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

**DAVID PARIS,**

*Applicant,*

**vs.**

**SAVOLT ENTERPRISES, INC.; SAFECO  
INSURANCE COMPANY,**

*Defendants.*

Case Nos. **ADJ323502 (LAO 0850342)**  
**ADJ1321695 (LAO 0877315)**

**OPINION AND ORDER  
GRANTING RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Award issued by a workers' compensation administrative law judge (WCJ) on October 18, 2011, wherein the WCJ found that defendant is not liable for medical treatment provided outside the medical provider network (MPN) and that there is no evidence that defendant has failed or refused to provide medical treatment. At the mandatory settlement conference (MSC) held on August 2, 2011, the parties stipulated that applicant, while employed as a cashier and clerk on November 28, 2003 (ADJ323502) and from January 1, 1980 to November 28, 2003 (ADJ1321695), sustained industrial injury to his upper extremities and spine.

Applicant contends that the WCJ erred in finding defendant is not liable for medical treatment provided outside defendant's MPN, arguing that defendant lost control of medical treatment when it initially denied applicant's upper extremity injury in 2004 and that he cannot now be compelled to treat within defendant's MPN.

We have considered the Petition for Reconsideration and we have reviewed the record in this matter. Defendant filed an Answer. The WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

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1 For the reasons discussed below, we will grant reconsideration, rescind Findings of Fact Numbers  
2 2 and 3, and return the matter to the WCJ for further proceedings and decision.

3  
4 **FACTS**

5 As relevant here, on September 10, 2004, applicant filed an Application for Adjudication of  
6 Claim, alleging that while employed by defendant on November 28, 2003 (ADJ323502), he sustained  
7 industrial injury to his spine, left upper extremity, and leg. Defendant admitted liability to the spine and  
8 leg, but denied the left upper extremity. In December 2003, applicant began treatment with Clayton E.  
9 Patchett, M.D., for his industrial injury, including his left upper extremity. (Defendant's Ex. L.)  
10 Applicant also treated with William Mouradian, M.D. (Defendant's Ex. K.)

11 On January 31, 2005, defendant sent applicant and his counsel an MPN notification letter, which  
12 indicated that applicant's treatment with Dr. Patchett and Dr. Mouradian would continue without any  
13 change, and included an Employee Medical Provider Network Handbook. (Defendant's Ex. J.)

14 On February 24, 2007, applicant filed an Application for Adjudication of Claim alleging  
15 cumulative injury from January 1, 1980 to November 28, 2003 (ADJ1321695) to both his upper  
16 extremities and his spine. On May 14, 2007, defendant denied the cumulative trauma claim.

17 In May 2007, applicant began treating with Phillip A. Sobol, M.D., and continued to treat with  
18 him as his primary treating physician for all body parts, not just the upper extremities, intermittently  
19 through the present. (Applicant's Ex. 3-10.)

20 Defendant notified Dr. Sobol that he was not within its MPN and that applicant had been treating  
21 within its MPN since 2005. (Defendant's Ex. B, C, D, E.)

22 The parties utilized Jeffrey A. Berman, M.D., as agreed medical examiner (AME). He examined  
23 applicant and issued a report dated October 19, 2009. (Defendant's Ex. A.) Dr. Berman found industrial  
24 injury to applicant's upper extremities.

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1 On April 19, 2011, the matter proceeded to a MSC, and defendant stipulated to provide surgery to  
2 applicant's upper extremities. The parties were unable to resolve their dispute regarding whether  
3 applicant was required to obtain treatment for the upper extremity injuries within defendant's MPN.

4 On September 8, 2011, the matter proceeded to trial on the issues of need for further medical  
5 treatment, liability for self-procured medical treatment, and attorney fees. Applicant raised the issues of  
6 defendant's failure to authorize surgery with Dr. Sobol, sections 5814 and 5813, and estoppel to assert  
7 the MPN. Defendant raised the issues that applicant was aware of MPN objection notices to Dr. Sobel  
8 since 2007 and applicant's treatment outside the MPN. On October 18, 2011, the WCJ issued the  
9 disputed decision.

