

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

3  
4 **CHRISTOPHER TYNI,**

5 *Applicant,*

6 vs.

7 **CITY OF MONTEBELLO, permissibly self-**  
8 **insured,**

9 *Defendant.*

Case No. **ADJ9661661**  
(Van Nuys District Office)

**OPINION AND ORDER  
GRANTING APPLICANT'S  
PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

10  
11 Applicant seeks reconsideration of the April 26, 2016 Findings And Order of the workers'  
12 compensation administrative law judge (WCJ), who found that the March 7, 2016 Independent Medical  
13 Review (IMR) in this case was "untimely," but that the untimely IMR determination "does not confer  
14 jurisdiction on the WCJ to decide any medical treatment issues."

15 It is admitted that applicant sustained industrial injury to his right knee while employed by  
16 defendant as a Police Officer on August 26, 2014.

17 Applicant contends that the WCJ erred in concluding that the WCAB has no jurisdiction to decide  
18 the medical treatment dispute notwithstanding the finding that the IMR determination did not timely  
19 issue.

20 An answer was received from defendant.

21 The WCJ provided a Report And Recommendation On Petition For Reconsideration (Report)  
22 recommending that reconsideration be denied.

23 The WCJ's April 26, 2016 decision is generally affirmed for the reasons stated in the Report,  
24 which is incorporated by this reference except as discussed below, and for the reasons below. However,  
25 reconsideration is granted in order to amend Finding 2 to delete reference to the issuance of an IMR  
26 decision within a "period of 30 days" from receipt of the application for IMR because the actual time  
27 allowed is 30 days from the receipt of supporting documentation. The amended finding does not change

1 the WCJ's decision that the WCAB has no authority to determine the treatment dispute because the time  
2 periods for completion of IMR contained in Labor Code section 4610.6(d) are directory not mandatory,  
3 and the IMR determination in this case is valid and binding upon applicant even though it issued outside  
4 the time described in the statute.<sup>1</sup> (*California Highway Patrol v. Workers' Comp. Appeals Bd.*  
5 (*Margaris*) (June 22, 2016, No. B269038) \_\_\_ Cal.App.4th \_\_\_ [2016 Cal. App. LEXIS 491] (*Margaris*);  
6 *Stevens v. Workers' Comp. Appeals Bd.* 241 Cal.App.4th 1074 [80 Cal.Comp.Cases 1262] (*v Stevens*);  
7 *Arredondo v. Tri-Modal Dist. Services* 80 Cal.Comp.Cases 1050 (writ den.) (*Arredondo*).

### 8 DISCUSSION

9 The WCJ explains in his Report that he determined that the IMR determination in this case was  
10 untimely because it issued more than 30 days after the IMR reviewer received applicant's *application* for  
11 IMR and that view is reflected in the WCJ's Finding 2. We do not affirm that finding of the WCJ or  
12 adopt that part of his Report because it incorrectly states the time that is provided in the statute for the  
13 conduct of IMR.

14 Section 4610.6(d) provides that an IMR determination shall in most instances issue "within 30  
15 days of the receipt of the request for review *and supporting documentation...*" (Italics added.)  
16 Administrative Director (AD) Rule 9792.10.5(a)(1) in turn provides that relevant documents are to be  
17 delivered to the IMR organization "within fifteen (15) days" after the matter has been assigned for IMR.  
18 (Cal. Code Regs., tit. 8, § 9792.10.5(a)(1).) The 15 days allowed by the AD Rule to provide supporting  
19 documentation is in addition to the 30 day period described in section 4610.6(d). (*Id.*) In that the 30  
20 day period described in section 4610.6(d) begins to run upon "receipt of the...supporting  
21 documentation," the 15 day period allowed by Rule 9792.10.5(a)(1) is part of the total time allowed for  
22 completion of the IMR. Thus, the total allowed time for completion of the typical IMR process from the  
23 date a request for regular IMR review is received, through the date of receipt of supporting  
24 documentation to the date the IMR determination issues, is 45 days. (Cf. Cal. Code Regs., tit. 8,  
25 §§ 9792.10.4(a)(5), 9792.10.7(g)(1).)

26  
27 <sup>1</sup> Further statutory references are to the Labor Code.

1 Notwithstanding the amended finding, the WCJ's finding that the IMR determination did not  
2 issue within the time period described in section 4610.6(d) is correct. That does not, however, affect the  
3 validity of the IMR determination because the time periods stated in the statute are directory and not  
4 mandatory, as concluded by the WCJ. (*Margaris, supra; Stevens, supra; Arredondo, supra.*)

5 The Legislature requires that every medical treatment dispute that remains after UR be addressed  
6 through IMR in order to assure that medical necessity is objectively and uniformly determined by  
7 medical professionals based upon the MTUS and other recognized standards of care. IMR is  
8 governmental action performed under the auspices and control of the AD, and an IMR determination is a  
9 determination of the AD. The Legislature provided guidelines in section 4610.6(d) on when an IMR  
10 determination should issue, but it enacted no provision that invalidates an IMR determination if it is not  
11 made within those section 4610.6(d) timeframes, and it made no allowance for the WCAB to determine  
12 treatment disputes after they are submitted to IMR. In light of the expressed legislative intent and  
13 statutory design of IMR, the section 4610.6(d) timeframes are properly considered to be directory and the  
14 IMR determinations in this case are valid even if they did not issue within those timeframes.

15 The April 26, 2016 Findings And Order of the WCJ is affirmed.

16 For the foregoing reasons,

17 **IT IS ORDERED** that applicant's petition for reconsideration of the April 26, 2016 Findings  
18 And Order of the workers' compensation administrative law judge is **GRANTED**.

19 **IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers'  
20 Compensation Appeals Board that the April 26, 2016 Findings And Order of the workers' compensation  
21 administrative law judge is **AFFIRMED**, except that Finding Of Fact 2 is **RESCINDED** and the  
22 following is **SUBSTITUTED** in its place:

23  
24 **FINDINGS OF FACT**

25 \*\*\*\*\*

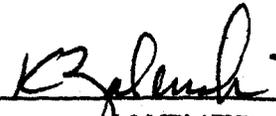
26 2. It is found that Maximus did not issue a final determination until March 7, 2016, and that this  
27 determination upheld the denial of medical care which Utilization Review (UR) had previously issued.

1 Further, it is found that the period between 11-12-2015 and 03-7-16 is in excess of the time allowed by  
2 the statute and Regulations, so that the Maximus IMR determination was indeed untimely.

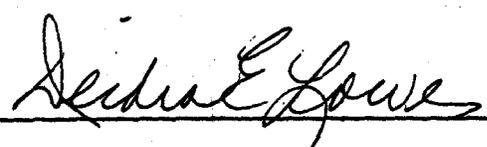
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4 **IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers'  
5 Compensation Appeals Board that the case is **RETURNED** to the trial level.

7 **WORKERS' COMPENSATION APPEALS BOARD**

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10 \_\_\_\_\_  
11 **KATHERINE ZALEWSKI**

11 **I CONCUR,**

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14 \_\_\_\_\_  
15 **DEIDRA E. LOWE**

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18 \_\_\_\_\_  
19 **DEPUTY RICHARD L. NEWMAN**



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

20  
21 **JUN 3 0 2016**

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

24 **CHRISTOPHER TYNI**  
25 **LEWIS MARENSTEIN ET AL.**  
26 **GOLDMAN, MAGDALIN & KRIKES**



27 **JFS/abs**