

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

IDALIA PEREZ, *Applicant*

vs.

FOREVER 21; ACE AMERICAN INSURANCE COMPANY, *Defendants*

**Adjudication Numbers: ADJ11447255; ADJ15982160
Los Angeles District Office**

**OPINION AND ORDER
GRANTING PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

Lien claimant Optimal Health Medical Center seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Joint Findings and Award of Fact and Orders of November 4, 2024, wherein it was found that while employed during the period August 1, 2016 to August 1, 2018 (ADJ11447255) and on August 1, 2018 (ADJ15982160) applicant sustained industrial injury to her back, shoulders, and knee. As relevant to the instant Petition, the WCJ found that applicant was entitled to treatment provided between November 9, 2018 and September 10, 2019 by Henry Kan, D.C. and Ali Sabbaghi, M.D., but that, "Applicant did not reasonably require the treatment provided by Stanley S. Wong, LAc, OMD between 11/09/2018 and 09/10/2019." In a Compromise and Release approved on April 18, 2022, in exchange for \$80,460.00, applicant settled her claims against defendant. In the Compromise and Release, defendant agreed to "adjust or litigate all liens of record...."

Lien claimant contends that the WCJ erred in (1) limiting the period of reimbursable medical treatment to between November 9, 2018 and September 10, 2019 and in (2) finding that applicant did not reasonably require any acupuncture treatment from Stanley S. Wong. We have not received an Answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

As explained below, we¹ will grant reconsideration and amend the WCJ's decision to find that applicant was entitled to at least some acupuncture treatment. We will defer the issue of the reasonableness of the duration and frequency of the acupuncture sessions for determination at the trial level. We otherwise affirm the WCJ's decision.

Preliminarily, we note that former Labor Code 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, Labor Code 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 Labor Code 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 December 5, 2024, and 60 days from the date of transmission is February 3, 2025. This decision is issued by or on February 3, 2025, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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

¹ Previously in this matter, on December 7, 2020, we issued an Opinion and Orders Denying Petition for Removal and Petition for Disqualification. Since the issuance of that decision, Commissioner Marguerite Sweeney has retired from the Appeals Board and Deputy Commissioner Anne Schmitz is not available to participate in the instant reconsideration proceedings. Commissioners Joseph V. Capurro and Paul F. Kelly have been substituted in their place.

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. Labor Code 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 December 5, 2024, and the case was transmitted to the Appeals Board on December 5, 2024. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on December 5, 2024.

Turning to the merits, previously in this matter, on March 11, 2024 the WCJ issued a decision finding that applicant did reasonably require acupuncture treatment. Defendant filed a Petition for Reconsideration arguing that the Medical Treatment Utilization Schedule states that only six acupuncture sessions are authorized unless the treatment results in functional improvement, whereupon more sessions could be authorized. Defendant argued that the record in this matter did not show functional improvement. Thus, defendant asked that reconsideration be granted, and that the decision be amended to reflect that "Applicant reasonably required the treatment provided by Stanley S. Wong, L.Ac. OMD from 02/04/2019 through 02/20/2019." (Defendant's March 28, 2024 Petition for Reconsideration at p. 6.) This period corresponded to six acupuncture sessions. In response to defendant's March 28, 2024 Petition, the WCJ issued an order on April 8, 2024 rescinding his prior decision and setting the matter for further proceedings which culminated in the instant November 4, 2024 decision.

However, in the November 4, 2024 decision, the WCJ found that none of the acupuncture treatment was necessary, including the six sessions acknowledged by defendant to be reasonably required. We therefore grant reconsideration and amend the November 4, 2024 decision to reflect that some acupuncture treatment from Mr. Wong was reasonably required but deferring the issue of the reasonable frequency and duration of treatment. As noted above, defendant does not dispute that some acupuncture treatment was reasonable, and the treatment was initially provided at the direction of applicant's primary treating physician whose treatment was found reasonable. We

otherwise affirm the WCJ's decision for the reasons stated by the relevant portions of the WCJ's Report which we quote below:

JOINT REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

Applicant, IDALIA PEREZ, [age 44 on the dates of injury], while employed during the period 08-01-2016 through 08-01-2018 (ADJ11447255) and on 08/01/2018 (ADJ15982160) as a warehouse worker at Los Angeles, California, by FOREVER 21, whose workers' compensation insurance carrier was ACE AMERICAN INS. CO., sustained injury arising out of and occurring in the course of employment to her back, shoulders and knee.

II. CONTENTIONS

Petitioner lien claimant Optimal Health Medical Center contends that defendant neglected or refused to provide medical care and therefore did not maintain control of medical treatment through [the] Medical Provider Network (MPN).

