth in the statement *there is no issue of fact to be determined*." (*Mackie v. Dyer* (1957) 154 Cal.App.2d 395, 399, italics added.)

Furthermore, even if detailed and verified allegations of fact have been made, it is settled law that a WCJ is not subject to disqualification under section 641(f) if, prior to rendering a decision, the WCJ expresses an opinion regarding a legal or factual issue but the petitioner fails to show that this opinion is a fixed one that could not be changed upon the production of evidence and the presentation of arguments at or after further hearing. (*Taylor v. Industrial Acc. Com.* (*Thomas*) (1940) 38 Cal.App.2d 75, 79-80 [5 Cal.Comp.Cases 61].)[1] Additionally, even if the WCJ expresses an unqualified opinion on the merits, the WCJ is not subject to disqualification under section 641(f) if that opinion is "based upon the evidence then before [the WCJ] and upon the [WCJ's] conception of the law as applied to such evidence." (*Id.*; cf. *Kreling v. Superior Court* (1944) 25 Cal.2d 305, 312 ["It is [a judge's] duty to consider and pass upon the evidence produced before him, and when the evidence is in conflict, to resolve that conflict in favor of the party whose evidence outweighs that of the opposing party."].)

Also, it is "well settled … that the expressions of opinion uttered by a judge, in what he conceives to be a discharge of his official duties, are not evidence of bias or prejudice" under section 641(g) (*Kreling, supra*, 25 Cal.2d at pp. 310-311; accord, *Mackie, supra*, 154 Cal.App.2d at p. 400) and that "[e]rroneous rulings against a litigant, even when numerous and continuous, form no ground for a charge of bias or prejudice, especially when they are subject to review" (*McEwen v. Occidental Life Ins. Co*. (1916) 172 Cal. 6, 11; accord, *Mackie, supra*, 154 Cal.App.2d at p. 400.) Similarly, "when the state of mind of the trial judge appears to be adverse to one of the parties but is based upon actual observance of the witnesses and the evidence given during the trial of an action, it does not amount to that prejudice against a litigant which disqualifies" the judge under section 641(g). (*Kreling, supra*, 25 Cal.2d at p. 312; see also *Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1219 ["When making a ruling, a judge interprets the

[1] Overruled on other grounds in *Lumbermen's Mut. Cas. Co. v. Industrial Acc. Com.* (*Cacozza*) (1946) 29 Cal.2d 492, 499 [11 Cal.Comp.Cases 289].

evidence, weighs credibility, and makes findings. In doing so, the judge necessarily makes and expresses determinations in favor of and against parties. How could it be otherwise? We will not hold that every statement a judge makes to explain his or her reasons for ruling against a party constitutes evidence of judicial bias."].)

Under no circumstances may a party's unilateral and subjective perception of bias afford a basis for disqualification. (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1034; *Robbins v. Sharp Healthcare* (2006) 71 Cal.Comp.Cases 1291, 1310-1311 (Significant Panel Decision).)

Finally, WCAB Rule 10960 provides that when the WCJ and "the grounds for disqualification" are known, a petition for disqualification "shall be filed not more than 10 days after service of notice of hearing or after grounds for disqualification are known." Therefore, we deny the Petition to the extent that it seeks disqualification.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that the Petition for Disqualification is **DENIED.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ NATALIE PALUGYAI, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 25, 2023

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

ROBERT HARLOW
LAW OFFICES OF PARKER & IRWIN

JMR/*ara*

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

1.	Findings of Fact and Orders	06/01/2023
2.	Identity of Petitioner	Applicant
3.	Verification	No
4.	Timeliness	Petition is timely
5.	Petition for Reconsideration Filed	6/26/2023
6.	Petitioner's Contentions:	

a. Applicant's trial should have been continued rather than taken under submission;
b. Defendant has lost medical control;
c. The record requires further development;
d. The judge improperly advocated for the defendants;
e. Applicant has lost confidence in defendant's MPN physicians

