WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

LEEANN P. THOMAS MCMILLAN, *Applicant*

vs.

LOS ANGELES COUNTY DISTRICT ATTORNEY, permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants*

Adjudication Numbers: ADJ4187849; ADJ353229
Los Angeles District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the August 13, 2025 Joint Findings of Fact and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that in Case No. ADJ353229, applicant, while employed from November 6, 2002 to November 6, 2003, sustained industrial injury to her psyche, bilateral wrists, bilateral elbows, bilateral shoulders, dental, upper gastrointestinal tract, rheumatology, and hypertension. In ADJ4187849, the WCJ found that applicant, while employed from June 26, 2005 to June 26, 2006, sustained industrial injury to her psyche, bilateral wrists, bilateral elbows, bilateral shoulders, dental, upper gastrointestinal tract, rheumatology, and hypertension. In both cases, the WCJ determined that the parties were bound by their prior stipulations to submit home health care issues to the Agreed Medical Evaluator (AME), and that applicant's engagement with the Independent Medical Review (IMR) process did not waive that stipulation.

Defendant contends that an April 18, 2024 Order denying defendant's Petition for Change of Venue also provides that home health care issues are to be determined by the Utilization Review (UR) and IMR processes and supersedes the parties' stipulation. Defendant further contends applicant has breached the home health care stipulation by failing to timely appoint a primary treating physician, and that applicant waived the argument that the dispute is controlled by the parties' prior stipulations when she submitted the matter to IMR.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

FACTS

The relevant facts are set forth in the WCJ's Report, as follows:

> The central issue for the current litigation is home health care. The underlying case was the subject of a Stipulation with Award for 99% disability on June 12, 2014. The Stipulation with Request for Award stated in the Addendum 3 at Item 11 "Defendant's agree to have AME, Dr. Michael Luciano address the homecare needs of the applicant both on a current and retroactive basis". Exhibit 10. A further Stipulation with Request for Award was approved by WCJ Tolman on 3-16-2021 which adds terms but continues the AME as the final determiner of the home health care needs of the applicant. Exhibit 6.
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> On 4-18-2024 the parties appeared before PWCJ Rassp on a Petition to Change Venue. The Order by WCJ Rassp denies the change of venue. Exhibit E. The PWCJ did not hear testimony, did not go on the record, and did not make a finding on home health care.
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> The parties have not returned to AME Luciano to evaluate the applicant for home health care needs, although the doctor is still practicing medicine and is otherwise available. Defendants scheduled an appointment which was cancelled on 6-12-2024, Exhibit 4.
>
> Defendant employed the UR process regarding an 8-7-2024 report of treating doctor Rubanenko, which led to a denial of home health care on 10-7-2024. Exhibit 3, Exhibit B. An IMR Decision issued 12-11-2024 upholding the decision. Exhibit D. Home Health Care was terminated by defendants on 9-30-2024.
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> Defendants had furnished home health care 4 hours per day, 7 days a week from 9-1-2013 to 9-30-2024. MOH/SOE 5-28-2025 Stipulated Facts, p.2.

(Report, at p. 3.)

The F&O determined in relevant part that the parties' stipulation to utilize an AME Dr. Luciano for resolving home health care issues, as described in the March 16, 2021 Stipulations

and Order continues in full force and effect. (Findings of Fact No. 4 & 15.) The WCJ further determined that applicant did not "consent to the IMR process by not objecting to the UR process." (Findings of Fact Nos. 5 & 16.) Finally, the WCJ determined that the April 18, 2024 Order denying defendant's Petition for Change of Venue did not supersede the parties' stipulation regarding home health care. (Findings of Fact Nos. 6 & 17.)

Defendant's Petition contends the April 18, 2024 Order Denying Change of Venue included an order that "defendant was not entitled to have the case transferred to Oxnard to be heard by the judge that originally issued the [March 16, 2021] decision because 'Home Health Care issues are determined by the UR and IMR processes.'" (Petition, at p. 3:4.) Defendant further contends that applicant is in material breach of the agreement regarding home health care because she failed to timely appoint a primary treating physician between at least October 28, 2015 and July, 2024. (*Id.* at p. 4:5.) Defendant also contends that applicant waived her right to object to the UR/IMR process by invoking the IMR process without reservation and failing to object to that process until after an adverse determination issues. (*Id.* at p. 4:22.)

