

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

**SONIA ARTEAGA, *Applicant***

**vs.**

**STARCREST PRODUCTS OF CALIFORNIA, INC.; ZENITH INSURANCE, *Defendants***

**Adjudication Number: 16637235  
Riverside District Office**

**OPINION AND ORDER  
DENYING PETITION FOR RECONSIDERTION**

Lien claimant Medland Medical seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of June 28, 2024, wherein it was found that, while employed as an auditor during a cumulative period ending June 7, 2022, applicant sustained industrial injury to the back, neck and shoulders. It was found that lien claimant was entitled to reimbursement for medical-legal services, but that the issue of reimbursement for medical treatment was deferred pending retrospective utilization review. In this matter, applicant settled her claims against defendant in exchange for \$35,000.00 by way of a Compromise and Release approved on October 12, 2023.

Lien claimant contends that the WCJ erred in deferring the issue of the medical treatment lien pending retrospective utilization review. Lien claimant argues that defendant waived its ability to conduct retrospective utilization review by not timely responding to each request for authorization. We have received an answer from the defendant, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

For the reasons stated in the Report, which we adopt, incorporate and quote below, as well as the additional reasons stated below, we will deny the lien claimant's Petition.

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 August 2, 2024, and 60 days from the date of transmission is October 1, 2024. This decision is issued by or on October 1, 2024, so that 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 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 August 2, 2024, and the case was transmitted to the Appeals Board on August 2, 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 August 2, 2024.

Turning to the merits, as noted above, we will deny lien claimant's Petition for the reasons stated in the WCJ's Report, quoted below. Administrative Rule 9792.9.1(b), which was cited in the Report, states in full:

(b) Utilization review of a medical treatment request made on the DWC Form RFA may be deferred if the claims administrator disputes liability for either the occupational injury for which the treatment is recommended or the recommended treatment itself on grounds other than medical necessity.

(1) If the claims administrator disputes liability under this subdivision, it may, no later than five (5) business days from receipt of the DWC Form RFA, issue a written decision deferring utilization review of the requested treatment unless the requesting physician has been previously notified under this subdivision of a dispute over liability and an explanation for the deferral of utilization review for a specific course of treatment. The written decision must be sent to the requesting physician, the injured worker, and if the injured worker is represented by counsel, the injured worker's attorney. The written decision shall contain the following information specific to the request:

(A) The date on which the DWC Form RFA was first received.

(B) A description of the specific course of proposed medical treatment for which authorization was requested.

(C) A clear, concise, and appropriate explanation of the reason for the claims administrator's dispute of liability for either the injury, claimed body part or parts, or the recommended treatment.

(D) A plain language statement advising the injured employee that any dispute under this subdivision shall be resolved either by agreement of the parties or through the dispute resolution process of the Workers' Compensation Appeals Board.

(E) The following mandatory language advising the injured employee:

"You have a right to disagree with decisions affecting your claim. If you have questions about the information in this notice, please call me (insert claims adjuster's name in parentheses) at (insert telephone number). However, if you are represented by an attorney, please contact your attorney instead of me.

and

"For information about the workers' compensation claims process and your rights and obligations, go to [www.dwc.ca.gov](http://www.dwc.ca.gov) or contact an information and

assistance (I&A) officer of the state Division of Workers' Compensation. For recorded information and a list of offices, call toll-free 1-800-736-7401."

(2) If utilization review is deferred pursuant to this subdivision, and it is finally determined that the claims administrator is liable for treatment of the condition for which treatment is recommended, either by decision of the Workers' Compensation Appeals Board or by agreement between the parties, the time for the claims administrator to conduct retrospective utilization review in accordance with this section shall begin on the date the determination of the claims administrator's liability becomes final. The time for the claims administrator to conduct prospective utilization review shall commence from the date of the claims administrator's receipt of a DWC Form RFA after the final determination of liability.

Here, the WCJ correctly determined that defendant was entitled to retrospective utilization review. The WCJ found that the defendant responded to lien claimant's first request for authorization with a timely and proper notice to defer utilization review on a basis other than medical necessity. (Report at p. 2.) As noted above, Administrative Rule 9792.9.1(b)(1) exempts the defendant from having to issue subsequent delay notices to subsequent requests for authorization if "the requesting physician has been previously notified under this subdivision of a dispute over liability and an explanation for the deferral of utilization review for a specific course of treatment." Since defendant timely and properly advised the lien claimant of the liability dispute in response to the first request for authorization, it did not have an obligation to issue any subsequent delay notices.

We otherwise deny the lien claimant's Petition for the reasons stated by the WCJ in the Report, which we adopt, incorporate and quote as follows:

**REPORT AND RECOMMENDATION OF  
WORKERS' COMPENSATION JUDGE  
ON PETITION FOR RECONSIDERATION**

**I.  
INTRODUCTION**

1. Applicant's Occupation: Auditor  
Date of Injury: June 7th, 2021 through June 7th, 2022  
Parts of Body Injured: back, shoulders, hands and knees  
Manner in which injury occurred: Cumulative Trauma
2. Identity of Petitioner: Lien Claimant, Medland Medical  
Timeliness: it is timely

Verification: it is verified

3. Date of Issuance of Order: June 28, 2024
4. Petition's Contentions: Applicant contends the court erred in finding that Defendant is permitted to conduct retrospective Utilization Review regarding Medland's dates of service 10/07/2022 through 8/28/2023 (excluding date of service 2/22/2023) and that the evidence does not justify that finding.

## **II** **FACTS**

The Application for Adjudication alleging injury to hernia, excretory system, back, shoulders and multiple parts during the period of 6/7/2021 through 6/7/2022 was filed on 9/1/2022.

Applicant began treating with Dr. Haghghinia, of Medland Medical (hereinafter Medland), on 10/07/2022. The initial Request for Authorization was sent by Medland to Defendant, Zenith Insurance (hereinafter Defendant) on 10/24/2022. Defendant did send notice of the intent to defer Utilization Review on a basis other than medical necessity to Medland on 10/24/2022.

Defendant denied the claim on 11/29/2022. Applicant continued to treat with Medland subsequent to the denial.

The case settled by Compromise and Release, with the Order Approving Compromise and Release issuing on 10/12/2023.

A Notice and Request for Allowance of Lien was filed by Medland on 11/9/2023, followed by a Declaration of Readiness on 11/17/2023.

The matter came before the undersigned for a lien trial on 5/1/2024. The matter was submitted on 5/1/2024 and a Findings and Order issued on 6/28/2024. Among the findings, the undersigned found that Applicant sustained injury AOE/COE, Defendant did not retain medical control through the MPN during the delay period, Defendant was liable for the Med-Legal services performed by Medland on 2/22/2023 and Defendant is permitted to conduct retrospective UR regarding dates of service 10/07/2022 through 8/28/2023 (excluding date of service 2/22/2023).

Medland filed a Petition for Reconsideration on 7/22/2024 disputing only the finding that Defendant is permitted to conduct retrospective UR regarding dates of service 10/07/2022 through 8/28/2023 (excluding date of service 2/22/2023).

### **III** **DISCUSSION**

Medland contends that Defendant should not be allowed to conduct retrospective Utilization Review as they did not issue a timely Utilization Review deferral to all Requests for Authorization submitted.

California Code of Regulation §9792.9.1(b) governs the deferral of Utilization Review when there are threshold disputes other than medical necessity. CCR §9792.9.1(b)(1) indicates that “a written decision deferring utilization review of the requested treatment unless the requesting physician has been previously notified under this subdivision of a dispute over liability..”

Defendant did issue an Utilization Review deferral notice to the initial Request for Authorization from Medland dated 10/24/2022. That notice dated 10/24/2022 was timely issued (within five business days of the date of the Request for Authorization). At the time of all subsequent Requests for Authorization, Medland was already on notice that Defendant was disputing their request for treatment of the Applicant due to a threshold issue other than medical necessity.

Additionally, Defendant denied the claim within 90 day, on 11/29/2022. The undersigned WCJ agrees with the rational in the panel case of Ghattas v. O'Reilly Auto Parts, Safety Nat'l Cas. Co., 2018 Cal. Wrk. Comp. P.D. LEXIS 86, which notes that Defendant is not required to submit Requests for Authorization to Utilization Review following a timely denial of the case.

The threshold issues of AOE/COE and Medical Control under the MPN were contested up until the time the undersigned issued the Findings and Order. Now that those issues have been found in the favor of Lien Claimant, Defendant is permitted to conduct retrospective Utilization Review.

### **IV** **RECOMMENDATION**

It is respectfully requested that the Petition be denied.

For the foregoing reasons,

**IT IS ORDERED** that Lien Claimant Medland Medical's Petition for Reconsideration of the Findings and Order of June 28, 2024 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

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

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



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

**October 1, 2024**

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

**SONIA ARTEAGA  
RAPHAEL HEDWAT  
CHERNOW, PINE AND WILLIAMS  
MEDLAND MEDICAL**

**DW/oo**

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