#### 10 DISCUSSION

11  
12 The employer is required, pursuant to Labor Code section 4600<sup>1</sup>, to provide the injured worker  
13 with medical treatment reasonably required to cure or relieve the worker from the effects of an industrial  
14 injury. The employer may elect, pursuant to section 4616, to satisfy its liability to provide medical  
15 treatment, pursuant to section 4600, through the establishment or modification of an MPN. If the  
16 employer fails or refuses to provide reasonably necessary medical treatment as required pursuant to  
17 section 4600, whether through an MPN or otherwise, then an injured worker is entitled to self-procure it  
18 at the employer's expense. (*McCoy v. Industrial Accident Comm.* (1966) 64 Cal.App.2d 82 [31  
19 Cal.Comp.Cases 93]; see, *Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)*  
20 (1983) 34 Cal.3d 159, 161-162 [48 Cal.Comp.Cases 566].)

21 However, if the employer provides or authorizes medical treatment and the employee,  
22 nonetheless, self-procures unauthorized medical treatment, the employer is not liable for those self-  
23 procured medical expenses. (*Montyk v. Workmen's Comp. Appeals Bd.* (1966) 245 Cal.App.2d 334 [31  
24 Cal.Comp.Cases 321].) An employer or insurer's failure to provide required notice to an employee of  
25 rights under the MPN that results in a neglect or refusal to provide reasonable medical treatment renders  
26

27 <sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

1 the employer or insurer liable for reasonable medical treatment self-procured by the employee. (*Knight*  
2 *v. United Parcel Service* (2006) 71 Cal.Comp.Cases 1423.)

3 In order to implement the use of medical provider networks, the Administrative Director has  
4 adopted regulations. (See Lab. Code, § 4616(g).) The regulations require the employer to notify a  
5 “covered employee” (one whose employer has ongoing workers’ compensation obligations for which the  
6 employer has established an MPN for the provision of medical treatment to injured employees) in writing  
7 about the use of an MPN 30 days prior to the implementation of the approved MPN, at hire, or when an  
8 existing employee is transferred into the MPN, whichever is appropriate to “ensure that the employee has  
9 received the initial notification.” (Cal. Code Regs., tit. 8, § 9767.12(a).) Additionally, section  
10 9767.12(d) of the Administrative Director’s Rules requires the employer to give the employee “a  
11 complete written MPN notification” at the time of injury. Administrative Director’s Rule 9767.9 provides  
12 the applicable statutory and regulatory requirements governing transfer of an injured worker into an  
13 employer’s MPN. (Cal. Code Regs., tit. 8, § 9767.9; *Babbitt v. Ow Jing dba National Market* (2007) 72  
14 Cal.Comp.Cases 70 [Appeals Board en banc].)

15 With respect to the MPN dispute, i.e., the validity of the MPN and the transfer of applicant’s care,  
16 we find that there was a validly established, properly noticed MPN, (Defendant’s Ex. J) and applicant is  
17 required to continue treatment within the MPN for the accepted body parts. (*Valdez v. Warehouse Demo*  
18 *Services* (2011) 76 Cal. Comp. Cases 970.)

19 Regarding applicant’s self-procured medical treatment, Dr. Sobol is entitled to be paid for  
20 medical treatment only for the upper extremities because defendant denied these body parts. Defendant’s  
21 failure to provide reasonably necessary medical treatment, as required pursuant to section 4600, justified  
22 applicant self-procuring medical treatment at defendant’s expense from Dr. Sobol for his upper  
23 extremities. (*McCoy v. Industrial Accident Comm., supra*, 64 Cal.2d 82 [31 Cal.Comp.Cases 93]; *Knight*  
24 *v. United Parcel Service, supra*, 71 Cal.Comp.Cases 1423.) However, Dr. Sobol is not entitled to be  
25 reimbursed for the accepted body parts because applicant was already receiving treatment within the  
26 MPN.

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1 Here, defendant initially denied applicant's carpal tunnel syndrome. Dr. Berman, in his  
2 October 19, 2009 AME report, attributed the carpal tunnel to the cumulative industrial injury. Defendant  
3 stipulated on April 19, 2011, to provide surgery, but the parties remained unable to resolve their dispute  
4 over medical control. In order to return applicant to the MPN for treatment there are statutory and  
5 regulatory requirements with which defendant must comply including continuity of care. (Lab. Code, §  
6 4616.2; Cal. Code Regs., tit. 8, § 9767.10.) When this case is returned, the WCJ must decide whether or  
7 not defendant has met each of these requirements.