Applicant's Answer responds that the Petition was not served on all parties as required under Labor Code[1] section 5905. (Answer, at p. 4:11.) Applicant also observes that while an employer's decision to deny or modify a physician's request for specific medical services for an injured employee is generally subject to the UR/IMR process, two recognized exceptions to the UR/IMR process arise when either the UR decision is untimely, or when the parties have agreed to waive their right to the statutory review process. (*Id.* at p. 7:13.)

The WCJ's Report observes that the parties have entered into two separate agreements to have the home health care issues resolved by AME Dr. Luciano. The WCJ observes that "the parties are bound by what they agreed to, and what the Judge ordered." (Report, at p. 6.) With respect to whether the intervening denial of defendant's Petition for Change of Venue superseded the parties' stipulation to submit home health care disputes to the AME, the WCJ observes:

> The Orders of WCJ Tolman are Awards based on Stipulations of the parties, which include a provision for resolving home health care disputes solely by the AME. The Order of PWCJ Rassp denies a change of venue to Oxnard. The Order by the PWCJ does not modify the Awards. There is no conflict.

(*Id.* at p. 8.)

[1] All further references are to the Labor Code unless otherwise noted.

Accordingly, the WCJ recommends we deny defendant's Petition. (*Id.* at p. 9.)

DISCUSSION

I.

Former section 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 September 22, 2025, and 60 days from the date of transmission is November 21, 2025. This decision is issued by or on November 21, 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 act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on September 22, 2025, and the case was transmitted to the Appeals Board on September 22, 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 September 22, 2025.

II.

California's workers' compensation system makes the employer of an industrially injured employee responsible for all medical treatment reasonably necessary to cure or relieve the injured employee from the effects of his or her injury. (Lab. Code, § 4600.) Employers are required to conduct UR of treatment requests received from physicians. (Lab. Code, § 4610; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (2008) 44 Cal.4th 230, 236 [73 Cal.Comp.Cases 981] (*Sandhagen*).) The purpose of California's UR requirement, "... is to ensure quality, standardized medical care for workers in a prompt and expeditious manner," since UR "balances the dual interests of speed and accuracy, emphasizing the quick resolution of treatment requests, while allowing employers to seek more time if more information is needed to make a decision." (*Sandhagen*, *supra*, 44 Cal.4th at 241.)

Upon receipt of a request for authorization (RFA) for medical treatment, the employer has two options: they may either approve the treatment request or submit the matter to UR. To determine the medical necessity of the treatment recommendations by treating physicians, the employer must follow the UR process codified in section 4610(a). (Lab. Code, § 4610(a).) Through this UR process, when an employee's treating physician submits an RFA to an employer and the employer does not approve the treatment, a corresponding UR physician will then evaluate whether the requested treatment is "medically necessary," and on that basis will either: (1) approve; (2) modify; or (3) deny the requested treatment. (Lab. Code, § 4610(a), (c), (e) & (g)(4).) If the UR decision modifies or denies the requested treatment, the injured employee can challenge that UR decision through the Independent Medical Review ("IMR") process where an IMR physician evaluates the medical necessity of the disputed treatment. (Lab. Code, §§ 4610.5(c)(2) & (3), (k), 4610.6(a), (c) & (e).)

In *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298, 1299 (Appeals Board en banc) (*Dubon II*), we held that if a UR decision is untimely, the UR decision is invalid and not subject to IMR. The *Dubon II* decision further held that the Appeals Board has jurisdiction to decide the underlying factual issue of whether a UR decision is timely. (*Id.*) If a UR decision is untimely, and therefore invalid, the determination of medical necessity for the treatment requested may be made by the Appeals Board. (*Id.* at p. 1300.) If a UR decision is timely, and therefore valid, IMR is the sole remedy for an injured employee to challenge a UR decision that modifies or denies the treatment.

In *Allied Signal Aero. v. Workers' Comp. Appeals Bd.* (*Wiggs*) (2016) 35 Cal.App.5th 1077, 1081 [84 Cal.Comp.Cases 367], the Court of Appeal confirmed that the two exceptions where the Appeals Board has jurisdiction to consider the issue of whether the requested medical treatment is medically necessary are when the UR decision is untimely or when the parties have agreed to waive their right to pursue the statutory review process of UR/IMR.

