WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

PHYLLIS FELICIT CORONADO, *Applicant*

vs.

COUNTY OF LOS ANGELES – DEPARTMENT OF PUBLIC SOCIAL SERVICES, permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ8270157
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant has petitioned for reconsideration of the Findings of Fact and Order issued and served by the workers' compensation administrative law judge (WCJ) in this matter on May 14, 2024. In that decision, the WCJ found that the request for authorization (RFA) dated January 18, 2018 by Dr. Ahmed for home health services was not timely denied by Utilization Review (UR) and thus the WCAB retains jurisdiction over the treatment request. The WCJ further found that home health care (HHC) services were reasonable and necessary for the period January 18, 2018 through June 27, 2019, but not on an ongoing basis. The lien of Lucila Alfaro for HHC services provided to applicant for the period March 1, 2018 to February 28, 2022 was disallowed, as were attorney fees for that same period of time.

Petitioner contends that the WCJ erred in finding applicant was entitled to reasonable and necessary home health care per Dr. Ahmed, but yet limited same to the period January 18, 2018 through June 27, 2019, since the RFA was for the HHC to continue indefinitely. Petitioner also asserts that the rationale of *Patterson*[1] applies in this case, and thus the burden is on defendant to prove that home health care services are no longer required at this time. (Petition, pp. 1-2, 4.)

Finally, petitioner alleges that in disallowing the lien of Lucila Alfaro, such lien claimant's due process rights were violated as lien claimants billing was introduced by the Applicant as

[1] *Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910 (significant panel decision.)

evidence only for the purpose of showing that "home care was conducted retroactively by a home care provider, to satisfy the reasonableness and necessity." (Petition, p. 5-7.)

We have received an Answer from defendant. 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. Based upon our preliminary review of the record, we will grant applicant's Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

PROCEDURAL HISTORY

As per in the Minutes of Hearing and Summary of Evidence (MOH/SOE) dated February 28, 2024, the parties stipulated that the applicant, while employed during the period March 29, 2011 to March 29, 2012, as an Intermediate Typist Clerk, Occupation Group No. 112, at Norwalk, California, by the County of Los Angeles - Department of Public Social Services, sustained injury arising out of and in the course of employment to [her] cervical spine, lumbar spine, shoulders, knees, left hip, bilateral grip loss, kidney, sleep, hypertension, and psyche. The parties further stipulated that the primary treating physician was Dr. Khalid Ahmed.

The issues were listed as follows:

1. Liability for self-procured medical treatment in the form of home care.
2. The lien of Lucila Alfaro for home care in the amount of $43,449 for the period March 1, 2018 to February 28, 2022. There are no other unresolved liens.
3. Attorney's fees.
4. Whether the Utilization Review dated March 30, 2018, was timely denied regarding requests for authorization dated January 18, 2018, for home care under Section 4610.
5. Whether the WCAB retains jurisdiction when the Utilization Review is untimely denied regarding requests for authorization for home care regarding the Utilization Review dated March 30, 2018.

6. Whether home care is reasonable and necessary for the period January 18, 2018, and ongoing.

7. Whether the WCAB has jurisdiction over the need for medical treatment and home healthcare due to prior settlement of the issue in Stipulation and Order dated March 8, 2023, and a valid Utilization Review denial.

8. Whether the defense of Regulation 9792.9.l (h) applies for the Utilization Review decision to remain in effect for 12 months.

9. Laches.

(Minutes of Hearing and Summary of Evidence (Minutes), dated February 28, 2024, p. 2-3).

The medical evidence and exhibits were offered to the court, and testimony was received from applicant and defendant's witness. Applicant's exhibit 1 and defendant's exhibits A through Z, except for T, were marked for identification only, to be taken under submission as to admissibility.

On May 14, 2024, the WCJ issued her Findings and Order in which she found that Dr. Ahmed's RFA dated January 18, 2018 for home health services was not timely denied by Utilization Review (UR), that home health care (HHC) services were reasonable and necessary for the period January 18, 2018 through June 27, 2019, but not on an ongoing basis, disallowed HHC services provided to applicant by lien claimant Lucila Alfaro for the period March 1, 2018 to February 28, 2022, and denied attorney fees for that same period of time.

It is from these Findings and Order that applicant seeks reconsideration.

I.

Preliminarily, we note the following in our review:

Petitioner asserts that the RFA by Dr. Ahmed on January 18, 2024 states that he requested the applicant have home healthcare "4 hours a day, 3 days a week" indefinitely. (Petition, pg.1-2.)

The WCJ stated in her Opinion on Decision (Opinion) the following, in relevant part:

> At trial the applicant testified. She is not bedridden. She is currently able to dress herself, and drives to the bank and the dialysis location 5 minutes away. In 2018 she lived with her husband until her divorce. After the divorce she moved into a smaller mobile home with a son on disability. She does not require full time care; she needs help with tasks that require strength and steady gait such as house cleaning, laundry and grocery shopping. Dr. Ahmed requests that the caregiver

assist with "cooking, cleaning, grocery shopping, traveling etc." 4 hours a day, 3 days a week. There is no evidence the applicant travels beyond the local area. Therefore, home health care consisting of 4 hours a day, 3 days a week, cooking, cleaning, grocery shopping and traveling in the local area are found reasonable and necessary.

It is noted that the applicant is over 80 years old, but age here is not the determining characteristic; rather the condition of the applicant's joints and current level of degeneration resulting from 65% industrial injury and the effect on Activities of Daily Living is the focus.

The 1-18-2018 report was silent on duration of care, which is different from affirmatively finding an ongoing request for authorization. The doctor did not make a credible or persuasive case for a continuous request for home health care in the single medical report submitted at trial. Further, it is clear from nearly all the medical reports from Dr. Ahmed beginning 6-27-2019 referenced in the multitude of UR Denials, that each RFA includes a request for a 3 or occasionally 4 month duration for the home care. At no time was a continuous request for home health care intended or found necessary.

(Opinion, p. 6.)

Petitioner alternatively argues that applicant's home health care should be continued indefinitely because under *Patterson* it was the defendant's burden to prove the services were no longer reasonable and necessary. (Petition, p. 3.)

In *Patterson*, we held in pertinent part that an employer may not unilaterally cease to provide *approved nurse case manager services* when there is no evidence of a change in the employee's circumstances or condition showing that the services are no longer reasonably required to cure or relieve the injured worker from the effects of the industrial injury. . . [And] It is not necessary for an injured worker to obtain a Request for Authorization to challenge the unilateral termination of the services of a nurse case manager. (*Patterson,* 79 Cal. Comp. Cases at p. 917.) (Emphasis added.)

As stated by defendants in their Answer:

Petitioner has relied on the *Patterson* case as the basis for finding that HHC should be continuous and ongoing. However, the factual situation in the two cases are different.

In the *Patterson* case, defendants had voluntarily provided the applicant with the services of a nurse case manager before unilaterally terminating the services. Since defendants had authorized the services of the nurse case manager, they deemed said services to be reasonable medical treatment and there was substantial medical evidence to support the ongoing award for services of a nurse case manager. In the

case at hand, the two factors present in the *Patterson* case are missing. Defendants never authorized HHC for the petitioner and therefore never unilaterally terminated HHC.

…HHC benefits were authorized in 2023 incorrectly by a temporary adjuster. The temporary adjuster was under the misbelief that a prior award had not been paid and therefore incorrectly authorized HHC benefits. There was unrebutted testimony from defense witness, Cindy Hutchinson, claims supervisor for Sedgwick Claims Management Services that a temporary adjuster mistakenly authorized HHC as she thought there was a home health care order that had not been satisfied. Defendants never agreed or stipulated that HHC was reasonable medical treatment that should be provided by defendants. In the *Patterson* case, there was a multitude of substantial medical evidence that the services of a nurse case manager were necessary. In the case at hand, the WCJ was left with a single report which did not meet the burden of proof on all issues as required by the findings in the *Sandhagen* case. The report was silent on the issue of the duration of the HHC and left the issue to speculation and conjecture. Applicant argues that the decision of the WCJ has shifted the burden of proving the need for ongoing HHC from defendant to petitioner. The burden of proving that continuous, ongoing HHC was required was never established by the medical evidence submitted at trial by petitioner. (Answer, p. 3-4.)

Petitioner further contends that lien claimant Lucila Alfaro has been deprived due process by the WCJ making a finding disallowing her lien.

The WCJ addresses this in her report as follows:

The Petitioner disingenuously contends under penalty of perjury that the lien of Lucila Alfaro was not in issue at trial. The Minutes of Hearing and Summary of Evidence dated February 28, 2024 on page 2, in the Issues at line 23 state:

"1. Liability for self-procured medical treatment in the form of home care.

2. The lien of Lucila Alfaro for home care in the amount of $43,449 for the period March 1, 2018 to February 28, 2022."

There was no objection to the lien listed as an issue at trial or listed in the Pretrial Conference Statement. Counsel represented the applicant as well as the lien claimant. The same firm appeared for the applicant at the MSC and then at trial. There can be no claim of surprise or lack of notice and opportunity to be heard. Petitioner also complains that the exhibits they moved into evidence were intended for another purpose. That is not grounds for reconsideration.

The lien claimant did not testify at trial. That is a strategy choice. There was no surprise. The lien was in issue from the first preparation of the Pre-Trial Conference Statement, so the applicant and the lien claimant represented by counsel had adequate time to prepare. The parties specifically required the WCJ to make a finding on the validity of the lien when they put the lien in issue. The undersigned

> reviewed the evidence and made a determination based on the facts and law. The represented parties should not be allowed to claim they did not know the lien was in issue when they put it in issue. The undersigned was *required* to make a finding regarding the lien, because the parties put it in issue. There could be no other outcome. The petitioner and lien claimant were not deprived of any due process rights.
>
> (Report, p.7-8.)

Finally, with respect to the WCJ's Findings and Order, we note that although the WCJ states in her Opinion under Objections to Evidence that she is admitting into evidence all exhibits marked for identification by both applicant and defendant, she fails to order same in her findings and order. (Opinion, p. 10-11.) Further, the Findings of the WCJ indicate that HHC services are reasonable and necessary for the period January 18, 2018 to June 27, 2019, and that defendant has liability for self-procured medical treatment in the form of Home Health Care only from January 18, 2018 to June 27, 2019. (FF #6 and 7.) However, part of the lien for services filed by Lucila Alfaro which was ordered disallowed, includes such home care services encompassing the time frame of March 1, 2018 to June 27, 2019.

Any decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [520 P.2d 978, 113 Cal. Rptr. 162] [39 Cal.Comp.Cases 310]*; Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [475 P.2d 451, 90 Cal. Rptr. 355] [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [463 P.2d 432, 83 Cal. Rptr. 208] [35 Cal.Comp.Cases 16].)

In this regard, it has been long established that, in order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416-417, 419 [445 P.2d 313, 71 Cal. Rptr. 697] [33 Cal.Comp.Cases 660]*; Travelers Ins. Co. v. Industrial Acc. Com. (Odello)* (1949) 33 Cal.2d 685, 687-688 [203 P.2d 747] [14 Cal.Comp.Cases 54]*; Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700-1702, 1705 [20 Cal. Rptr. 2d 778] [58 Cal.Comp.Cases 313].)

Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (*Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, 407 [445 P.2d 294, 71 Cal. Rptr. 678] (a mere legal conclusion does not furnish a basis for a finding); *Zemke v. Workmen's Comp. Appeals Bd., supra,* 68 Cal.2d at pp. 799, 800-801 (an opinion that fails to disclose its underlying basis and gives a bare legal

conclusion does not constitute substantial evidence); see also *People v. Bassett* (1968) 69 Cal.2d 122, 141, 144 [443 P.2d 777, 70 Cal. Rptr. 193] (the chief value of an expert's testimony rests upon the material from which his or her opinion is fashioned and the reasoning by which he or she progresses from the material to the conclusion, and it does not lie in the mere expression of the conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based). (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

Here, it is unclear from our preliminary review whether the existing record is sufficient to support the decision, order, award, and legal conclusions of the WCJ, as well as whether further development of the record may be necessary with respect to the issues noted above.

II.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com*. (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd*. (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd*. (1967) 67 Cal.2d 483,

491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra,* at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Labor Code section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

III.

Accordingly, we grant applicant's 's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to WCABmediation@dir.ca.gov .

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Order issued on May 14, 2024 is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 22, 2024

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

PHYLLIS FELICIT CORONADO
GLAUBER BERENSON VEGO
LAW OFFICES OF MICHAEL MANSFIELD

LAS/abs

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