This matter has been scheduled for hearing before the undersigned on no fewer than eight occasions, with the original proceeding scheduled as an Expedited Hearing on 3/2/2022. The Expedited Hearing was scheduled based upon Defendant's Declaration of Readiness[1] for an Order transferring applicant into its Medical Provider Network (MPN). During the course of that hearing, following questioning by the Court, Mr. Harlow claimed fatigue and stated that he needed a continuance, as he could not answer any additional questions or otherwise proceed to trial. The Court noted[2] that there were several procedural deficiencies in any event related to the filing of exhibits and the pre-trial conference statement, converted the hearing to Mandatory Settlement Conference (MSC) over defendant's objection, and gave applicant additional time to complete his portion of the Pre-Trial Conference Statement (PTCS) and file his exhibits.

Mr. Harlow then filed a request[3] for additional time to complete his PTCS and file his exhibits, claiming that he was suffering from food poisoning. The undersigned granted[4] the request. The new trial date was scheduled for May 5, 2022.

On May 4, 2022, an administrative decision was made to grant Mr. Harlow an additional 6 month continuance, with a provision to set the future hearings in the matter in the afternoon rather than at 8:30 a.m. The new trial date was scheduled for November 3, 2022.

On November 1, 2022, the applicant e-mailed the Information and Assistance Unit a cell phone picture of a purportedly positive home Covid test, and on that basis sought an additional

[1] EAMS doc ID 40084545
[2] 3/2/22 MOH, EAMS doc ID 75246514
[3] EAMS doc ID 75271036
[4] 3/11/23 MOH, EAMS doc ID 75274496

continuance. Whether the test was administered that day was unknown. The matter returned to the trial calendar on November 3, 2022, and in part due to Mr. Harlow's allegation that he could not proceed due to being ill with Covid-19, the parties and the Court instead spent several hours searching through defendant's MPN in an attempt to locate providers who were both acceptable to Mr. Harlow and also willing to take Mr. Harlow as a patient despite the age of his injury. This was documented in the Minutes of Hearing[5]. The matter was given a short continuance and added on manually to the trial calendar for November 30, 2022.

On November 30, 2022, Mr. Harlow informed the Court that none of the identified providers in the MPN were acceptable, and thus, the matter proceeded on the record, with the parties framing stipulations, issues, and evidence. Mr. Harlow indicated that he wished to offer testimony. However, the framing of stipulations, issues, and evidence required the use of the entirety of the afternoon session, and at approximately 4:23 p.m., with Court Reporters unavailable after 4:30 p.m., the Court continued the matter again to January 17, 2023.

The case was then re-scheduled two additional times for reasons unrelated to specific requests by the parties, and the matter returned to the trial calendar on April 27, 2023. On that date, applicant testified on his own behalf, with cross-examination completed the same day. Following the completion of applicant's examination, the matter was submitted for decision. Findings and Orders issued on June 1, 2023. This was served by mail on the same date.

Applicant filed a timely but unverified petition for reconsideration/removal of the Findings and Orders. Petitioner contends the WCJ erred by: a) taking the matter under submission rather than granting another continuance; b) not finding that defendant had forfeited medical control; c) not ordering further development of the record; and d) improperly advocating for the defendant, to wit, citing to decisional authority supportive of defendant's position in the opinion on decision.

II
FACTS

The parties stipulated that Applicant, born [ ], while employed on April 1, 1991, as an electrician, Occupational Group Number 31 in the old PDRS, at Baldwin Park, California, by Steiny and Company, sustained injury arising out of and in the course of employment to neck, back, right foot, hernias, and dental. Findings and Award issued on December 13, 1995. Thereafter, applicant petitioned to Re-Open, and Amended Findings and Award issued on January 4, 2018. Applicant's original Award pre-dated SB 899.