In *Wiggs*, *supra*, 35 Cal.App.5th 1077, the parties entered into a stipulation regarding housekeeping services in which an agreed nurse case manager (NCM) would perform a home assessment for housekeeping services and prepare and submit a report to applicant's treating physicians for review and comment. (*Id.* at p. 1082.) Again, the Court recognized the Appeals Board's jurisdiction to consider the factual issue of whether the parties had entered into a valid stipulation, but determined that the agreement was essentially for a one-time evaluation rather than an ongoing agreement to submit all present and future housekeeping disputes to the NCM, and that nothing in the language of the agreement purported to supplant the UR/IMR review process by providing that the NCM would actually decide any disputes. Accordingly, "[s]ince there was no stipulation to displace the provision of home health care from the UR-IMR process, the appeals board had no jurisdiction to review the medical necessity and reasonableness of home health care." (*Id.* at p. 1087.)

Here, however, the parties have on two occasions entered into stipulations specifically designed to displace the provision of home health care from the UR-IMR process. In a stipulation approved by a WCJ on October 28, 2015, the parties agreed in relevant part to the following:

> Furthermore, treating doctor is to provide request for home healthcare at intervals of no longer than 6 months and at the request of the parties, AME, Dr. Michael Luciano is to review said request at intervals of no longer than once per year. If treating doctor changes homecare recommendation applicant will be re-

> evaluated by Dr. Luciano for final determination. All penalties and interest waived if payment is commenced within 30 days from the service of the itemized statements.

(Stipulation and Award and/or Order, dated October 28, 2018.)

On November 15, 2018, the parties entered into an interim stipulation whereby defendant agreed to reimburse applicant's provider for certain home health care expenses, and the parties agreed that "all home care bills have now been paid to date." (Stipulation and Award and/or Order, dated November 15, 2018.)

On March 16, 2021, the parties entered into another stipulation, providing in relevant part:

> The primary treating physician is to provide request for HHC [home health care] for at (sic) intervals no longer than 6 months and at the request of the parties, AME Dr. Luciano is to review said request at intervals of no longer than once per year. If the treating doctor changes the HHC recommendations, then applicant will be re-evaluated by Dr. Luciano for final determination.

(Addendum to Stipulation and Award and/or Order, dated March 16, 2021, at p. 1:27.)

Thus, the parties have agreed that disputes regarding the ongoing provision of home health care are to be submitted to AME Dr. Luciano "for final determination." (Addendum to Stipulation and Award and/or Order, dated March 16, 2021, at p. 2:2.)

We note that in *Wiggs*, the Court first considered the underlying factual issue of whether there was a valid stipulation and determined that there was no valid stipulation. Here, and consistent with the analysis in *Wiggs*, in order to determine whether the parties were required to proceed with UR/IMR the WCJ first considered the underlying factual issue of whether the parties entered into a valid stipulation to "displace the provision of home health care from the UR-IMR process." Based on a different set of facts than those in *Wiggs*, the WCJ in the present matter determined that the parties' stipulation was valid, so that jurisdiction had been reserved to the Appeals Board to determine the issue of medical necessity. (*Wiggs*, *supra*, 35 Cal.App.5th at p. 1087; see also *Chavez v. Supreme Truck Bodies* (September 21, 2018, ADJ155904 (LAO 0811479) [2018 Cal. Wrk. Comp. P.D. LEXIS 449]; *Payne v. Federal Express* (May 31, 2017, ADJ2117331 (OAK 0261803) [2017 Cal. Wrk. Comp. P.D. LEXIS 243]; *Schendel v. B & B Sales* (November 15, 2016, ADJ3568698 (MON 0246436) [2016 Cal. Wrk. Comp. P.D. LEXIS 623]; *Bertrand v. City of Orange*, *supra*, 2014 Cal. Work. Comp. P.D. LEXIS 342].)

