**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**PARK EDDY, *Applicant***

**vs.**

**ACTIVE CAPTIVE MANAGEMENT;**
**ACCIDENT FUND INSURANCE COMPANY OF AMERICA,**
**administered by UNITED WISCONSIN INSURANCE, *Defendants***

**Adjudication Number: ADJ16748364; ADJ16734273**
**Santa Ana District Office**

# OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration, the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto, and the contents of the WCJ's Opinion on Decision. Based on our review of the record, and for the reasons stated in the WCJ's report and opinion, which are both adopted and incorporated herein, we will deny reconsideration.

Former Labor Code[1] 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.

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

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 April 28, 2025, and 60 days from the date of transmission is June 27, 2025. This decision is issued by or on June 27, 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 April 28, 2025, and the case was transmitted to the Appeals Board on April 28, 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 April 28, 2025.

The sole issue before the court is whether applicant's spouse is "appropriate to provide overnight nursing care for applicant, while daytime care is provided by outside caregivers." (Minutes of Hearing (Further) – Expedited Hearing (Minutes), dated March 20, 2025, at p. 2:8.)

The WCJ's Findings and Order (F&O) finds that "[a]pplicant has demonstrated his spouse is capable of providing overnight attendant care." (F&O, Finding of Fact No. 2.) The WCJ's Opinion on Decision reviews the medical and testimonial evidence, and notes that applicant's spouse has provided both primary and secondary support to applicant since applicant returned home from the hospital in March, 2023. (Opinion on Decision, at p. 4.) Applicant's spouse currently provides assistance with applicant's activities of daily living (ADLs) from early in the morning until the caregiver arrives at 7:00AM. During the day, applicant's spouse provides

transportation to applicant to all medical and other appointments. (*Ibid*.) When the caregiver departs at 7:00PM, applicant's spouse resumes full responsibility for any assistance required by applicant throughout the night until the next day. (*Id.* at p. 5.) The Opinion on Decision carefully reviews the evidence and discusses applicable case law authority which provides for family members to act as home caregivers "where there is a documented need for the care and the requested member is able to perform the required care." (*Ibid*.) Moreover, the WCJ expressly found the testimony of applicant's spouse to be credible, "and in light of the fact that she was confident in her ability to care for the Applicant overnight and has been performing such duties since his release from inpatient care demonstrated her capability to provide care for Applicant." (Report, at p. 2.) We accord to the WCJ's credibility determinations the great weight to which they are entitled. (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].)

Based on our independent review of the evidentiary record, we agree with the WCJ's analysis of the issue as set forth in the Opinion on Decision and in the WCJ's Report. Accordingly, we decline to disturb the WCJ's conclusion that applicant's spouse is both feasible and appropriate to provide home healthcare services.

We also address defendant's contention that Dr. Miller's reporting does not constitute substantial evidence upon which the WCJ may rely. Defendant avers Dr. Miller's October 21, 2024 report "only addresses reimbursement for the applicant's wife," rather than the underlying need for overnight attendant care. (Petition, at p. 7:17.) However, the issue of the extent of home health care has been resolved by defendant's authorization of 24-hour daily care pursuant to Independent Medical Review decision dated February 27, 2025, and Utilization Review certification dated March 5, 2025. (Minutes, at p. 2:8.) Moreover, to the extent that the reporting of Dr. Miller seeks authorization for "patient's wife for non-skilled homecare, 12 hours *per night*," (Ex. 5, RFA of Lawrence Miller, M.D., dated October 21, 2024, italics added), we agree with the WCJ's ultimate conclusion that "the entire record supports that Applicant requires non-skilled attendant care for his overnight needs." (Report, at p. 3.)

