

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

3
4 **MICHAEL GHATTAS,**

5 *Applicant,*

6 **vs.**

7 **O'REILLY AUTO PARTS; SAFETY**
8 **NATIONAL CASUALTY COMPANY.**

9 *Defendants.*

Case No. ADJ10896105
(Stockton District Office)

OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

10
11 Applicant, Michael Ghattas, seeks reconsideration of the January 8, 2018 Opinion and Order
12 Granting Reconsideration and Decision After Reconsideration, in which this panel of the Workers'
13 Compensation Appeals Board granted reconsideration from the Findings of Fact, Award and Order, issued
14 November 3, 2017, and reversed the workers' compensation administrative law judge's order to defendant
15 Safety National Casualty to provide applicant with surgery and other medical treatment specified in Dr.
16 Behzadi's Request for Authorization (RFA), for applicant's claimed May 19, 2017 industrial injury to his
17 right ankle and right lower extremity. The WCJ concluded that applicant was entitled to the surgery because
18 defendant's notice that it was denying applicant's claim of injury was not a proper and timely response to
19 the RFA.

20 In reversing the WCJ's determination, we concluded that defendant's responsibility to provide
21 initial medical treatment ended when it made the determination to deny applicant's claim of injury within
22 the 90 day period provided in Labor Code section 5402.

23 Applicant renews the argument raised in his response to defendant's prior petition, that defendant
24 should be required to provide medical treatment that is the subject of an RFA served prior to the date
25 defendant issued its denial of applicant's claim of injury. Applicant argues that defendant, upon its receipt
26 of Dr. Behzadi's RFA, was obligated to follow the Utilization Review (UR) process under Administrative
27 Director's Rule 9792.9.1, which does not include a denial of a claim under Labor Code section 5402 as a

1 basis for not submitting the RFA to UR and denying the medical treatment.

2 We remain convinced that after defendant made the timely determination to deny applicant's claim
3 of injury, its responsibility to authorize medical treatment ended, and it was not required to submit the RFA
4 to UR. As we stated in our prior determination:

5 When defendant denied applicant's claim of injury on June 7, 2017, within
6 the 90 day period provided by Labor Code section 5402(b), its responsibility
7 to provide medical treatment pursuant to Labor Code section 5402(c) ended.
8 Labor Code section 5402(c) provides that:

9 Within one working day after an employee files a claim form
10 under Section 5401, the employer shall authorize the provision
11 of all treatment, consistent with Section 5307.27, for the alleged
12 injury and shall continue to provide the treatment **until the date**
13 **that liability for the claim is accepted or rejected.** Until the
14 date the claim is accepted or rejected, liability for medical
15 treatment shall be limited to ten thousand dollars (\$10,000).
16 (Emphasis added.)

17 Defendant's timely notice of its denial of applicant's claim
18 terminated defendant's responsibility to provide applicant with medical
19 treatment pursuant to section 5402(c), until such time as liability is
20 subsequently adjudicated or is accepted by defendant. Had defendant
21 accepted applicant's claim, it would have been required to submit the RFA
22 to UR and responded within the timeframe provided in Rule 9792.9.1(e)(3).
23 The fact that the Dr. Behzadi's RFA was pending at the time defendant made
24 its determination to deny applicant's claim does not act to negate the effect
25 of defendant's timely notification of its denial. Until applicant's claim is
26 adjudicated, applicant may obtain reasonable and necessary medical
27 treatment on a lien basis.

Accordingly, we reaffirm our prior determination and will deny applicant's Petition for
Reconsideration.

///

///

///

///

///


///

///

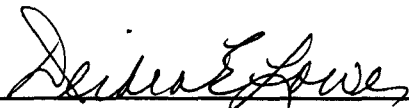
1 For the foregoing reasons,

2 **IT IS ORDERED** that the Petition for Reconsideration, filed January 30, 2018, is **DENIED**.

3
4 **WORKERS' COMPENSATION APPEALS BOARD**

5
6  **CHAIR**
7 **KATHERINE ZALEWSKI**

8 **I CONCUR,**

9
10 

11
12 **DEIDRA E. LOWE**

13
14 **CONCURRING, BUT NOT SIGNING**

15 **JOSÉ H. RAZO**



16
17 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

18
19 **MAR 22 2018**

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

22 **MICHAEL GHATTAS**
23 **CENTRAL VALLEY INJURED WORKER LEGAL CLINIC**
24 **SAMUELSEN, GONZALEZ, VALENZUELA & BROWN**

25 **SV/pc**