Defendant does not dispute that such an agreement is legally proper but contends that applicant waived this agreement by her conduct in voluntarily submitting the August 7, 2024 adverse UR determination to IMR. (Petition, at p. 4:26.) However, defendant cites to no authority for the proposition that applicant may not seek to enforce a prior stipulation regarding home health care while, in the alternative, engaging in the statutorily prescribed IMR process under section 4610.5. Rather, applicant had the right (and her attorney the obligation) to pursue all available remedies while the underlying dispute regarding home health care was pending. (See, e.g., *Federal Express Corp. v. Workers' Comp. Appeals Bd.* (*Payne*) (2017) 82 Cal.Comp.Cases 1014 [2017 Cal. Wrk. Comp. LEXIS 91]; see also *Bertrand*, *supra*, 2014 Cal. Wrk. Comp. P.D. LEXIS 342.)

Defendant further asserts that the April 18, 2024 order issued by a Presiding Workers' Compensation Administrative Law Judge (PWCJ) denying defendant's petition for change of venue also determined that "home healthcare issues are determined by the UR and IMR processes." (Petition, at p. 3:4.) Defendant asserts that this statement effectively supersedes the parties' stipulations with respect to home health care, and that the order of the PWCJ is in direct conflict with the instant Findings of Fact. (Petition, at p. 3:4.)

However, additional context is necessary to understand the scope of the April 18, 2024 order. On March 15, 2024, defendant petitioned to change venue from Los Angeles to the Oxnard district office, ostensibly so that the issue of home health care could be heard in front of the same WCJ who issued the March 16, 2021 Stipulation and Order. The relief sought in the petition does not include setting aside the parties' prior stipulations, only averring defense counsel's belief that a transfer of venue "would facilitate resolution" of "applicant's on going (sic) request for 'home healthcare services.'" (Petition for Change of Venue, dated March 15, 2024, at p. 1:22.) In response, the PWCJ issued an order which states, in relevant part, that "[d]efendant's petition for change of venue does not state any good cause, specific names and addresses of potential defense witnesses, or offers of proof under LC 5501.6. Home health care issues are determined by UR and IMR processes. Defendant's Petition is denied." (Order Denying Defendant's Petition [for] Change of Venue; Order Denying Applicant's Petition for Automatic Reassignment of Trial Judge, dated April 18, 2024.) The WCJ's Report observes:

> The PWCJ ruled on the change of venue petition in the first line of the Order Denying Change of Venue. He then went on to list a variety of further support for his decision. None are framed as findings. The PWCJ notes at the very end of the one paragraph Order "Home health care issues are determined by UR and

> IMR processes." This is a general statement, not a finding in this case or an Order to the parties to act accordingly. The PWCJ does not void the prior Awards.

(Report, at p. 8.)

We concur with the WCJ's analysis of the import of the PWCJ's April 18, 2024 order. The order itself offers multiple reasons for why defendant's change of venue petition did not establish good cause to change venue, including why the petition failed from a procedural standpoint, as well as a general statement that home health care issues are generally decided through the UR-IMR process. We decline to read into the April 18, 2024 order denying change of venue a substantive decision on the issue of whether the parties' prior stipulations to submit home health care disputes to an AME remained in effect. (See 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 947, pp. 989–991 ["It is axiomatic that cases are not authority for propositions they did not consider or address."]; *Gomez v. Superior Court* (2005) 35 Cal. 4th 1125, 1153.) We therefore agree with the WCJ's conclusion that the "Order Denying Change of Venue of 4-18-2024 by Presiding Judge Rassp, Exhibit E, did not determine jurisdiction of the home health care issue." (Findings of Fact Nos. 6 & 17.)

Finally, and insofar as defendant contends that applicant "voided" the parties' stipulation by failing to timely nominate a new treating physician, we agree with the WCJ's assertion that because the parties' stipulations to submit home health care disputes was approved and *ordered* by the WCJ, the parties are obligated to comply with that order. In the face of substantive noncompliance with a court order, the Appeals Board retains jurisdiction over its prior orders, and either party may institute proceedings to request enforcement of a prior order. (Lab. Code, § 5803; see *Barnes v. Workers' Comp. Appeals Bd.* (2000) 23 Cal.4th 679 [65 Cal.Comp.Cases 780].)

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 21, 2025

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

LEEANN THOMAS MCMILLAN
GLAUBER BERENSON VEGO
ROBINSON DILANDO

SAR/abs

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