At some point thereafter, defendant apparently created an MPN and attempted to transfer applicant into the network. In accordance with 8 C.C.R. 9767.9, on October 4, 2018, Defendant sent a Transfer of Care notice[6] to Mr. Harlow, with a copy to Dr. Holmes. Mr. Harlow testified that if it was sent to his P.O. box, then he received the letter.[7] Dr. Holmes received and objected[8] to the letter, providing his March 18, 2019 response that Mr. Harlow suffers from a serious and chronic

[5] EAMS doc ID 76111316
[6] Exhibit "W"
[7] MOH/SOE 4/27/23 at pg 5:15-16
[8] Exhibit "CC"

condition as set forth in 8 C.C.R. 9767.9(e)(2). Such entitled Mr. Harlow to continue treating outside of the MPN for a year following Dr. Holmes' objection. Defendant followed this with a similar transfer of care letter[9] to applicant, with copy to Dr. Bennaroch, dated June 4, 2019. The Court is not aware of any response by Dr. Bennaroch. As of June 4, 2019, both Dr. Holmes and Dr. Bennaroch were put on specific notice of defendant's intention to transfer applicant's care into its MPN. Mr. Harlow was represented by counsel at all relevant aforementioned times.

Defendant filed its formal Petition to Transfer on February 9, 2022, nearly two years after the outside date when it would have been legally permitted to transfer applicant into its MPN. Applicant thus received *years* of additional time to complete treatment with Drs. Holmes and Bennaroch and make arrangements to seek treatment from MPN providers before defendant finally petitioned for an Order of Transfer.

The Court examined the Transfer of Care notices and found that they complied with 8 C.C.R. 9767.9. On March 18, 2019, pursuant to 8 C.C.R 9767.9(g) and (j), Dr. Holmes objected[10] to the original October 4, 2018 transfer of care notice, albeit well after the 20 days provided in the regulation. Despite the significant delay, defendant honored that objection and did not transfer applicant into its MPN. Defendant effectively delayed its attempted transfer for nearly *three* years, rather than the one year it was required to wait pursuant to 8 C.C.R 9767.9.

Upon review of the totality of the admitted evidence, as well as applicant's testimony, the Court granted defendant's Petition to Transfer.

Applicant's Petition for Reconsideration/Removal followed.

III
DISCUSSION

A.
Applicant's Petition is Unverified

Labor Code § 5902 requires that a petition for reconsideration "shall be verified upon oath in the manner required for verified pleadings in courts of record and shall contain a general statement of any evidence or other matter upon which the application relies in support thereof." The appeals board has discretion to dismiss a petition for reconsideration for failure to file a verification. *Safeway Stores v. Workers Compensation Appeals Bd. of California & Phillip Carter*, 47 Cal. Comp. Cases 455 (Cal. App. 1st Dist. May 18, 1982). The petition filed herein is not verified and is therefore subject to dismissal.

[9] Exhibit "V"
[10] Exhibit "CC"

B.

Petitioner Did Not Demonstrate Good Cause to Grant a Further Continuance, and in Fact Completed his Testimony

Petitioner Mr. Harlow argues that "applicant was denied Due Process of the Law by not allowing the completion of his oral testimony (of 117 questions provided to the Court on 1/17/23) for a continued trial date after he informed the Judge that his disabilities had fatigued him for that days proceedings on 4/27/23"[11] He continues, "This trial was commenced at 1:30 PM. At this point, applicant informed the court that he was not feeling up to proceeding and requested a continuance. After a few hours of the proceedings which included some of the testimonies (117 questions provided to Judge) applicant became fatigued and again asked for a continuance. Judge Graff denied the request for continuance and terminated the proceedings."

It is true that applicant Mr. Harlow began the day's proceedings by stating that "he was not feeling up to proceeding" and that he wished for the trial to be continued, which the Court denied. The remaining allegations are either inaccurate or misleading. As reflected in the 4/27/23 Minutes of Hearing and Summary of Evidence, at page 4, lines 17 - 20, after he had provided testimony in response to a number of his pre-written questions, Mr. Harlow made an election to suspend further reading of his pre-written questions and instead make a general statement for the Court's consideration. Following the completion of his statement, cross-examination, and completion of his additional statement in re-direct, applicant rested. As reflected in the 4/27/23 Minutes of Hearing and Summary of Evidence, page 1, line 13, the proceedings lasted less than one hour, from 1:57 p.m. until 2:52 p.m. Mr. Harlow did not renew his request for a continuance. The proceedings ended when both parties rested and agreed to have the matter taken under submission.

Labor Code §5502.5 provides:

> "A continuance of any conference or hearing required by Section 5502 shall not be favored, but may be granted by a workers' compensation judge upon any terms as are just upon a showing of good cause. When determining a request for continuance, the workers' compensation judge shall take into consideration the complexity of the issues, the diligence of the parties, and the prejudice incurred on the part of any party by reasons of granting or denying a continuance."
>
> Regulation 8 C.C.R. §10748 adds:
>
> "Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious and are not favored. Continuances will be granted only upon a clear showing of good cause. Where possible, reassignment pursuant to rule 10346 shall be used to avoid continuances."

As set forth *supra*, this matter was continued many times. During the pendency of this litigation, and as reflected in the record, the Court has been nothing if not accommodating to Mr. Harlow in his requests for multiple continuances and additional time beyond convention to complete basic tasks. Mr. Harlow also received multiple continuances due to events outside of the Court's control.

[11] Petition at page 2.

However, in considering Mr. Harlow's request for yet another continuance, as required by Labor Code §5502.5, the Court was required to balance a multitude of factors, including the complexity of the issues to be adjudicated, the diligence of parties, and potential prejudice to either party by either granting or denying the requested continuance. As of April 27, 2023, with defendant having filed its Petition to Transfer on February 2, 2022, the Court did not find Mr. Harlow's statement that he "did not feel up to proceeding" to constitute good cause to once again continue the matter over defendant's objection. Accordingly, the matter proceeded, and Mr. Harlow testified, indicated that he had finished, rested his case, and acquiesced in the submission of the decision. Other than his initial request for a continuance, there is no record that Mr. Harlow took any of these actions under protest.

Given the history and subject matter of the litigation, including the multitude of allowances previously granted to Mr. Harlow, the undersigned submits that that Court properly denied the request for the additional continuance, and that such does not constitute reversible error.

C.
Applicant did not Explicitly Raise Lack of Compliance with 8 C.C.R. 9767.12 as an Issue, and Even Had he Done So, the Record Demonstrates Compliance with Same.

Petitioner next argues that the testimony he did not provide would have evidenced a lack of compliance with 8 C.C.R. 9767.12, and that for this reason, defendant should have been adjudged to have lost medical control, thus preventing his transfer of care into the MPN. Applicant did not explicitly raise this issue at trial. If the Court construes the record in the light most favorable to applicant, one could argue that issue number 3, "Did Defendant waive the opportunity to transfer Applicant's care into the medical provider network (loss of medical control)?" could encompass this argument. However, the documentary evidence admitted[12] into the record demonstrates compliance with 8 C.C.R. 9767.12. The regulation requires that:

> "(a) When an injury is reported or an employer has knowledge of an injury that is subject to an MPN or when an employee with an existing injury is required to transfer treatment to an MPN, a complete *written* MPN employee notification with the information specified in paragraph (2) of this subdivision, shall be provided to the covered employee by the employer or the insurer for the employer. (*emphasis* added).

Exhibits "V" and "W" demonstrate that defendant provided applicant with all of the information explicitly required by 8 C.C.R. 9767.12(a)(2). For example, as required by 8 C.C.R. 9767.12(a)(2)(A) Exhibit "V" contains the following information regarding the MPN Medical Access Assistant:

> "What if I need help finding and making an appointment with a doctor?
> The MPN's Medical Access Assistant will help you find available MPN physicians of your choice and can assist you with scheduling and confirming physician appointments. The Medical Access Assistant is available to assist you Monday thru Saturday 7am-8pm (Pacific) and schedule medical appointments

[12] *See* e.g. Exhibits "V" and "W"

during doctors' normal business hours. Assistance is available in English and in Spanish.
The contact information for the Medical Access Assistant is:
Toll Free Telephone Number: 888-202-4964 Fax Number: 312-260-2101
Email Address: CNACAMPN@cna.com"

Applicant testified that he received these notices. Such satisfies the requirements of 8 C.C.R. 9767.12. Applicant did not introduce evidence that defendant has lost medical control on this basis.

D.
The Existing Record Supports the Decision to Grant Defendant's Petition

Petitioner argues that due process requires a full development of the record in all worker's compensation cases. The Court agrees. However, the question of whether the requirements of 8 C.C.R. 9767.9 have been met required neither additional discovery nor further development of the record. The evidence submitted at trial justified the granting of defendant's Petition; applicant admitted to receiving the transfer of care notices, Dr. Holmes objected to the transfer, and defendant delayed the transfer in accordance with Dr. Holmes' objection well beyond the time that it was required to do so. Defendant's transfer of care notices complied with both 8 C.C.R. 9767.9 and 8 C.C.R. 9767.12. The record contained no obvious deficiencies warranting supplementation.

E.
Citation to Decisional Authority In Support of One Party s Legal Position Does not Constitute Advocacy on Behalf of that Party.

Mr. Harlow alleges that the undersigned improperly advocated for the defense by citing to precedential authority that supported defendant's decision. This is not advocacy - this is adjudication. The undersigned cited to this authority because the undersigned is required to follow it. That the undersigned did not cite to authority in support of Petitioner's position is because the undersigned was not aware of any such authority supporting it.

F.
Applicant's Lack of Confidence in the Abilities of MP Physicians Does Not Constitute Good Cause to Forbid Defendant from Completing its Transfer of Care into the MPN

Finally, Petitioner argues that he has lost confidence in "MPN" doctors, as "some have proven, to omit, lie, and/or submit incomplete reports"[13]. Applicant introduced no evidence in support of these allegations. The undersigned has no knowledge of the events that transpired between Petitioner and his former attorney. The evidentiary decisions regarding admission or striking of certain medical reports in prior proceedings are both *res judicata* and irrelevant to the determination of the issues adjudicated herein.

The undersigned acknowledges that a decision which effectively requires applicant to change treating physicians with whom he has an established relationship may be challenging. The undersigned similarly acknowledges that there is a possibility that an applicant with a 1992 injury

[13] Petition at page 5.

may not be able to establish care with an MPN provider, despite his best efforts. However, this issue was not before the Court. The Court received no evidence that applicant attempted to establish care with MPN providers and could not do so; to the contrary, applicant expressly stated that he was unwilling to attempt to establish care with MPN providers and preferred to remain under the care of his current, non-MPN treating doctors. Based upon the existing record, while the Court is sympathetic to applicant's position, the Court is compelled to follow the law. The law dictates that defendant, after following the required steps pursuant to 8 C.C.R. 9767.9 and 9767.12, is permitted to transfer applicant into an MPN, regardless of applicant's date of injury. The Court found that defendant followed the necessary procedures to effectuate the transfer of care. Accordingly, the Court granted defendant's Petition.

Defendant has provided applicant Mr. Harlow with the information and tools required to establish care in its MPN (e.g. contact information for Medical Access Assistant). Thus far, Mr. Harlow has refused to use these tools to attempt to establish care within the MPN. If in the future, Mr. Harlow can demonstrate to the Court that despite his best efforts, he is unable[14] to establish care within the MPN, such might entitle him to treat outside of defendant's MPN. However, as of the present time and existing record, this has not been proven true.

IV
RECOMMENDATION

For the reasons stated above, it is respectfully recommended that applicant's Petition for Reconsideration/Removal be DENIED.

DATE: June 30, 2023

Adam D. Graff
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

[14] *See e.g.* Lopez v. City of Dinuba, 2019 Cal. Wrk. Comp. P.D. LEXIS 214.