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

**/s/ PAUL F. KELLY, COMMISSIONER**

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

**June 18, 2025**

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

**EDDY PARK**
**BENTLEY & MORE**
**LAW OFFICE OF STUART NAGEL**

**SAR/abs**

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

## REPORT & RECOMMENDATION ON PETITION FOR RECONSIDERATION

Applicant was employed as president of Active Captive Management where he sustained an industrial injury arising out of and in the course of his employment to his cardiovascular system, brain, left upper extremity, left lower extremity, and claims to have sustained a sleep disturbance during the period October 1, 2007, through July 2, 2022. Applicant alleges a second injury occurring October 21, 2024, to his cardiovascular system, brain, left upper extremity, and left lower extremity that is denied by defendant.

The matter initially proceeded to trial on the issue of Dr. Lawrence Miller's request for additional overnight home health care services contained in his RFA dated October 21, 2024. (Exhibit 5) Submission was vacated for development of the record clarify Dr. Miller's request for authorization and the associated claim for which it was requested as it was unclear from the record if the RFA was issued on Applicant's denied specific injury or the accepted cumulative trauma based on defendant's letter dated October 28, 2024 (Exhibit A). The information was provided at hearing and upon resubmission of the matter the undersigned discovered a DOR had been filed requesting a hearing on a related issue; resubmission was therefore deferred to that hearing so they could both be adjudicated together. At the hearing, the parties informed the undersigned that the initial issues had been resolved by a subsequent request from Dr. Miller dated February 24, 2025, and IMR decision issued on February 27, 2025. The sole issue remaining was that of the appropriateness of Applicant's spouse providing overnight home healthcare for Applicant.

The undersigned issued a Findings, Order and Opinion on Decision dated March 24, 2025, finding that Applicant could select his spouse to act as his overnight home healthcare provider. Defendant is aggrieved of the undersigned's decision and filed a timely and verified Petition for Reconsideration on April 15, 2025, arguing the undersigned erred when determining Applicant was entitled to select his spouse as his overnight home healthcare provider and that the evidence relied upon for such determination did not constitute substantial medical evidence of the level of care required for Applicant.

Defendant's first contention regarding the ability of Applicant's spouse to provide the care required is framed by Defendant as "...the issue of whether the applicant's spouse Linda Eddy, would be able to provide appropriate services while working." (Defendant's Petition for Reconsideration dated April 15, 2025, page 6 line 8) In my Opinion on Decision, I discussed the care that Applicant's spouse had provided for Applicant, nothing that she begins aiding Applicant

from approximately 4:30 to 5:30 a.m. until the morning caretaker's arrival at 7:00 a.m. with her resuming care duties after their departure at 7:00 p.m. She also assists Applicant in dressing and preparing him prior to the arrival of the morning caretaker and preparing him for bed in the evening. During the night, Applicant will awaken her when he requires assistance with the restroom or any other needs. As Applicant is unable to manage his own medications, she also assists with sorting and providing these for Applicant.

When reaching my decision, I considered Applicant's wife's trial testimony that since Applicant's release from inpatient care in March 2023, she has been providing his overnight care. I also considered her testimony that she believed she was able to provide the necessary care and was confident in her ability to do so. I found Applicant's spouse to have testified credibly, and in light of the fact that she was confident in her ability to care for the Applicant overnight and has been performing such duties since his release from impatient care demonstrated her capability to provide care for Applicant.

Applicant's spouse testified that she is currently not working due to the fact his daytime caregivers are only allowed to provide care at Applicant's residence, requiring her to accompany and transport applicant to his medical appointments. Defendant argues that Applicant's spouse would be unable to provide the required evening care while working; however, Applicant's testified that she is not currently employed. Accordingly, the potentiality of any interference with her ability to provide the Applicant the required care due to said employment does not currently concern the matter.

Should Applicant's spouse be unable to provide the care required due to employment or other reasons, a different home healthcare attended could be requested by Applicant.[1]

Defendant's second contention is that Dr. Miller's report of October 21, 2024 (Exhibit 5) and RFA of September 12, 2024 (Exhibit 4) do not constitute substantial medical evidence upon which to justify the undersigned's findings as they do not discuss overnight attendant care, arguing that the RFA of September 12, 2024, addresses reimbursement to Applicant's wife and not the type of care required. (Petition for Reconsideration, page 7, line 18) Defendant argues in their

[1] Even if Applicant were currently employed, the Court's has previously held that it was appropriate to reimburse the spouse of an applicant for home healthcare services where the applicant's spouse worked outside the home during the day and then provided 12 hours of overnight care under the holding in *Henson v. Workmen's Comp. Appeals Bd.* (1972) 27 Cal.App.3d 452. (*Department of Highway Patrol v. Workers' Comp. Appeals Bd.* (1995) 33 Cal.App.4th 1828, 1837 [40 Cal.Rptr.2d 188].)

