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**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**Case No. SJO 0245781**

**MICHAEL A. WILLETTE,**

*Applicant,*

*vs.*

**AU ELECTRIC CORPORATION; and  
STATE COMPENSATION INSURANCE  
FUND,**

*Defendant(s).*

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION  
(EN BANC)**

Applicant, Michael A. Willette (“applicant”), seeks reconsideration of the Opinion and Decision After Reconsideration (En Banc) issued by the Appeals Board on October 5, 2004. In that decision, the Appeals Board rescinded the May 17, 2004 Findings and Award issued by the workers’ compensation administrative law judge (“WCJ”), which had found in relevant part that: (1) applicant sustained industrial injury to his low back and tailbone on October 13, 2003, while employed as an alarm installer by Au Electric Corporation, the insured of State Compensation Insurance Fund (“defendant”); and (2) applicant will need further medical treatment to cure or relieve the effects of his injury, including the treatment jointly prescribed by his primary treating physician, Michael D. Butcher, M.D., and his secondary pain management physician, Hessam Noralahi, M.D., consisting of a TENS unit, water therapy, and acupuncture. In addition, the Appeals Board’s October 5, 2004 decision set forth the procedure to be followed if a defendant’s utilization review physician does not approve an unrepresented employee’s treating physician’s treatment authorization request in full: (1) if the unrepresented employee disputes the utilization review physician’s determination, the unrepresented employee must timely object, and then a panel qualified medical examiner (“QME”) must be obtained to resolve the disputed treatment issue(s); (2) once the panel QME’s evaluation has been obtained, neither the treating physician

1 nor the utilization review physician may issue any further reports addressing the post-utilization  
2 review treatment dispute; (3) the panel QME should ordinarily be provided with and consider  
3 both the reports of the treating physician and the utilization review physician regarding the  
4 disputed issues; (4) if a post-utilization review medical treatment dispute goes to trial after the  
5 panel QME issues his or her report, both the treating physician's reports and the utilization  
6 review physician's reports are admissible in evidence; and (5) when a WCJ or the Appeals Board  
7 issues a decision on a post-utilization review medical treatment dispute, the reports of the panel  
8 QME, the treating physician, and the utilization review physician will all be considered, but none  
9 of them is necessarily determinative. Finally, the Appeals Board's October 5, 2004 decision  
10 remanded the matter to the trial level to give the parties an opportunity to follow this procedure  
11 for resolving the post-utilization review dispute over applicant's entitlement to medical  
12 treatment.

13 In his petition for reconsideration, applicant contends, in substance: (1) he should receive  
14 the treatment prescribed by his treating physicians because they have been caring for him for  
15 awhile and they are helping him to get back to work; (2) if defendant does not agree with what  
16 his treating physicians have prescribed, then going to a neutral physician (i.e., a QME) is fair,  
17 provided that the QME talks with him, examines him, and reviews all of his medical records;  
18 (3) the opinion of a utilization review physician who has never talked with him or examined him,  
19 and who just has looked some things up the book, should not be considered at all and should not  
20 have equal weight with the opinions of his treating physicians and of the QME who has talked  
21 with him, examined him, and reviewed all of his medical records; and (4) if the QME agrees  
22 with the treatment his physicians have prescribed, he should be able to get that treatment right  
23 away and not have to go to another hearing, which will further delay his treatment.

24 Defendant has filed an answer to the petition for reconsideration.

25 For the reasons that follow, we will dismiss applicant's petition for reconsideration.

26 A petition for reconsideration is properly made only from a "final" order, decision, or  
27 award. (Lab. Code, §§5900(a), 5902, 5903.) A "final" order has been defined as one "which  
28 determines any substantive right or liability of those involved in the case." (*Rymer v. Hagler*

1 (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.*  
2 (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410, 413]; *Kaiser*  
3 *Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45  
4 [43 Cal.Comp.Cases 661, 665].) In general, where, as here, the WCAB grants reconsideration,  
5 rescinds the WCJ's decision, and returns the matter to the trial level for further proceedings and  
6 a new decision, the WCAB has not issued a "final" order subject to a petition for  
7 reconsideration. (See, *Travelers Ins. Co. v. Workers' Comp. Appeals Bd. (Taylor)* (1983) 147  
8 Cal.App.3d 1033, 1036, fn. 3 [48 Cal.Comp.Cases 774, 775, fn. 3]; see also, e.g., *Transportation*  
9 *Insurance Co. v. Workers' Comp. Appeals Bd. (Van De Hey)* (2003) 68 Cal.Comp.Cases 309;  
10 *Anbender v. Workers' Comp. Appeals Bd.* (1999) 64 Cal.Comp.Cases 546; *Employers First Ins.*  
11 *Co. v. Workers' Comp. Appeals Bd. (Morales)* (1997) 62 Cal.Comp.Cases 1710; *Goodrich v.*  
12 *Workers' Comp. Appeals Bd.* (1994) 59 Cal.Comp.Cases 763; *Minton v. Workers' Comp.*  
13 *Appeals Bd.* (1975) 40 Cal.Comp.Cases 313.) Accordingly, we will dismiss applicant's petition  
14 for reconsideration.

15 Although we are dismissing the petition, however, we will make the following brief  
16 observations.

17 First, after applicant sees the panel QME, and if both parties agree with the QME's  
18 opinion, there will be no need for further proceedings. If, however, either applicant or defendant  
19 does not agree with the panel QME's opinion, then the parties have the right to a judicial  
20 determination of the issue of applicant's entitlement to the medical treatment prescribed by Drs.  
21 Butcher and Noralahi.

22 Second, our October 5, 2004 decision did *not* state that defendant's utilization review  
23 reports would have the same weight as the reports of the treating physicians and the panel QME.

24 We said:

25 "[I]n determining whether to rely on the panel QME, the treating  
26 physician, or the utilization review physician, the WCJ or the  
27 Appeals Board will consider the weight to be given to the  
28 respective opinions and will consider whether they constitute  
substantial evidence. (*Lamb v. Workmen's Comp. Appeals Bd.*)

1 (1974) 11 Cal.3d 274, 280-281 [39 Cal.Comp.Cases 310]; *Garza v.*  
2 *Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35  
3 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.*  
4 (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16]; see also, Cal.  
5 Code Regs., tit. 8, §10606 [compliance with Rule 10606 goes to  
6 weight to be given report]; *Insurance Co. of North America v.*  
*Workers' Comp. Appeals Bd. (Kemp)* (1981) 122 Cal.App.3d 905,  
917 [46 Cal.Comp.Cases 913] [a report that is 'woefully  
inadequate' in its compliance with Rule 10606 should not be relied  
upon]."

7 We have made no determination about the weight to be given to any of the medical evidence in  
8 this case.

9 For the foregoing reasons,

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