

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

**JOHN ERNST, *Applicant***

**vs.**

**GLENDALE MEMORIAL HOSPITAL AND HEALTH CENTER/COMMONSPIRIT  
HEALTH, administered by SEDGWICK, *Defendants***

**Adjudication Number: ADJ16747878  
Los Angeles District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted reconsideration in this matter to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O) issued on December 6, 2022, wherein the workers' compensation administrative law judge (WCJ) found that (1) while employed as registered nurse on July 23, 2021, applicant sustained injury arising out of and in the course of employment (AOE/COE) to the left shoulder; (2) defendant furnished some medical treatment, with Dr. Yacoubian serving as primary treating physician; and (3) the Utilization Review (UR) decision dated April 19, 2022 was untimely.

The WCJ ordered that the requested three series of orthovisc injections to the left shoulder are not medically necessary.

Applicant contends that the WCJ erroneously found that no evidence was submitted establishing the medical reasonableness and necessity for the three series of orthovisc injections sought by the Request for Authorization (RFA) dated March 10, 2022.

We did not receive an Answer.

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

We have reviewed the Petition for Reconsideration and the contents of the Report. Based upon our review of the record and as discussed below, as our Decision After Reconsideration, we

will rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision.

### **FACTUAL BACKGROUND**

On November 28, 2022, the parties filed a Pretrial Conference Statement (PTCS), identifying the following issue in dispute:

Medical necessity, orthovisc injections – 3 series left shoulder LC 4604.5, Dubon II, Bodam Stipulation 4/19/2022 UR is not timely.

(PTCS, November 28, 2022, p. 3.)

On that same date, the matter proceeded to an expedited trial on the issue of whether “three series of orthovisc injections to the left shoulder are medically necessary.” (Expedited Minutes of Hearing, November 28, 2022, p. 2:10.) The WCJ entered the parties’ stipulation that “[t]he UR dated April 19, 2022, was untimely” into the record. (*Id.*, p. 2:8.)

The WCJ admitted a UR Determination dated May 2, 2022, into evidence. (Ex. Y, UR Determination dated May 2, 2022.) It states:

#### **REVIEW QUESTION(S):**

**I. Is Orthovisc injections - 3 series injections to the left shoulder xi injection per week for three weeks RFA dated 3/10/2022 medically necessary?**

The request is modified.

Request was for an appeal of a series of 3 Orthovisc injections to the left shoulder x 1 injection per week for three weeks RFA dated 3/10/2022 with noncertification on 4/7/2022. The reviewer at that time stated that the requested intervention is not clearly established as beneficial for the claimant's condition based on primary literature and is not otherwise endorsed by the aforementioned guidelines, the request is not shown to be medically necessary. Reviewed left shoulder MRI on 8/4/2021 which demonstrated: massive rotator cuff tear with ruptures of the supraspinatus, infraspinatus, and subscapularis tendon with medial attraction of the glenoid. Moderate to severe degenerative AC joint arthrosis. Small joint effusion. No updated progress notes were submitted for review. Progress note on 2/14/2022 stated that there was still pain rated 8/10, dull, intermittent, and primarily localized to the shoulder. Claimant also had history of left shoulder biceps repair. Left shoulder exam demonstrated weakness rated 4/5, positive crepitus and impingement, pain and stiffness of motion, flexion 100, abduction 150, internal rotation was to the LS, and external rotation 60. MRI demonstrated high-tiding humeral head with articulation of the humeral head with the acromion and chronic

rotator cuff tear with retraction and advanced osteoarthritis of left shoulder. There was also bone on bone articulation between the humeral head in glenoid.

CA MTUS states that Viscosupplementation injections have been used for treatment of impingement syndrome. However, there is no recommendation for or against the use of subacromial viscosupplementation injections for the treatment of chronic rotator cuff tendinopathies (including rotator cuff tendinosis, supraspinatus tendinitis, impingement syndrome, and subacromial bursitis). NCBI states that Viscosupplementation by hyaluronic acid (HA) injections is frequently used for local treatment of osteoarthritis (OA), due to ease of use and good tolerance. Regarding the shoulder, results are promising with or without rotator cuff tear.

In this case, the claimant was seen regarding persistent pain throughout the left shoulder that was rated 8/10 with history of biceps repair. The review of the claimant's MRI also demonstrated advanced arthritic symptoms. Although MTUS guidelines do not have recognition for or against the use of Orthovisc injection; NCBI study states that these injections are typically utilized for local treatment of osteoarthritis and had promising results with or without rotator cuff tear for the shoulder. At this time, the claimant had failed conservative treatments including medication therapy, had history of biceps repair, and MRI also demonstrated advanced osteoarthritis. Orthovisc injection is reasonable, but a series of 3 injections is not recommended as claimant should have reevaluation performed to verify objective improvement with an initial injection. As such, the request is modified to 1 Orthovisc injection for the left shoulder. Therefore, the request for Orthovisc injections - 3 series injections to the left shoulder xl injection per week for three weeks, RFA dated 3/10/2022 is not medically necessary. However, 1 Orthovisc injection for the left shoulder is medically necessary.

(Ex. Y, UR Determination, May 2, 2022, pp. 1, 10.)

In the Opinion on Decision, the WCJ states:

[N]o evidence has been provided that would support an argument or a finding of medical necessity for the requested orthovisc injections. Therefore, they are not deemed to be medically necessary.

(Opinion on Decision, p. 4.)

In the Report, the WCJ states:

On March 10, 2022, Primary Treating Physician (“PTP”) Dr. Yacoubian submitted a Request for Authorization (“RFA”) for orthovisc injections, 3 series injections, one injection per week for three weeks into left shoulder, indicating the diagnosis of the left shoulder osteoarthritis (Applicant's Exhibit 1, EAMS Doc. I.D. 76174552).

...

In his report dated July 27, 2022, Dr. Yacoubian indicates that the applicant had received one orthovisc injection, "which helped him significantly in the shoulder" (Applicant's Exhibit 3, page 1, EAMS Doc. I.D. 76174595).

...

Dr. Yakoubian provided no evidence to rebut the MTUS and the one UR doctor that approved one shot pointed to "promising" results in one NCBI study. (Report, pp. 1-4.)

## DISCUSSION

Applicant argues that the WCJ erroneously found that no evidence was submitted establishing the medical reasonableness and necessity for the three series of orthovisc injections sought by the March 10, 2022 RFA. Specifically, applicant argues that the May 2, 2022 UR decision authorizing one orthovisc injection and Dr. Yacoubian's July 27, 2022 report indicating that applicant's single orthovisc injection helped him significantly in the left shoulder establish medical necessity for the treatment.

In *Sandhagen v. Workers' Comp. Appeals Bd.* (2008) 44 Cal.4th 230 [73 Cal.Comp.Cases 981], the Supreme Court stated:

The Legislature amended section 3202.5 to underscore that all parties, including injured workers, must meet the evidentiary burden of proof on all issues by a preponderance of the evidence. Accordingly, notwithstanding whatever an employer does (or does not do), an injured employee must still prove that the sought treatment is medically reasonable and necessary. That means demonstrating that the treatment request is consistent with the uniform guidelines (§ 4600, subd. (b)) or, alternatively, rebutting the application of the guidelines with a preponderance of scientific medical evidence (§ 4604.5).

(*Sandhagen, supra*, at p. 990.)

Under this authority, applicant may meet his burden of proving entitlement to the three series of orthovisc injections by presenting substantial medical evidence that the treatment is appropriate under the MTUS or, though at variance with the MTUS, reasonably required to cure or relieve him of his injury. (Lab. Code § 4604.5(a)<sup>1</sup> (providing that the MTUS shall be presumptively correct on the issue of extent and scope of medical treatment, but may be controverted by a preponderance of the scientific medical evidence establishing that variance from the guidelines reasonably is required to cure or relieve the injured worker from the effects of injury).)

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

In this regard, the May 2, 2022 UR decision states that one orthovisc injection is medically necessary and that objective improvement of the shoulder should be verified before additional injections be approved. (Ex. Y, UR Determination, May 2, 2022, p. 10.) Dr. Yacoubian's July 27, 2022 report states that the single injection received by applicant significantly helped his shoulder. (Report, p. 2.)

However, the WCJ concluded that this medical evidence was insufficient to establish the medical reasonableness and necessity of the requested treatment without explaining how it failed to rebut the MTUS. (Report, pp. 2, 4.)

The WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award, there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (§ 5313; see also *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton, supra*, at p. 476, (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351]).)

The Appeals Board has the discretionary authority to order development of the record when appropriate to provide due process or fully adjudicate the issues consistent with due process. (See *San Bernardino Community Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121–1122 [63 Cal.Comp.Cases 261, 264–265].)

Because the record is unclear as to the WCJ's reasons or grounds for concluding that applicant failed to establish the medical necessity of the three series of orthodisc injections, we conclude that the record should be developed as to whether applicant is entitled to the requested treatment.

Accordingly, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued on December 6, 2022 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**I CONCUR,**

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

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



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

**FEBRUARY 12, 2026**

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

**JOHN ERNST  
EMILIA MIKAELIAN LAW OFFICE  
WORK COMP CARE PC**

**SRO/kl**

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