Petition that "The RFA of Dr. Miller, dated October 21, 2024, requests reimbursement to the patient's wife for non-skilled homecare for twelve (12) hours per night, seven (7) days per week. The RFA does not indicate the need for nighttime home health care and only addresses reimbursement for the applicant's wife. The RFA does not indicate the type of care that would be required. There is an issue of whether the reporting and RFA would be substantial medical evidence to support the issues raised herein. Does Dr. Miller need to define the type of care necessary, if the applicant needs to be monitored through the night or other requirements of a nonskilled homecare provider." (Defendant Petition for Reconsideration page 7 line 17) The undersigned disagrees with defendant's reading and believes the entire record supports that Applicant requires non-skilled attendant care for his overnight needs.

Dr. Miller's report of September 12, 2024, addresses Applicant's proposed treatment plan that includes non-skilled homecare and notes Applicant has issues with grooming and dressing, bathing, and required assistance with medication. (Exhibit 4 page 14) The RFA issued by Dr. Miller states that the services requested are "Reimbursement to the patient's wife for non-skilled homecare, 12 hours per night, 7 days per week." (Exhibit 5, page 1)

Applicant's nurse case manager Sue Coleman also issued a report discussing nursing recommendations for Applicant and recommends 24/7 attendant care "...for his safety and supervision. He requires full assistance for most of his activities of daily living. He requires assistance with bathing, dressing, grocery shopping, meal preparation, housekeeping, laundry, and bill payment." Mrs. Coleman also recommended "An RN visit is needed to check his vitals, load his automatic pill dispenser, and to check for skin breakdown or other related medical concerns." (Exhibit 1, page 14)

When examined concurrently, I determined that the record supported that Applicant's overnight care needs required non-skilled attendant care and that Applicant's spouse could be selected as his overnight care provider as she had demonstrated she had successfully been caring for Applicant in that capacity.

**RECOMMENDATION**

It is respectfully recommended that Defendant's Petition for Reconsideration be denied.

DATE: April 28, 2025

**Jeremy Clifft**
WORKERS' COMPENSATION JUDGE

## JOINT OPINION ON DECISION

Applicant was employed as president of Active Captive Management when he sustained an industrial injury arising out of and in the course of his employment to his cardiovascular system, brain, left upper extremity, left lower extremity, and claims to have sustained a sleep disturbance during the period October 1, 2007 through July 2, 2022.1 A second injury of October 21, 2024 to applicant's cardiovascular system, brain, left upper extremity, and left lower extremity is also alleged but is denied by defendant.2 The matter proceeded to trial on the issue of Dr. Lawrence Miller's request for additional overnight home health care services contained in his RFA dated October 21, 2024.

At trial, defendant objected to Applicant's Exhibits "4" and "5" as not constituting substantial medical evidence as well as being generated on the incorrect claim. The objection to the substantiality of the medical records is an objection to the weight of the evidence and do not bear on the admissibility of the documents. The objection to the documents being generated on the incorrect claim also do not bear upon their admissibility, as both claims proceeded to hearing. Applicant's Exhibits "4" and "5" are admitted into evidence.

Applicant objected to Defendant's Exhibit "A" on the grounds that the document was not properly served, does not incorporate the proper RFA, and the timeliness of the document's procurement. These objections would also bear upon the substantiality of the document and would require judicial determination as to the issues raised. Defendant's Exhibit "A" is admitted into evidence.

Submission was vacated and the matter reset for hearing as the undersigned sought clarification of defendant's claim numbers associated with the filed cases as Dr. Miller's reporting and RFA included defendant's claims file numbers and not the ADJ case file number.

