

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

JUAN VARGAS, *Applicant*

vs.

**SONTAG CONSTRUCTION, INC.; OMAHA NATIONAL INSURANCE COMPANY,
*Defendants***

**Adjudication Number: ADJ18040257
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on September 8, 2025, wherein the WCJ found in pertinent part that applicant's selection of Centre for Neuro Skills (CNS) as his primary treating physician (PTP) from the carrier's approved medical provider network (MPN) on June 23, 2025, was a valid selection, notwithstanding the carrier's subsequent removal of CNS from their MPN, and that defendant is obligated to authorize CNS to treat applicant.

The crux of defendant's contentions appears to be that, although applicant selected a PTP that was in defendant's MPN at the time of the selection, because defendant notified applicant "within a reasonable time frame" that the PTP was no longer in its MPN and did not authorize treatment on that basis, and therefore the WCJ erred in finding that defendant is obligated to authorize treatment with the selected PTP.

We have not received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be dismissed or denied.

We have considered the allegations in the Petition and the contents of the Report with respect thereto.

Based on our review of the record, for the reasons stated in the WCJ's Report, which is adopted and incorporated herein, except for the section titled "Dismissal of Petition for

Reconsideration,” (p. 6), and for the reasons discussed below, we will deny defendant’s Petition for Reconsideration.

DISCUSSION

I.

Preliminarily, former Labor Code section¹ 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on October 9, 2025, and 60 days from the date of transmission is December 8, 2025. This decision is issued by or on December 8, 2025, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to

¹ All statutory references are to the Labor Code unless otherwise stated.

act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on October 9, 2025, and the case was transmitted to the Appeals Board on October 9, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 9, 2025.

II.

In the Petition, defendant raises the following issue with the Summary of Evidence dated August 20, 2025:

In the Summary of Evidence dated August 20, 2025 (page 2, lines 11-13), WCJ Stringfellow listed “Other Stipulations: 5. On or about 5/30/25, Applicant requested that Center for Neuro Skills/Dr. Koh be designated as the new Primary Treating Physician from Defendant’s MPN.” PLEASE NOTE: Defendant objects to this portion of the Minutes of Hearing and Summary of Evidence as an error or clerical mistake. During the Trial proceedings, Defendant specifically objected to Applicant’s Attorney’s contention that their email dated May 30, 2025 (Exhibit 6 (EAMS Doc Id # 59635044) was an election of new Primary Treating Physician and never stipulated to the characterization of that communication as provided in the Minutes of Hearing. Moreover, no such stipulation was documented on the Pre-Trial Conference Statement dated August 19, 2025 (EAMS Doc Id# 59584626).

(Petition, p. 4.)

While it is true that no such stipulation appears in the pre-trial conference statement, it is undisputed that “Applicant requested change of his PTP, electing CNS, who was in Defendant’s MPN on [June 23, 2025]....” (Petition, p. 6.) Thus, it is immaterial to the analysis herein and we will not disturb the WCJ’s findings on this basis.

We also note that Exhibit 1 was marked for identification only (Minutes of Hearing and Summary of Evidence (MOH/SOE), August 20, 2025 trial, p. 3) and remind the parties and the WCJ that “Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings.” (Cal. Code Regs., tit. 8, § 10803.) Because it is undisputed that applicant requested change of his PTP on June 23, 2025, electing Dr. Koh/CNS,

this harmless error does not alter our analysis and we will not disturb the WCJ's findings on this basis.

Accordingly, we deny defendant's Petition.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 8, 2025

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

**JUAN VARGAS
LAW OFFICE OF SAAM AHMADINIA
EM LEGAL**

JB/pm

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

The Applicant is a 33-year-old carpenter who sustained admitted injuries on 6/13/2023. Through counsel he selected a primary treating physician from the carrier's MPN.

The Petitioner is the Defendant who has filed a verified and timely Petition for Reconsideration claiming that the undersigned erred by finding the Applicant was entitled to treat with the physicians he selected off the MPN. Petitioner claims the selected physicians were not on the MPN.

It will be recommended that the Petition be Denied or Dismissed.