Petitioner further contends that the Order issued on 09/10/2019 (On 09/10/2019 an Order issued requiring 1) applicant to select a treating physician from within defendant's Medical Provider Network (MPN), and 2) defendant, failing such selection by applicant, to select an MPN doctor and schedule an appointment for treatment (EAMS Doc. ID No. 71097919) did not restore defendant's medical control since defendant did not make the MPN selection upon applicant's failure to select.

Petitioner further contends that the self-procured acupuncture treatment was reasonable and necessary.

III. FACTS

Defendant initially sent notice of its Medical Provider Network (Defendant's Exhibit A, 08/03/2018), but then denied both claimed injuries on 11/09/2018 (Defendant's Exhibits B and C).

Applicant then self-procured treatment with lien claimant Optimal Health.

On 09/10/2019 an Order issued requiring 1) applicant to select a treating physician from within defendant's Medical Provider Network (MPN), and 2) defendant, failing such selection by applicant, to select an MPN doctor and schedule an appointment for treatment (EAMS Doc. ID No. 71097919).

Applicant made no selection. Defendant did not make a selection.

Applicant continued her treatment with Optimal, including that provided by provided by Stanley S. Wong, Lac, OMD of Optimal Health between 11/09/2018 and 09/10/2019 is documented in Lien Claimant's Exhibits 39 through 41.

His reports of 04/12/2019 and 05/17/2029 are the only follow up reports from him after he commenced acupuncture care. Neither report demonstrates any improvement with that treatment.

IV. DISCUSSION

MPN Control

In essence the issue of MPN control turns on the interpretation of the Order of 09/10/2019. The wording of that Order is critical to the interpretation. It reads: "Applicant *shall* choose an Orthopedic Surgeon Physician within Defendant's MPN within 20 days of the date of this order. (emphasis added)."

The Order goes on to state that "If no choice is made, Defendants *may* schedule Applicant with an MPN physician. (emphasis added)."

Thus applicant was under a duty to make the selection, and defendant was merely permitted to make the selection.

The failure of applicant to comply with the mandatory duty did not permit her to avoid defendant's MPN control just because defendant did not take the option of making the choice for her. The Order contained the website address of the MPN and the MPN number.

If all applicant had to do in order to keep her free choice doctor was refuse to make a choice, the Order would be meaningless.

Accordingly it was found that from 09/10/2019 defendant maintained medical control through its MPN.

For the foregoing reasons,

IT IS ORDERED that Lien claimant Optimal Health's Petition for Reconsideration of the Joint Findings and Award of November 4, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings and Award of November 4, 2024 is **AMENDED** as follows:

FINDINGS OF FACT

1. Applicant, IDALIA PEREZ, age 44 on the dates of injury, while employed 08-01-2018 during the period 08-01-2016 through 08-01-2018 (ADJ11447255) and on 08/01/2018 (ADJ15982160) as a warehouse worker at Los Angeles, California, by FOREVER 21, whose workers' compensation insurance carrier was ACE AMERICAN INS. CO., sustained injury arising out of and occurring in the course of employment to her back, shoulders and knee

2. Applicant did not suffer injury to her ankles.

3. Applicant reasonably required some treatment provided by Stanley S. Wong, LAc, OMD between 11/09/2018 and 09/10/2019. The issue of frequency and duration of reasonable treatment is deferred with jurisdiction reserved.

4. Applicant reasonably required the treatment provided Henry Kan, D.C. up to 24 sessions of chiropractic care between 11/09/2018 and 09/10/2019.

5. Applicant reasonably required the treatment provided Ali Sabbaghi, M.D. between 11/09/2018 and 09/10/2019.

6. Defendant has no liability for treatment charges outside of the dates 11/09/2018 and 09/10/2019.

7. The treatment by Drs. Bartwahl and Ninh was provided after 09/10/2019 and was after medical control had been wrested by defendant into its MPN and is found not reasonably necessary and defendant has no liability therefor.

8. The value of the allowed charges is governed by the Official Medical Fee Schedule. Reimbursement is ordered pursuant to the Schedule. In the event of any dispute as to the proper application of the Schedule the parties are to secure an agreed bill review. In the absence of agreement, an independent bill reviewer will be appointed by the Court at the joint expense of the parties. Jurisdiction is reserved.

9. Statutory penalty and interest is to be applied to any unpaid balance over the amount ultimately determined reasonable under the OMFS for the services allowed herein. Credit for sums paid is allowed.

AWARD

AWARD IS MADE in favor of IDALIA PEREZ against ACE AMERICAN INS. CO. of reimbursement to lien claimant Optimal Health pursuant to Findings of Fact Nos. 4, 5, 7 and 8 above.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 3, 2025

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

**IDALIA PEREZ
ELMER ESCOBAR
COSTFIRST CORP
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*I certify that I affixed the official seal of
the Workers' Compensation Appeals
Board to this original decision on this
date. o.o*