8 Turning to applicant's contention that he is entitled to a section 5814 penalty for unreasonable  
9 delay of medical treatment, we find that the record is insufficient to make that determination and needs  
10 further development. The WCJ found no unreasonable delay, but does not offer an explanation for his  
11 findings. The record reflects that defendant denied some treatment to the upper extremities, then  
12 authorized surgery, and then may have rescinded the offer. The WCJ must review the facts and  
13 circumstances and then determine whether there was an unreasonable delay.

14 Accordingly, we will grant the Petition for Reconsideration, rescind Findings of Fact Numbers 2  
15 and 3 of the October 18, 2011 Findings and Award, and return the matter to the trial level for further  
16 proceedings and a new decision by the WCJ.

17 For the foregoing reasons,

18 **IT IS ORDERED** that applicant's Petition for Reconsideration of the October 18, 2011 Findings  
19 and Award be, and hereby is **GRANTED**.

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1 IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers'  
2 Compensation Appeals Board, that Findings of Fact Numbers 2 and 3, issued October 18, 2011 be, and  
3 hereby are, **RESCINDED** and that the matter is **RETURNED** to the trial level workers' compensation  
4 administrative law judge for further proceedings, as necessary, and a new decision consistent with the  
5 opinion herein.

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7 **WORKERS' COMPENSATION APPEALS BOARD**

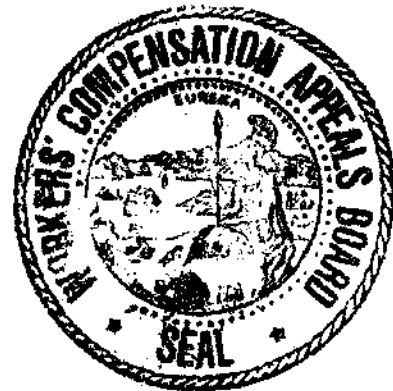
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10 **RONNIE G. CAPLANE**

11 **I CONCUR,**

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14 **ALFONSO J. MURESI**

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17 **DEIDRA E. LOWE**



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

22 **JAN 13 2012**

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

25 **DAVID PARIS**  
26 **STEVEN DEWBERRY**  
27 **RIFENBARK ZURAWSKI**

  
**MG/csl**

**PARIS, DAVID**

DAVID PARIS vs. SAVOLT ENTERPRISES, INC.

WORKERS' COMPENSATION JUDGE: GARRETT BAILEY

DATES OF INJURY: 11/28/2003; CT 01/01/1980 TO 11/28/2003

**REPORT AND RECOMMENDATION ON  
PETITION FOR RECONSIDERATION**

I

**INTRODUCTION**

Applicant has filed a timely, verified Petition For Reconsideration contending: 1. The evidence does not justify the Findings of Fact. 2. The Findings of Fact do not support the Award. 3. By the Order, Decision, or Award, the Appeals Board acted without or in excess of its powers. I recommend that the Petition be DENIED.

II

**STATEMENT OF FACTS**

By denial letter, dated 07/23/2004 (APPLICANT'S 11), Defendants' representative advised of denial of liability "...only for your claim of injury to your bilateral carpal tunnel because these injuries were not alleged during your injury, we do not have an amended claim form for these injuries, and they have not been determined to be work-related by medical evidence..."

By letter to Applicant, dated 01/31/2005 (DEFENDANT'S J) and attachments, Defendants' representative advised Applicant with regard to its MPN and referred to the treatment, within the MPN, that was currently being provided by Dr. Patchett and Dr. Mouradian.

Dr. Mouradian, in his Progress Note, dated 02/08/2005 (DEFENDANTS' K) chronicled "...We were able to get copies of the April 2, 2004 nerve conduction and electromyogram of the upper body. This does not reveal any obvious radicular findings to support his left upper extremity radiculitis for radicular complaints. It does indicate a possible early mild neuropathy, and bilateral carpal tunnel syndrome, of moderate intensity...IMPRESSION: Cervical sprain...carpal tunnel syndrome...currently not particularly symptomatic; Post laminectomy syndrome...status post spinal fusion...PLAN: Electromyogram and nerve conduction velocity of both lower extremities is recommended. No further treatment in the upper extremities is currently recommended. Return after the tests..."

Per the report of Philip A. Sobol, M.D., dated 05/17/2007, at pages 2, 17 & 19, "...I have been apprised that the employer/insurance carrier has failed to comply with the Labor Code 4616.3 and/or Labor Code (sic) 9767.12 relative to the above referenced work-related injuries, and as a result, the patient has requested that I assume medical control as his primary treating physician...David Paris presents with a history of complaints involving his lower back, neck, right shoulder, right elbow, and bilateral forearms, wrists and hands arising secondary to work-related injuries, both on a specific and cumulative trauma basis...While the patient had been treated for multiple complaints following the November 29, 2003, work-related injury, I note from Dr. Mouradian's Permanent and Stationary Report of December 6, 2005, that he only addressed residuals involving the patient's lower back...The patient further reports to me that he has since continued to follow up with Dr. Mouradian every six to eight weeks, during which time his overall condition has gradually and progressively worsened, thus necessitating his presentation to this office for further medical attention, electing the undersigned as primary treating physician to render such..."



By letter dated 07/11/2007 (DEFENDANTS' E), Defendants' representative advised Dr. Sobol that "...Defendant contends that the applicant has been authorized and/or is receiving treatment with another physician. Claimant has been treating within Safeco's Medical Provider Network since 03/31/05. Dr. Sobol is not part of Safeco's MPN. The billing is for self-procured medical treatment and the defendant disputes it is reasonable or necessary..."

Per Jeffrey A. Berman, M.D., Agreed Medical Examiner, in his report dated 10/19/2009 (DEFENDANTS' A) at pages 36, 37, 38, 39 & 40, "...Clinically he does have carpal tunnel syndrome...Quite frankly, I do not believe that carpal tunnel syndrome, however, resulted from the November 2003 date of injury. I think this is more reasonably attributed to continuous trauma. I will also address the history of bicycle riding as well, as I believe this does contribute to the carpal tunnel syndrome...I do not see a shoulder injury, as noted by Dr. Sobol...He is no longer receiving treatment. Ultimately, he has been released from care...Future medical care is indicated. There must be access to orthopaedic follow-up and further testing if necessary. Physical therapy, medications, injections, and other such nonoperative measures may be warranted. As it relates to the cervical spine, I would not anticipate anything surgical. As it relates to the lumbar spine, he may need extension of the fusion to L3-4, given the positive discogram. As it relates to the hands and wrists, he does not need anything conservative in terms of treatment, but there must be access to surgical intervention as it concerns the carpal tunnel syndrome..."

Per the report of Philip A. Sobol, M.D., dated 06/06/2011 (APPLICANT'S 3), at page 3, "...At this time I am requesting authorization for bilateral carpal tunnel release surgeries...the patient remains under my care, is considered to have a chronic condition and has not yet

completed his course of treatment..."

At Trial, on 09/08/2011, the matter was submitted for decision without witness testimony. I found that Applicant requires further medical treatment as indicated by Dr. Berman, the Agreed Medical Examiner. I found that Defendants are not liable for treatment provided outside of the MPN. I found that there is no evidence that Defendants have failed or refused to provide medical treatment

### III

#### DISCUSSION

Petitioner acknowledges that "...Defendant admitted and accepted the injury of 11/28/03, and provided significant medical care including spinal surgery..."

Petitioner argues that Defendant lost medical control, and the MPN did not apply, when defendant denied liability for applicant's carpal tunnel syndrome. I disagree. Defendants' denial letter, dated 07/23/2004, advised of denial of liability "...only for your claim of injury to your bilateral carpal tunnel because these injuries were not alleged during your injury, we do not have an amended claim form for these injuries, and they have not been determined to be work-related by medical evidence..." Defendants' position was borne out by Dr. Berman, the Agreed Medical Examiner, who opined "...Quite frankly, I do not believe that carpal tunnel syndrome, however, resulted from the November 2003 date of injury. I think this is more reasonably attributed to continuous trauma. I will also address the history of bicycle riding as well, as I believe this does contribute..."

As indicated in the report of Dr. Mouradian, dated 02/08/2005 (DEFENDANTS' K), Defendants provided treatment, through Dr. Mouradian, with regard to Applicant's bilateral

upper extremities ("...We were able to get copies of the April 2, 2004 nerve conduction and electromyogram of the upper body. This does not reveal any obvious radicular findings to support his left upper extremity radiculitis for radicular complaints. It does indicate a possible early mild neuropathy, and bilateral carpal tunnel syndrome, of moderate intensity...IMPRESSION: Cervical sprain...carpal tunnel syndrome...currently not particularly symptomatic; Post laminectomy syndrome...status post spinal fusion...PLAN: Electromyogram and nerve conduction velocity of both lower extremities is recommended. No further treatment in the upper extremities is currently recommended. Return after the tests...").

Petitioner argues that Defendants' MPN Notice did not comply with *Knight*. I disagree. Per *Knight*, an employer is required to give an injured employee notice of information about use of the MPN, notice of the right to be treated by an MPN physician of choice after the first visit, notice of the method of accessing the list of MPN providers and notice of the employee's right to use the second and third opinion process if he or she disputes either the diagnosis or the treatment prescribed by the MPN treating physician. DEFENDANTS' EXHIBIT J, the MPN letter to Applicant and attached MPN Handbook comports with the requirements of *Knight*. The Handbook addresses the purpose of the MPN, how to access the MPN, changing providers and second/third opinions, medical bills, continuity of care, transfer of ongoing care and the employee right to pre-designate a personal physician.

Petitioner argues that Defendants, unreasonably, refused to authorize treatment with Dr. Sobol. I disagree. Where there has been no neglect or refusal to provide reasonable medical treatment, a defendant is not liable for medical treatment procured outside an MPN. *Valdez (Elayne) v Warehouse Demo Services* (2011) 76 CCC 330 As acknowledged by Petitioner,

Defendant admitted and accepted the injury of 11/28/03, and provided significant medical care including spinal surgery.

Per, Labor Code Section 4616.3 (c), Applicant was required to seek the opinion of other physicians within the employer's MPN if he disputed Dr. Mouradian's diagnosis or treatment regimen. Per Labor Code Section 4605, he had the right to consult or treat with physicians outside the MPN; but, not at the expense of Defendants.

Petitioner argues that Applicant is entitled to a penalty on delayed treatment. I disagree. . On this record, there is no evidence that the employer has neglected to provide MPN notices or refused to provide medical treatment.

Petitioner argues that a stipulated award issued on 04/19/2011. I disagree. The 04/19/2011 Minutes Of Hearing reflect "APPLICANT GOING TO HAVE SX." There is no written agreement with regard to the provider of the surgery. There is nothing in the record that suggests that Defendant has authorized surgery outside of the MPN. There is no Order or Award from the WCJ. Accordingly, Petitioner's attorney is not entitled to any fee pursuant to Labor Code Section 5814.5.

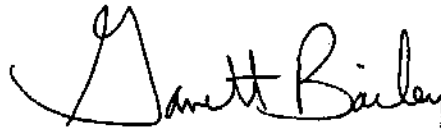
Petitioner argues that Defendant engaged in bad faith actions and tactics by refusing to authorize surgery with Dr. Sobol. I disagree. Defendant provided treatment, within its MPN, with Dr. Mouradian. Per, Labor Code Section 4616.3 (c), Applicant was required to seek the opinion of other physicians, within the employer's MPN, if he disputed Dr. Mouradian's diagnosis or treatment regimen. On this record, I find no basis for the imposition of sanctions.

IV

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Petition be DENIED.

11/15/2011

A handwritten signature in black ink, appearing to read "Garrett Bailey". The signature is fluid and cursive, with the first name "Garrett" and last name "Bailey" clearly distinguishable.

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GARRETT BAILEY  
WORKERS' COMPENSATION JUDGE