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WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

LETICIA AVILA,

Applicant,

vs.

**UNIVERSITY OF CALIFORNIA IRVINE
MEDICAL CENTER, permissibly self-insured;
SEDGWICK CMS,**

Defendants.

**Case Nos. ADJ6907549
ADJ9156151
(Anaheim District Office)**

**OPINION AND DECISION
AFTER
RECONSIDERATION**

On October 30, 2014, we granted reconsideration in this matter to provide an opportunity to further study the legal and factual issues raised by the petition for reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Applicant, Leticia Avila, filed a Petition for Reconsideration from the Findings and Order, issued September 3, 2014, in which a workers' compensation administrative law judge (WCJ) denied applicant's appeal of the Administrative Director's Decision denying applicant's application for Independent Medical Review (IMR) on the grounds that applicant's IMR application was not timely filed.

Applicant contests the WCJ's finding that her application for IMR was untimely, contending that her application was timely submitted on the 30th day after service of the Utilization Review (UR) decision pursuant to the provisions of Labor Code section 4610.5(h)(1) and Administrative Director's Rule 9792.10.1(b)(2). Applicant contends that neither the Labor Code nor the Regulations mention receipt of the application, that section 4610.5(h)(1) only states that the employee may "submit" the IMR application, not that the Administrative Director receive it, within 30 days, and that Code of Civil Procedure section 1013(a) applies to extend the time to submit by five days. Applicant further argues that the "date of submission" is the date of mailing, not the date of receipt, and therefore she timely submitted and communicated the IMR application on the 30th day after service of the UR decision.

1 Defendant University of California Irvine Medical Center has filed an answer to applicant's
2 petition, and the WCJ has prepared a Report and Recommendation on Petition for Reconsideration.

3 For the reasons set forth below, and as our Decision After Reconsideration, we shall affirm the
4 WCJ's determination that applicant's application for IMR was untimely.

5 I.

6 Applicant sustained an industrial injury to her spine and psyche on January 14, 2009, while
7 employed as a food server. A dispute arose over applicant's need for a lumbar spine brace, for which
8 applicant's treating physician submitted a request for authorization on December 18, 2013. The request
9 was submitted to UR, and a denial of the lumbar spine brace was served on applicant on
10 December 24, 2013. On January 23, 2014, thirty days thereafter, applicant mailed an application for
11 IMR, which was received by the Administrative Director on January 29, 2014. The application was
12 denied on March 11, 2014, as untimely.

13 Applicant appealed the Administrative Director's denial and the matter was decided by the WCJ
14 on September 3, 2014. Acknowledging that the five day extension for mailing in California in Code of
15 Civil Procedure section 1013(a) applies, the WCJ concluded that applicant's appeal was required to be
16 received by the Administrative Director no later than January 28, 2014, and that its receipt on
17 January 29, 2014 was not within the applicable time limitation.

18 II.

19 We agree with the WCJ's determination that applicant's application for IMR was untimely. The
20 applicable statutory and regulatory provisions require an application to be received by the Administrative
21 Director within the 30 day time period in Labor Code section 4610.5(h)(1), extended by the provisions of
22 Code of Civil Procedure section 1013(a), which in this case allow an extra five days to respond to the UR
23 denial. Applicant's application for IMR was required to be submitted, i.e. received, by the Administrative
24 Director, no later than January 28, 2014, and was untimely submitted on January 29, 2014.

25 Labor Code section 4610.5(h)(1) provides: "The employee may submit a request for independent
26 medical review to the division no later than 30 days after the service of the utilization review decision to
27 the employee."

1 Labor Code section 5316 provides: "Any notice, order, or decision required by *this division* to be
2 served upon any person either before, during, or after the institution of any proceeding before the appeals
3 board, may be served in the manner provided by Chapter 5, Title 14 of Part 2 of the Code of Civil
4 Procedure, unless otherwise directed by the appeals board." (Emphasis added.)

5 As section 4610.5(h)(1) and section 5316 are both in Division 4 of the Labor Code, the provisions
6 of section 5316 apply to section 4610.5(h)(1). Further, Chapter 5, Title 14 of Part 2 of the Code of Civil
7 Procedure, to which section 5316 refers, consists of Code of Civil Procedure section 1010 et seq.

8 Code of Civil Procedure section 1012 authorizes service by mail, and Code of Civil Procedure
9 section 1013(a) provides that "[i]n case of service by mail, ... any right or duty to do any act or make any
10 response within any period or on a date certain after service of the document, which time period or date
11 is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, if the
12 place of address and the place of mailing is within the State of California"

13 Therefore, under section 5316, if a UR decision is served by mail under section 4610.5(h)(1), then
14 the 30-day period within which to submit a request for IMR is extended by five days under CCP 1013(a),
15 if the address served is in California.

16 We note that at the time the UR/IMR activity took place in this case, Rule 9792.10.1(b)(2)
17 indicated the request must be "communicated" within 30 days, while the statute said it must be
18 "submitted...no later than 30 days... ." Subsequently, the Administrative Director's regulation was
19 amended in February 2014, and the word "communicated" was changed to "filed," and now provides "[a]
20 request for independent medical review must be filed . . . within 30 days of service of the written
21 utilization review determination . . ." The regulatory amendment did not effect a change in the time
22 frame for requesting IMR, but reflects the Administrative Director's understanding of the intended
23 meaning of the statutory requirement that receipt of an IMR application must be within the 30 day
24 period, and not merely served within that time. The 30 day time period is subject to the extension in Code
25 of Civil Procedure section 1013(a), when a UR denial is served by mail.

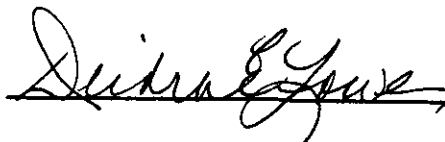
26 Accordingly, as our Decision After Reconsideration, we will affirm the WCJ's Findings and
27 Order.

1 Accordingly, as our Decision After Reconsideration, we will affirm the WCJ's Findings and
2 Order.

3 For the foregoing reasons,

4 **IT IS HEREBY ORDERED** as our Decision After Reconsideration that the Findings and Order,
5 issued September 3, 2014, is **AFFIRMED**.

7 **WORKERS' COMPENSATION APPEALS BOARD**

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10 **DEIDRA E. LOWE**

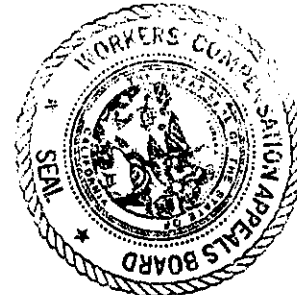
11 I CONCUR,

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14 **DEPUTY ANNE SCHMITZ**

15 I CONCUR (See Concurring Opinion),

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17
18 **MARGUERITE SWEENEY**



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

20 **MAY 28 2015**

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

24 **LETICIA AVILA**
25 **DI MARCO, ARAUJO & MONTEVIDEO**
26 **LAW OFFICES OF JODIE P. FILKINS**

27 **SV/sry**

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CONCURRING OPINION

I concur with the majority's analysis wherein they outline that the time frame specified in Labor Code section 4610.5(h)(1) and Administrative Director's Rule 9792.10.1(b)(2) is mandatory when applying for Independent Medical Review (IMR) after a Utilization Review (UR) denial of authorization for medical treatment. I write separately to express my opinion that the mandatory time limitations on the parties participating in UR/IMR process should apply equally to the entities involved in making the IMR determinations.

As held in this opinion, Labor Code section 4610.5(h)(1) requires an application for IMR be received by the Administrative Director within 30 days after service of the UR decision on applicant, subject to the extension provided in Code of Civil Procedure section 1013(a).

The determination that the 30 day period for seeking review by IMR is mandatory is based upon the statutory requirements of Labor Code section 4610.5(h)(1). The same adherence to statutory time limitations should be applied to the period for the issuance of the IMR determination by the IMR organization contracted by the Administrative Director, as provided in Labor Code section 4610.6, with the proviso that the failure to timely issue an IMR determination will vest jurisdiction in the WCAB to make a determination of the medical treatment dispute. The goal of prompt delivery of reasonable and necessary treatment is undermined if the timeframes in Labor Code section 4610.6 are not construed to be equally mandatory for the IMR organization and the Administrative Director, as they are for injured

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1 workers and claims administrators. To mandate consistency in the application of all time periods in
2 Labor Code sections 4610.5 and 4610.6 promotes fairness and the expeditious provision of necessary
3 medical treatment to injured workers.



WORKERS' COMPENSATION APPEALS BOARD


MARGUERITE SWEENEY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 28 2015

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

**LETICIA AVILA
DI MARCO, ARAUJO & MONTEVIDEO
LAW OFFICES OF JODIE P. FILKINS**

SV/sry



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WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

LETICIA AVILA,

Applicant,

vs.

**UCI MEDICAL CENTER, Permissibly
Self-Insured; SEDGWICK**

Defendants.

**Case Nos. ADJ6907549
ADJ9156151
(Anaheim District Office)**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Reconsideration has been sought by applicant with regard to a decision filed on September 3, 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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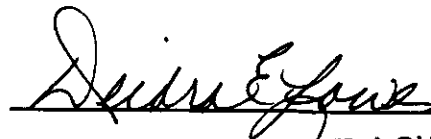
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1 IT IS FURTHER ORDERED that pending the issuance of a Decision After Reconsideration in
2 the above matter, all further correspondence, objections, motions, requests and communications shall be
3 filed in writing only with the Office of the Commissioners of the Workers' Compensation Appeals Board
4 at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102) or its Post
5 Office Box address (PO Box 429459, San Francisco, CA 94142-9459), and shall not be submitted to any
6 district office of the WCAB and shall not be e-filed in the Electronic Adjudication Management System.

7 **WORKERS' COMPENSATION APPEALS BOARD**

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10 DEIDRA E. LOWE

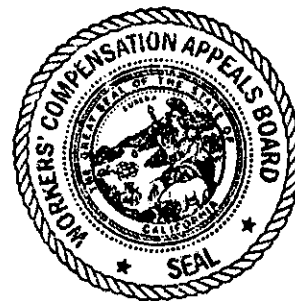
11 I CONCUR,

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14 FRANK M. BRASS

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18 MARGUERITE SWEENEY



19 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

20 OCT 30 2014

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

23 LETICIA AVILA
24 DIMARCO, ARAUJO & MONTEVIDEO
25 LAW OFFICES OF JODIE P. FILKINS



26 abs

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

CASE NUMBER: ADJ6907549
Anaheim District Office

LETICIA AVILA

-vs.-

UCI MEDICAL CENTER,
PSI;
SEDGWICK ;

WORKERS' COMPENSATION JUDGE: Alan L. Skelly

DATE: 9/22/14

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

Applicant, Leticia Avila, by and through its attorney of record, The Law Offices of Di Marco, Araujo & Montevideo (hereinafter, applicant) filed a timely, verified Petition for Reconsideration to this Court's Findings and Order served 9/3/14 on 9/15/14. At the time of preparing this Report the defendant had not filed an answer thereto. It was received after.

II
FACTS

This case began with the filing of an application for adjudication of claim filed by the applicant on 8/24/09. The parties entered into a Stipulated Findings and Award which was approved by this court on 1/13/14. Subsequent thereto a dispute arose regarding medical treatment and a Declaration of Readiness to Proceed was filed on 4/1/14 and an MSC was scheduled for 6/24/14 and then set for trial on 8/25/14 before the undersigned. The parties submitted the issue for decision on that date and the court served its decision on 9/3/14. It is from this court's decision finding the Acting Administrative Director did not act improperly when it denied the Applicant's Application for IMR due to it being untimely filed. Applicant filed this petition for reconsideration contending the court erred in its decision claiming the Application was timely.

III **DISCUSSION**

The Facts in this case are not in dispute. The issue lies with the interpretation of the Labor Code §4610(h)(1), Cal. Code of Regs. §9792.10.1(b)(2.).

The timing of the relevant facts are as follows and not in dispute:

12/24/13	UR decision mailed to applicant Exh. 2
1/23/14	Applicant's Application for IMR mailed to the AD's Office Exh. 3
1/28/14	35 days after service of the UR Decision - 30+5 for days for mail
1/29/14	AD's receives Applicant's Application for IMR Exh. 4
3/11/14	Decision of the Acting Admin. Dir. denying the Application for IMR Exh. X1

Applicant's position is that the Application for an IMR under Cal. Code of Regs. §9792.10.1(b)(1) only needs to be communicated to the Administrative Director and not received. This argument is not supported by the regulation. Communicated means to bestow convey or make known or transmit information that is needed, **Black's Law Dictionary 5th ed. 1979. Merriam-Webster Dictionary** says communicate is to give information about something to someone. Here the information is the Applicant's Application for an IMR Appeal of the UR. The regulations states that communication can be accomplished by facsimile, electronic transmission or by mail. However, Cal. Code of Regs. §9792.10.1(b)(1)says it must be filed within 30 days. Applicant's position is that by placing it in the US Mail within the 35 days of the UR decision constitutes valid service under the regulation. The regulation does not say it must be received by the AD's office by the 30th day plus five days for mailing the UR decision it states it must be filed. The Acting AD rejected the Application as it was not ***filed and received*** (emphasis added) by the 35th day, 1/28/2014. Filed is defined by **Black's Law Dictionary 5th ed.** as; " A paper is said to filed when it is delivered to the proper officer, and by him received to be kept on file as a matter of record and reference." **Merriam-Webster Dictionary** defines filed as "2.a: to place among official records as prescribed by law. **Law.com** an online legal dictionary defines the term file as; "to deposit with the clerk of the court a written complaint..." All these definitions confirm that the method of communication is not relevant, but that it must be communicated and filed by the

35th day, or 1/28/2014, the Application for the IMR was received in the AD's Office on 1/29/2014, therefore it was untimely. The court would like to bring to the Board's attention that in its original Opinion on Decision and Findings and Order the court utilized the Labor Codes as published in the Workers' Compensation Laws of California, 2014 edition. It should be noted that Cal. Code of Regs. §9792.10.1 was amended subsequent to its publication and that the correct regulation as amended on 2/14/14 was used in this analysis. It did not change the results.

Labor Code §4610(h)(1) says the request for an IMR may be submitted no later than 30 days, plus five for mailing, after service of the UR decision on the employee. **Black's Law Dictionary 5th ed.** defines submit as "To Commit to the discretion of another. To yield to the will of another. To propound; to present for determination; as an advocate *submits* to proposition for the approval of the court." Law.com defines submitted as "the conclusion of all evidence and argument in a hearing or trial, leaving the decision in the hands of the judge." The **Merriam-Webster Dictionary** defines submit as "to give (a document, proposal, piece of writing, etc. to someone so that it can be considered and approved." This court determined that this meant that the Application had to be received by the AD's office by the 35th day for it to be considered timely. A matter stands submitted when all evidence has been received. The court viewed this like a Petition for Reconsideration in that it was jurisdictional in nature if it was not received by the due date the appellate body had no jurisdiction to hear the issue. The AD's Office rejected the Application as being untimely as it was not filed within 35 days of service of the UR decision and it was this court opinion that the Decision of the AD was correct and it found no basis to order the IMR. Based on the above this court requests the Board deny the applicant's Petition for Reconsideration and uphold its decision finding the Application untimely.

However, with the discrepancy in the terms of the statute and the regulation as claimed by the applicant, this court asks the Board for guidance on this issue. Was this court's determination that the statute and regulation were clear; that the Application for IMR had to be received/filed in the AD's office by the 35th day or were they in conflict and was the applicant correct in determining the Application had to be communicated by the 35th day?

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IV
RECOMMENDATION

Therefore, this Court requests the Board deny the applicant's Petition for Reconsideration as it failed to show the requisite facts to support the relief requested and uphold this courts determination that the Application was filed untimely and the Acting AD's decision was correct.

DATE: 09/22/2014



Alan L. Skelly
WORKERS' COMPENSATION JUDGE

Cc:

DIMARCO ARAUJO SANTA ANA, Email
JODIE FILKINS ORANGE, US Mail
LETICIA AVILA, US Mail