II. STATEMENT OF FACTS

Applicant sustained an admitted injury including head injuries on 6/13/2023. Based on the history given to the QME it appears that he treated with a chiropractor for at least 18 months. Finally, a referral was made to Dr. Timothy Lo in neurology as QME. He saw the patient on 5/2/2025. He indicated that Applicant was not P&S and had headaches and post traumatic concussion syndrome. He recommended that Applicant be referred to the Centre for Neuro Skills (CNS) for treatment (Ex. X). On 5/30/2025 Applicant asked Defendant to pick up treatment with the Centre for Neuro Skills as recommended by the QME report from Dr. Lo (Ex. 6). Ex. L shows that Centre for Neuro Skills was on the approved MPN list for Omaha National Ins. Co.¹ On or about a 6/23 a formal LC sec. [4600] letter was dispatched to Defendants seeking the same change to Dr. Koh/Centre for Neuro Skills (Ex. 1).

On or about 6/27/2025 Defendant informs Applicant that Dr. Koh is not on the carrier's approved MPN (Ex. D). Applicant immediately responded simply saying that Dr. Koh need not be in the MPN (Ex. C). The implication from this correspondence is that CNS is in the MPN (as evidenced by Ex. L), and hence Dr. Koh can treat since Koh is part of CNS.

On or about 7/2/2025 the Defendant informs Applicant that there are changes in the MPN and to pick a new doctor (Ex. E). On 7/3/2025 Defendant informs Dr. Koh that he is not on the MPN (Ex. F).

On 7/8/2025 The Defendant informs the Applicant (Ex. I), the Applicant's attorney (Ex. G) and CNS (Ex. H) that CNS is not on the MPN. Exhibit I to Applicant indicates that CNS "has been recently removed" from the MPN.

Applicant claimed that he should be allowed to treat with CNS and specifically Dr. Koh thereof since CNS was on the MPN when selection took place.

¹ Petitioner correctly pointed out that Ex. L is indeed the request for treatment of 6/23/2025. Ex. L is erroneously dated 8/19/2025 in the Minutes of Hearing.

Defendant claims that CNS and Dr. Koh are not members of the MPN having been removed.

Whether or not the selection of CNS was valid came on as an *expedited hearing* on 8/20/2025. Briefs were exchanged, and the matter was submitted for decision on 9/2/2025.

The undersigned issued a Findings of Fact and Orders on 9/8/2025 finding that the selection made by Applicant on 6/23/2025 to use CNS as his primary treating physician was valid in that CNS was part of the carrier's MPN at the time of selection.

III. DISCUSSION

MPN Selection

Cal. Code of Regs. sec. 9767.6 allows the injured employee to select a treating physician from the MPN. Ex. L seems to verify that CNS was on the approved MPN on or about 6/23/2025 when Applicant requested authorization. The request for CNS approval was on 6/23/2025, and Defendant informed Applicant on 6/27/2025 that they were no longer on the MPN.

The facts suggest that CNS was removed from the MPN after 6/23/2025 before the patient was ever seen and before any authorization would otherwise have been given.

More importantly, Petitioner agrees that CNS was on the MPN on 6/23/2025 when the selection was made by Applicant (see Recon, p.6, line 25).

Petitioner maintains that the undersigned's opinion "ended there."

Petitioners are essentially correct. The Petitioner agrees that Applicant selected his treating physician from the carrier's approved MPN on 6/23/2025, and the selected physician or clinic was on the MPN at the time.

If in the future there should be changes in the MPN such that the agreed physician is no longer on the MPN, then the Continuity of Care Policy found in Cal. Lab. Code sec. 4616.2(d) and Cal. Code of Regs. sec. 9767.10 apply.

However, there is no provision in the law that would permit denying treatment by a selected physician by way of retroactive removal from an otherwise approved MPN.

Continuity of Care Policy questions may come up in the future, but they do not impact the decision herein.

IV. RECOMMENDATION ON PETITION FOR RECONSIDERATION

Based upon the law and facts set forth above, it is respectfully recommended that the Petition for Reconsideration be either DISMISSED or DENIED.

Date: 10/9/2025

Dean Stringfellow
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE