

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

**ANA GARCIA, *Applicant***

**vs.**

**HEI HOSPITALITY, LLC; THE NORTH RIVER INSURANCE COMPANY,  
administered by BROADSPIRE SERVICES, INC., *Defendants***

**Adjudication Number: ADJ12007058  
Van Nuys 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/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**I CONCUR,**

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

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**FEBRUARY 16, 2024**

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

**ANA GARCIA  
GLAUBER BERENSON & VEGO  
CW LAW**

**AH/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 OF WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE ON PETITION FOR RECONSIDERATION**

**INTRODUCTION:**

On December 21, 2023, the Defendant, by and through its attorney of record, CW Law, LLP, filed a timely and verified petition for reconsideration dated December 21, 2023, alleging that the undersigned WCJ erred in his Partial Findings of Fact, Award & Order dated December 6, 2023. The Defendant contends that the WCJ erred in construing in his decision-making the parties'[] deferring to Yuri Falkinstein, M.D., the agreed medical evaluator in orthopedics, the Applicant's further need for home healthcare in the minutes of hearing by WCJ Clint Feddersen dated November 1, 2021.

**STATEMENT OF FACTS:**

The Applicant, while employed during the period March 9, 2017 to March 9, 2018, as a front desk associate, sustained an industrial injury to her lumbar spine from repetitive cumulative trauma resulting in her needed to ambulate with a cane.

On June 22, 2021, Matthew Longacre, M.D., the Applicant's primary treating physician, requested authorization for home healthcare for 20 hours per day. On June 29, 2021, denied the request by utilization review. On October 5, 2021, the Applicant filed her declaration of readiness to proceed claiming that the Defendant failed to authorize homecare services as recommended by Dr. Longacre. On October 12, 2021, the Defendant filed an objection claiming that the dispute needed to be resolve[d] by way of independent medical review. At the expedited hearing before WCJ Feddersen dated November 1, 2021, the parties entered into an agreement reflected in the minutes of hearing as follows:

“PARTIES AGREE TO OBTAIN: FURTHER DISCOVERY IN THE FORM OF IN HOME ASSESSMENT(S) AND SUBMIT THE ISSUE OF THE NEED FOR HOMECARE TO THE AME FALKINSTEIN. (RETRO ISSUES RESERVED + DEFERRED.”

On May 27, [2022], Dr. Longacre submitted a request for authorization dated May 27, 2022, for a non-licensed home care assistant, four hours a day, seven days per week, for three months. The Defendant's utilization review dated June 7, 2022, denied the requested assistant care. On August 11, 2022, independent medical review upheld the Defendant's denial.

In a joint request to Dr. Falkinstein dated December 4, 2022, the parties submitted a request to him to opine by supplemental report on the Applicant's need for homecare services. Dr.

Falkinstein, in his supplemental report dated June 30, 2023, on page 14, opined, “it is medically reasonable that [the] applicant be provided the necessary home care assistance four hours per day, seven days per week for six months, then a re-assessment to determine ongoing home care needs.”

On November 3, 2023, the Applicant filed her declaration of readiness to proceed alleging that the Defendant failed to provide homecare services requested by Dr. Falkinstein per the prior stipulations. On November 15, 2023, the Defendant filed its objection claiming, “[f]urther discovery is required before the claim is ready for settlement.”

On December 5, 2023, the parties appeared before the undersigned WCJ for an expedited hearing and submitted for decision the issue of further medical treatment in the form of home healthcare services.

On December 6, 2023, the undersigned WCJ issued his decision that the Applicant was entitled to retroactive homecare assistance four hours per day, seven days per week for six months, further retroactive services were deferred pending further supplemental reporting from Dr. Falkinstein, and that any further homecare assistance shall require a renewed request for authorization with utilization review. Should the Defendant deny the requested medical treatment, Dr. Falkinstein would resolve the dispute.

Aggrieved by the undersigned WCJ’s decision, the Defendant filed the present petition for reconsideration.

#### **DISCUSSION:**

Labor Code § 4600 requires a defendant to provide medical treatment “reasonably required to cure or relieve the injured worker from the effects of [the worker’s] injury” if there is a medical recommendation or prescription that there is a “demonstrated medical need” for such services. [*Smyers v. Workers’ Comp. Appeals Bd.* (1984) 49 Cal.Comp.Cases 454, 458.]

In addition, parties may bypass the independent medical review process for reviewing a utilization review denial of medical treatment in favor of submitting the dispute to an agreed medical evaluator. [*Federal Express Corp. v. Workers’ Comp. Appeals Bd. (Payne)* (2017) 82 Cal.Comp.Cases 1014, 1017 (writ denied); *Bertrand v. County of Orange* (2014) 2014 Cal. Wrk. Comp. P.D. LEXIS 342, \*7-8 (Appeals Board noteworthy panel decision).]

Finally, with respect to an agreement between the parties, a stipulation is “[a]n agreement between opposing counsel . . . ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action and [serves] to obviate need for proof or to narrow range

of litigable issues in a legal proceeding.” [*County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 65 Cal.Comp.Cases 1, 3 (internal citations and quotations omitted).] Stipulations are binding on the parties and “are designed to expedite trials and hearings and their use in workers’ compensation cases should be encouraged.” [*Id.*, at p. 5; see *Dzambik v. Ishaan Enterprise, Inc.* (2021) 2021 Cal. Wrk. Comp. P.D. LEXIS 279 (Appeals Board noteworthy panel decision) (the WCAB held that a party cannot be permitted to withdraw from an agreement to utilize an agreed medical evaluator).]

In construing the scope of the agreement, it must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting as far as is ascertainable and lawful. [Civil Code § 1636; *County of San Joaquin v. Workers’ Comp. Appeals Bd. (Sepulveda)* (2004) 69 Cal.Comp.Cases 193, 196.] The plain language of the agreement is the first step in determining the intent of the parties. [Civil Code §§ 1638 and 1639; *Breeding v. Workers’ Comp. Appeals Bd.* (1982) 47 Cal.Comp.Cases 45, 49; *Hurtado v. Jm Smucker Co.* (2022) 2022 Cal. Wrk. Comp. P.D. LEXIS 149, \*5 (Appeals Board noteworthy panel decision) (“The parties’ intention should be ascertained, if possible, from the writing alone and, if an absurdity is not involved, the clear language . . . governs its interpretation.”)]

In this case, despite the assertion of the Defendant that its agreement with the Applicant was only limited to specific retroactive periods of home healthcare and not to any prospective periods, the plain language in the minute reflection by WCJ Feddersen and in the joint letter submitted to Dr. Falkinstein contradicted that assertion. Ultimately, an agreement clearly evidencing the intent of the parties between the Applicant’s attorney and the Defendant’s prior attorney does not permit the Defendant’s present attorney to reinterpret and unreasonably narrow the scope of the agreement to its personal satisfaction and to the detriment of the Applicant. [See *Weatherall, supra* at p. 6.]

Therefore, for the reasons set forth above, there is no reasonable basis to disturb the undersigned WCJ decision in this case.

**RECOMMENDATION:**

The undersigned WCJ respectfully recommends that the WCAB deny the Defendant's petition for reconsideration dated December 21, 2023.

Date: December 26, 2023

DAVID L. POLLAK  
**WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE**