

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

3  
4 **JORDAN STONE,**

5 *Applicant,*

6 **vs.**

7 **ACHIEVE KID.; CAPS-SIG,**

8 *Defendants.*  
9

Case No. ADJ376655 (SJO 0257571)

**OPINION AND DECISION  
AFTER  
RECONSIDERATION**

10  
11 We previously granted defendant's petition for reconsideration of the September 30, 2014 Order  
12 Denying Appeal From IMR Determination of the workers' compensation administrative law judge  
13 (WCJ) who denied defendant's appeal of the June 30, 2014 Independent Medical Review (IMR)  
14 determination that the right knee cartilage transplant requested by applicant's treating physician is  
15 "medically necessary and appropriate." In his Opinion on Decision, the WCJ wrote that he found no  
16 basis for appeal under Labor Code section 4610.6(h) notwithstanding that the IMR determination is, on  
17 its face, contradicted by the "Expert Reviewers Rationale" included in the IMR.<sup>1</sup>

18 On December 5, 2007, the WCJ approved the parties' stipulation to entry of an award of 39%  
19 permanent disability and future medical treatment for the admitted industrial injury applicant sustained to  
20 his right knee and right upper extremity while working for defendant as a program counselor on  
21 September 19, 2005.

22 Defendant contends that there is a basis for its IMR appeal pursuant to section 4610.6(h)(5).

23 An answer was not received.

24 The WCJ provided a Report And Recommendation On Petition For Reconsideration (Report)  
25 recommending that reconsideration be denied.  
26

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

1 The WCJ's September 30, 2014 decision is reversed as our Decision After Reconsideration. The  
2 IMR determination issued in excess of the Administrative Director's powers as described in section  
3 4610.6(h)(1) and, as described in section 4610.6(h)(5), it contains plainly erroneous findings that are not  
4 subject to expert opinion. Defendant's IMR appeal is granted and the dispute is remanded through the  
5 WCJ to the Administrative Director for submission to a different IMR reviewer pursuant to section  
6 4610.6(h)(1).

### 7 BACKGROUND

8 Applicant admittedly sustained industrial injury to his right knee causing a need for medical  
9 treatment as set forth in the December 5, 2007 stipulated award. Surgery was initially performed on the  
10 knee in August 2005, but applicant continued to complain of pain. This led applicant's physician, Peter  
11 Bullock, M.D., to request authorization to perform a right knee cartilage transplant. Defendant submitted  
12 the request to utilization review (UR), but certification was denied on January 27, 2014. (Defendant's  
13 Exhibit B.) Applicant appealed the UR denial to IMR.

14 On June 30, 2014 IMR issued its final determination letter. (Defendant's Exhibit A.) That letter  
15 states that defendant's UR denial is "overturned," and describes that as meaning that "we decided that all  
16 of the disputed items/services are medically necessary and appropriate." The letter further references a  
17 "detailed explanation" of the decision that includes a clinical case summary that addresses applicant's  
18 earlier knee surgery and the requested cartilage transplant surgery. The last page of the letter is  
19 captioned as follows: "Cartilage transplant right knee joint is medically necessary and appropriate."<sup>2</sup>  
20 However, following that caption there is a paragraph described as the "Expert Reviewer's decision  
21 rationale," which states in full as follows:

22 "Based on California ACOEM Guidelines, the role of cartilage  
23 transplantation in this individual would not be indicated. Records indicate  
24 a morbidly obese gentleman with no documentation of specific imaging at  
25 present. There would be no current indication of a lesion that would be  
26 consistent with need for cartilage grafting and/or transplantation. Better  
understanding of the claimant's clinical picture, particularly from an  
imaging point of view would need to be established. *Specific request in  
this case is not medically necessary.*" (Emphasis added.)

27 <sup>2</sup> Quotations converted from upper case to lower case as appropriate.

1 The discrepancy between the IMR determination approving the surgery as “medically necessary  
2 and appropriate” and the conflicting rationale stating that the surgery is “not medically necessary” is  
3 addressed by the WCJ in his Report, as follows:

4 “Defendant points out that, while page 3 of the IMR decision starts with a  
5 heading declaring the right knee cartilage transplant in issue here to be  
6 ‘medically necessary and appropriate’, this heading is followed by a  
7 paragraph headed ‘Expert Reviewers Rationale’ which, to this layman’s  
8 eye, bears every indication of supporting the opposite conclusion. If the  
9 WCAB were granted sufficient discretion to determine whether the  
10 Determination was logical, I would certainly conclude that the Findings of  
11 Fact do not support the conclusion reached. *I cannot find any logical  
12 means by which the two can be reconciled.*

13 “On the other hand, *WCAB jurisdiction to overturn IMR does not extend to  
14 errors of logic*, but only to plainly erroneous findings of fact on matters  
15 which do not require expert opinion. The findings of fact set forth on page  
16 2 under the heading ‘Clinical Case Summary’ are not in dispute; no one  
17 claims they are in error. *The alleged error, if it exists, clearly lies in the  
18 conclusion reached, which is plainly a matter of expert opinion.* Even if  
19 we were to conclude that the decision to overturn UR was a simple  
20 typographical error, a not implausible proposition, Section 4610(h) makes  
21 no provision for the correction of such an error by the WCAB. Absent  
22 plainly erroneous findings of fact, the decision is presumed correct.

23 “Under these circumstances, I find no authority which would allow the  
24 WCAB to grant the relief requested.” (Emphasis added.)

### 25 DISCUSSION

26 While the WCAB has jurisdiction to hear appeals from IMR determinations, section 4610.6(h)  
27 expressly limits such appeals to five grounds, as follows:

19 “A determination of the administrative director pursuant to this section  
20 may be reviewed only by a verified appeal from the medical review  
21 determination of the administrative director, filed with the appeals board  
22 for hearing pursuant to Chapter 3 (commencing with Section 5500) of Part  
23 4 and served on all interested parties within 30 days of the date of mailing  
24 of the determination to the aggrieved employee or the aggrieved employer.  
25 The determination of the administrative director shall be presumed to be  
26 correct and shall be set aside only upon proof by clear and convincing  
27 evidence of *one or more of the following grounds for appeal:*

(1) *The administrative director acted without or in excess of the  
administrative director’s powers.*

(2) The determination of the administrative director was procured by fraud.

(3) The independent medical reviewer (3) was subject to a material conflict of  
interest that is in violation of Section 139.5.

1 (4) The determination was the result of bias on the basis of race, national  
2 origin, ethnic group identification, religion, age, sex, sexual orientation,  
3 color, or disability.

3 (5) *The determination was the result of a plainly erroneous express or*  
4 *implied finding of fact, provided that the mistake of fact is a matter of*  
5 *ordinary knowledge based on the information submitted for review*  
6 *pursuant to Section 4610.5 and not a matter that is subject to expert*  
7 *opinion.”* (Emphasis added; cf. Cal. Code Regs., tit. 8, § 10957.1.)

6 The remedy for a successful IMR appeal pursuant to section 4610.6(h) is limited by statute to the  
7 conduct of another IMR, as follows:

8 “If the determination of the administrative director is reversed, the dispute  
9 shall be remanded to the administrative director to submit the dispute to  
10 independent medical review by a different independent review  
11 organization. In the event that a different independent medical review  
12 organization is not available after remand, *the administrative director shall*  
13 *submit the dispute to the original medical review organization for review*  
14 *by a different reviewer in the organization.* In no event shall a workers’  
15 compensation administrative law judge, the appeals board, or any higher  
16 court make a determination of medical necessity contrary to the  
17 determination of the independent medical review organization.” (Lab.  
18 Code, 4610.6(i), emphasis added; cf. Cal. Code Regs., tit. 8, §  
19 10957.1(m).)

15 In this case, the WCJ concludes in his Report that defendant’s appeal was not cognizable under  
16 section 4610.6(h)(5) because the claimed error was one of “logic,” not fact, and that the determination to  
17 authorize the requested medical treatment involves a matter of expert opinion. We do not agree with that  
18 analysis as basis for denying defendant’s IMR appeal.

19 One does not need to be an expert to see that the IMR determination stating that the requested  
20 surgery is “medically necessary and appropriate” is plainly contradicted by the IMR rationale stating that  
21 the request “is not medically necessary.” In light of that patent discrepancy, it is plainly apparent that  
22 either the IMR determination approving the surgery, or the IMR rationale stating that the surgery is not  
23 medically necessary, is in error. One does not need to be an expert to observe that error, and our  
24 determination that there is a discrepancy between the IMR decision and the provided rationale does not  
25 involve expert opinion.

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1           Moreover, the IMR statute does not authorize the Administrative Director to arbitrarily approve  
2 surgeries that are not medically supported, and it does not allow surgeries that are medically supported to  
3 be arbitrarily denied by the Administrative Director. To do either would be “in excess of the  
4 administrative director’s powers” as described in section 4610.6(h)(1).

5           Accordingly, we grant defendant’s IMR appeal pursuant to sections 4610.6(h)(1) and  
6 4610.6(h)(5), and remand the dispute through the WCJ to the Administrative Director for review by a  
7 different IMR reviewer pursuant to section 4610.6(i). This should lead to the issuance of a correct final  
8 IMR determination with consistent supporting medical rationale.

9           For the foregoing reasons,

10           **IT IS ORDERED** as the Decision After Reconsideration of the Workers’ Compensation Appeals  
11 Board that the September 30, 2014 Order Denying Appeal From IMR Determination of the workers’  
12 compensation administrative law judge is **RESCINDED**.

13           **IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers’  
14 Compensation Appeals Board that defendant’s appeal of the June 30, 2014 IMR determination in this  
15 case is granted pursuant to Labor Code section 4610.6(h)(1) and Labor Code section 4610.6(h)(5).

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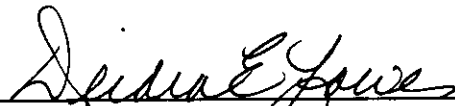
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1 IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers'  
2 Compensation Appeals Board that applicant's appeal for Independent Medical Review of defendant's  
3 utilization review decision denying authorization for the right knee cartilage transplant requested by  
4 applicant's physician, Peter Bullock, M.D., is remanded to the Administrative Director pursuant to Labor  
5 Code section 4610.6(i) for review by a different IMR reviewer.