The information was provided at hearing and when resubmitting the matter, the undersigned discovered the parties had requested another hearing on a related issue; resubmission was deferred to that hearing so they could both be adjudicated together. At the hearing, the parties informed the undersigned that the initial issues had been resolved with a subsequent request from Dr. Miller of February 24, 2025, and IMR reversal dated February27, 2025. The sole issue remaining was that of the appropriateness of Applicant's spouse providing overnight home health care for Applicant.

Applicant's injury resulted in Applicant being hospitalized after suffering a stroke on July 2, 2020. Applicant did not return home until March 1, 2023, at which time he required care as he was unable to sit up or stand unassisted and was unable to urinate without assistance. He also had difficulty speaking. (MOH/SOE 12/11/24, page 5 line 25) Currently Applicant's communication has improved, however, he is still receiving treatment associated with the stroke that includes issues with vision tracking, mobility, cognitive issues, and still requires 24hour assistance for his injuries. He can walk for 300 to 400 feet at which point he becomes fatigued; a wheelchair is used when attending medical appointments and at home. Applicant has issues with left-side paralysis which has rendered his left arm completely immobile. (MOH/SOE page 6, line 12)

Applicant had received approval for and was receiving home health care services for 12 hours a day from 7:00 a.m. to 7:00 p.m. During this time, Applicant's spouse was providing care for the Applicant in the evening.

At the initial trial setting, Applicant's spouse who acts as Guardian Ad Litem offered testimony at trial regarding care that she currently provides. She begins providing assistance to Applicant from approximately 4:30 to 5:30 a.m. until Applicant's caregiver arrives at 7:00 a.m. She will then resume care of Applicant at 7:00 p.m. when the caregiver leaves and is able to do so without issue. (MOH/SOE 12/11/24, page 7 line 13) During the day, she drives Applicant to any doctor appointments as the home health care provider during the day is not allowed to do transport Applicant. (MOH/SOE 12/11/24, page 8 line 19) Her assistance to Applicant includes dressing him prior to arrival of the morning caretaker and well helping him prepare for bed in the evening after the caregiver leaves. During the night, she will assist Applicant if he needs to use the restroom as she does not allow him to walk alone as he requires assistance.

She also assists in sorting and providing Applicant's medication as he is unable to do so himself. (MOH/SOE 12/11/24, page 6 line 17) She believes she is qualified to provide Applicant the assistance that he requires at night as she has been providing such without problems. (MOH/SOE 12/11/24, page 9 line 1)

The Court has previously addressed the issue of home health care provided by a family member of Applicant in the Harvey opinion where they stated:

> Labor Code Section 4600 and the limited case law on home health care do not preclude the relatives of the Applicant to care for her. There is no case law to support the proposition that defendant has the sole right to select the home health care providers. As the evidence currently exists, Applicant should be entitled to

> control this relationship much as she has the right to control her own choice of treating physician." *Harvey v. SCPMG*, 2012 Cal. Wrk. Comp. P.D. LEXIS 72, *9

Furthermore, the Court has previously allowed an Applicant's family member to act as their home care provider where there is a documented need for the care and the requested member is able to perform the required care requested. *County of Los Angeles v. Workers' Comp. Appeals Bd.* (*Intrachooto*), 76 Cal.Comp.Cases 1000, 2011 Cal. Wrk. Comp. LEXIS 131; *Barragan v. American Bridge*, 2012 Cal. Wrk. Comp. P.D. LEXIS 331; *Gomez v. Premium Roof Servs.*, 2012 Cal. Wrk. Comp. P.D. LEXIS 284

In the present matter, Applicant has demonstrated that his spouse is capable of providing the home health care services approved by defendant, and desires that she provide the services for Applicant's overnight care. In accordance with the above cited cases, Applicant may select their spouse to act as Applicant's overnight home care provider.

DATE: 3/21/2025

**Jeremy Clifft**
WORKERS' COMPENSATION JUDGE