6 WORKERS' COMPENSATION APPEALS BOARD

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9 DEIDRA E. LOWE

10 I CONCUR,

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13 FRANK M. BRASS

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15   
16 RONNIE G. CAPLANE



17 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

18 DEC 26 2014

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

21 JORDAN STONE  
22 STANEK & BOYLE  
23 LUNA, LEVERING, HOLMES & NALE  
24 ADMINISTRATIVE DIRECTOR, MEDICAL UNIT



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

**JORDAN STONE,**

*Applicant,*

**vs.**

**ACHIEVEKIDS AND CAPS-SIG,**

*Defendants.*

Case No. ADJ376655 (SJO 0257571)

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION**

Reconsideration has been sought by defendant with regard to a decision filed on September 30, 2014.

Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted in order to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration will be granted for this purpose and for such further proceedings as we may hereinafter determine to be appropriate.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **GRANTED**.

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**Worker's Compensation Appeals Board  
State of California**

**CASE NUMBER ADJ376655**

Jordan Stone vs Achievekids and CAPS-SIG

JUDGE: DAVID LAUERMAN

DATE: 10/17/2014

**REPORT AND RECOMMENDATION ON  
PETITION FOR RECONSIDERATION**

**I**

**INTRODUCTION**

1. Applicant, Jordan Stone, born [redacted] while employed as a program counselor in the State of California by Achievekids, insured for worker's compensation liability by CAPS-SIG on 9/19/2005, sustained a specific injury arising out of and in the course of this employment to his right knee and right upper extremity.

2. A Petition for Reconsideration has been filed by the Defendant, CAPS-SIG. The Petition appears to have been timely filed but not verified in accordance with law.

Applicant has not filed an Answer to Defendant's Petition.

3. Defendant seeks Reconsideration from an Oder Denying Appeal from IMR Determination which issued September 30, 2014, which found that Defendant's Appeal from IMR Determination was beyond the Board's authority to grant.

4. Defendant contends that the IMR determination is inconsistent and in error, and that the Board had authority to remand the determination for correction.

## II

### FACTS

The Applicant, Jordan Stone, suffers from an industrial condition in his right knee. Applicant's treating physician for this injury, Dr. Bullock, requested authorization to perform right knee cartilage transplantation. Defendant sent the request to UR, which issued a timely denial. Applicant then sought IMR and filed a timely appeal. On June 30, 2014, IMR issued a determination which overturned the UR determination and certified the procedure. From this IMR determination, Defendant filed an appeal, which was heard before the undersigned on 9/22/2014. The appeal was denied on 9/30/2014, and from this denial Defendant seeks Reconsideration. The balance of the factual background is more easily dealt with in the Discussion below.

## III

### DISCUSSION

The sole issue for determination at trial was whether Defendant's appeal from the IMR determination dated 6/30/2014 should be granted and the matter remanded to IMR for a new decision. WCAB jurisdiction over such appeals is strictly limited by statute. Labor Code Section 4610.6(h) sets forth only five possible grounds upon which such jurisdiction may be exercised and the parties to this case have agreed that the first four enumerated grounds do not apply here. The statute states that "The determination of the administrative director shall be presumed to be correct and shall be

set aside only by clear and convincing evidence of one or more of the following grounds for appeal;...(5) The determination was the result of a plainly erroneous express or implied finding of fact, provided that the mistake of fact is a matter of ordinary knowledge based on the information submitted for review...and is not a matter that is subject to expert opinion.”

Defendant points out that, while page 3 of the IMR decision starts with a heading declaring the right knee cartilage transplant in issue here to be “medically necessary and appropriate”, this heading is followed by a paragraph headed “Expert Reviewers Rationale” which, to this layman’s eye, bears every indication of supporting the opposite conclusion. If the WCAB were granted sufficient discretion to determine whether the Determination was logical, I would certainly conclude that the Findings of Fact do not support the conclusion reached. I cannot find any logical means by which the two can be reconciled.

On the other hand, WCAB jurisdiction to overturn IMR does not extend to errors of logic, but only to plainly erroneous findings of fact on matters which do not require expert opinion. The findings of fact set forth on page 2 under the heading “Clinical Case Summary” are not in dispute; no one claims they are in error. The alleged error, if it exists, clearly lies in the conclusion reached, which is plainly a matter of expert opinion. Even if we were to conclude that the decision to overturn UR was a simple typographical error, a not implausible proposition, Section 4610(h) makes no provision for the correction of such an error by the WCAB. Absent plainly erroneous findings of fact, the decision is presumed correct.

Under these circumstances, I find no authority which would allow the WCAB to grant the relief requested.

IV

RECOMMENDATION

Deny Reconsideration.



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David L. Lauerman,  
Workers' Compensation Judge

Filed and served by Mail on *00/17/2014*  
All parties on the Official Address Record  
By:

