

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

3
4 **JESSICA SENQUIZ,**

5 *Applicant,*

6 **vs.**

7 **CITY OF FREMONT; YORK INSURANCE,**

8 *Defendants.*
9

Case No. ADJ5829433
(Oakland District Office)

**OPINION AND ORDER DENYING
PETITION FOR RECONSIDERATION**

10
11 Lien claimant Fremont Surgery Center seeks reconsideration of the November 8, 2017 Opinion
12 and Decision After Reconsideration wherein the Appeals Board rescinded the August 25, 2017 Findings
13 and Order and issued a Finding of Fact that the dispute between defendant and Fremont Surgery Center
14 over payment for January 26, 2015 and July 22, 2015 dates of service is a billing dispute subject to
15 independent bill review (IBR).

16 Lien claimant contends, in essence, that whether epidural injections are properly considered one
17 procedure or two raises a medical question which must be resolved by the WCAB prior to proceeding to
18 IBR.

19 For the reasons stated below and for the reasons stated in our November 8, 2017 Opinion and
20 Decision After Reconsideration, we will deny lien claimant's petition.

21 In its petition, lien claimant states "complete and total non-payment for services rendered is an
22 express decision that the procedure was neither reasonable or necessary." (Petition, p. 4.) However, in
23 this case, Lien claimant was paid for some procedure codes and other procedure codes were denied as
24 duplicative. There was no issue raised regarding reasonableness and necessity, either implicitly or
25 explicitly. The issue of whether the charges contested by defendant were duplicative or not is, in fact a
26 dispute regarding the amount of payment. Pursuant to Labor Code section 4603.6(a), the dispute is
27 subject to Independent Bill Review. The IBR reviewer can determine whether the charges at issue are

1 duplicative or not, and can determine any additional amounts owed without determining whether the
2 procedures were reasonable and necessary.

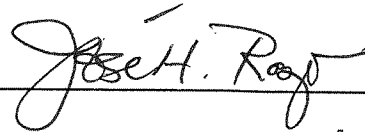
3 Accordingly, we continue to hold that the present dispute is subject to IBR.

4 For the foregoing reasons,

5 **IT IS ORDERED** that lien claimant's Petition for Reconsideration is **DENIED**.

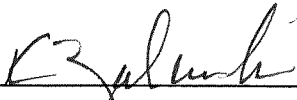
6
7 **WORKERS' COMPENSATION APPEALS BOARD**

8
9
10 **I CONCUR,**



JOSÉ H. RAZO

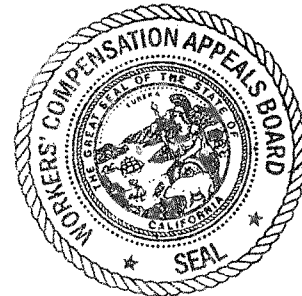
11
12 **CHAIR**



KATHERINE ZALEWSKI

13
14
15 **CONCURRING, BUT NOT SIGNING**

16
17 **FRANK M. BRASS**



18
19 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

20 **JAN 24 2018**

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

23 **COSTFIRST CORPORATION**
24 **FROST LAW FIRM**
25 **FREMONT SURGERY CENTER**

26
27 **MWH/ebc**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JESSICA SENQUIZ,

Applicant,

vs.

CITY OF FREMONT; YORK INSURANCE,

Defendants.

Case No. ADJ5829433
(Oakland District Office)

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration to further study the issues presented by this case. This is our Decision After Reconsideration.

In the August 25, 2017 Findings and Order, the workers' compensation administrative law judge (WCJ) found that, on January 26, 2015 and July 22, 2015, authorized transforaminal epidural steroid injections were performed by lien claimant Fremont Surgery Center. The WCJ also found that defendant, through the bill review process, refused to pay for two of the three levels injected for each date of service. The WCJ found that this dispute was not subject to independent bill review (IBR) and that the WCAB has jurisdiction. The WCJ deferred all other issues.

Defendant contends that the WCJ erred in finding that the WCAB has jurisdiction over this dispute, arguing that the sole dispute is the amount payable under the official medical fee schedule (OMFS) which is a dispute subject to IBR. Defendant argues that Fremont Surgery Center's lien should be dismissed because lien claimant failed to timely seek IBR. Defendant also contends that it properly objected to lien claimant's bills based on incorrect coding, arguing that the bills did not comply with the National Correct Coding Initiative (NCCI) and that NCCI applies to billing pursuant to the OMFS.

We have considered the Petition and we have reviewed the record in this matter. We have received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that the petition be denied. For the reasons set forth below, we will rescind the WCJ's decision and issue a new decision finding that the dispute is subject to IBR.

BACKGROUND

Applicant sustained an admitted industrial injury to her lumbar spine on September 18, 2007. The underlying case resolved on December 2, 2009 by stipulated award which included provision for future medical care.

On January 26, 2015 and again on July 22, 2015, applicant underwent three separate epidural steroid injections at the Fremont Ambulatory Surgery Center that utilization review authorized each time. After both sets of procedures, lien claimant submitted a bill for \$5,800.00, which included a charge for each level injected and a charge for fluoroscopy connected to the injections.

Defendant conducted bill reviews and paid \$558.81 for the first bill and \$674.80 for the second bill. Defendant offered the following reason for reducing the charges: "Service/Item included in the value of other services per CCI edits. Related service could be on separate bill" (Exh. 101, February 11, 2015 explanation of review (EOR) for January 26, 2015 procedure; Exh. 103, September 2, 2015 EOR for July 22, 2015 procedure.) Each time, lien claimant filed a letter requesting reconsideration. In response to lien claimant's requests, the employer issued second bill reviews, upholding the original bill reviews. Lien claimant did not request IBR within the timeframe allowed after either second review.

In the Report, the WCJ framed the issues and her determination as follows: "...I determined that the Board has jurisdiction to determine a dispute over defendant's denial of liability for duplicative services that was not done in accordance with the Official Medical Fee Schedule..." (Report, p.1.) The WCJ explained:

In the petition for reconsideration, as well as in its multiple trial briefs, defendant claims that it has not contested liability for any issue other than the amount due under the fee schedule, and so, FSC's failure to submit the "disputed bill" to IBR is fatal. I disagree.

The employer has contested liability for payment of services performed by claiming that such services are not payable pursuant to Medicare's CCI editing process. Defendant's contention presents two problems. The first is defendant's assertion that it has not contested liability for any issue other than the amount due under the fee schedule. Actually, this is not true. Where a service is performed and the employer is claiming that \$0 is the reasonable amount for that service, it is not contesting the reasonable amount of the payment; instead, it is contesting liability for that payment. Defendant has claimed that lien claimant performed duplicative services and that defendant is not liable for payment of such pursuant to Medicare's

CCI editing process. If the fee schedule reduces a bill due to duplication of services, that is an issue for IBR. Here, the fee schedule does not adopt or incorporate the CCI edits for Ambulatory Surgery Centers (ASC); thus, the defendant's denial of liability for such duplicative services is not based on the fee schedule.

Defendant argues that all Medicare rules are part of the fee schedule including the CCI edits. Defendant misconstrues Labor Code section 5307.1(a), which only states that the OMFS shall be in accordance with applicable Medicare rules. The Labor Code does not adopt or incorporate the Medicare rules as defendant suggests. To the contrary, Labor Code 5307.1 delegates to the Administrative Director the task of adopting the OMFS and the Administrative Director has expressly adopted the CCI edits as part of the Physician Fee Schedule. (See Cal. Code Regs., tit. 8, § 9789.12.13 ["The National Correct Coding Initiative Edits ("NCCI") adopted by the CMS shall apply to payments for medical services under the Physician Fee Schedule."].) The Administrative Director has not adopted such language under the Ambulatory Surgery Center (ASC) portion of the fee schedule. (report, pp.3-4.)

ANALYSIS

After reviewing the relevant statutes and regulations, we conclude that disputes over the coding of procedures are disputes over the amount payable under the OMFS and are subject to IBR.

Senate Bill No. 863 (2011-2012 Reg. Sess. chaptered as Statutes 2012, chapter 363 (SB 863)) added language to Section 4603.2 of the Labor Code¹ setting "forth requirements for the second review that a medical provider may request (and must request) prior to seeking independent review of a bill." (*California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd.* (2014) 232 Cal.App.4th 543, 555 [79 Cal.Comp.Cases 1481].) SB 863 also added Section 4603.6 which discusses when an IBR may be requested, what will occur if an IBR is not requested within the prescribed time, how such a request is to be made, and how the IBR will be assigned to, and addressed by, an independent reviewer. Of particular relevance to the issues in this case, subsection (a) provides as follows:

(a) If the only dispute is the amount of payment and the provider has received a second review that did not resolve the dispute, the provider may request an independent bill review within 30 calendar days of service of the second review pursuant to Section 4603.2 or 4622. If the provider fails to request an independent bill review within 30 days, the bill shall be deemed satisfied, and neither the employer nor the employee shall be liable for any further payment. If the employer has contested liability for any issue other than the reasonable amount payable for services, that issue

¹ All further statutory references are to the Labor Code unless otherwise noted.

1 shall be resolved prior to filing a request for independent bill review, and
2 the time limit for requesting independent bill review shall not begin to run
3 until the resolution of that issue becomes final, except as provided for in
4 Section 4622. (Lab. Code, § 4603.6(a).)

5 The only dispute is the amount of payment if there are no other issues that would impact whether
6 defendant is required to pay the provider. It is well established that threshold issues that would entirely
7 defeat an applicant's right to medical treatment must be resolved by the WCAB prior to proceeding to
8 IBR. Threshold issues include whether applicant sustained an industrial injury, employment, statute of
9 limitations, or insurance coverage. (Cal. Code Regs., tit. 8, § 10451.2(c)(1)(C).) Other potential disputes
10 that could render IBR premature include disputes over whether the treatment is authorized, disputes over
11 whether treatment is reasonable and necessary, and disputes over whether an applicant is entitled to treat
12 outside of a medical provider network. No such disputes are present here.

13 In this case, the WCJ characterized the dispute as not subject to the OMFS because the fee
14 schedule does not adopt and incorporate the NCCI edits which were the basis for defendant's objections
15 to the bills. The WCJ is correct that the NCCI edits have not been formally adopted into the OMFS, but
16 that does not preclude IBR's use of the edits in determining the correct amount owed to lien claimant.
17 The NCCI edits are appropriately characterized as a tool utilized by IBR in applying and interpreting the
18 OMFS to resolve disputes over amounts owed. Using the correct procedure code is in fact the first step
19 in determining the proper amount to be paid to a provider. Once the correct code is identified, the
20 corresponding authorized payment amount can be identified.

21 In the present case, the only issue that must be resolved in order to determine the amount lien
22 claimant is owed under the OFMS is whether the relevant bills used the correct procedure codes. If the
23 WCAB had jurisdiction to resolve that question, the WCAB would effectively be determining the amount
24 due under the fee schedule. Pursuant to Section 4603.6(a), if "the only dispute is the amount of payment
25 and the provider has received a second review that did not resolve that dispute," the provider must
26 request IBR within 30 days or "the bill shall be deemed satisfied." In this case, the amount of payment
27 depends upon the procedure codes used, but "the only dispute is the amount of payment." Therefore, we
conclude that this dispute is subject to IBR and is not within the jurisdiction of the WCAB.

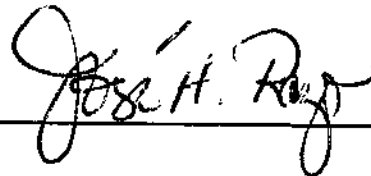
1 For the foregoing reasons,

2 **IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation
3 Appeals Board, that Findings and Order issued by the WCJ on August 25, 2017 is **RESCINDED** and the
4 following is **SUBSTITUTED** in its place:

5 **FINDING OF FACT**

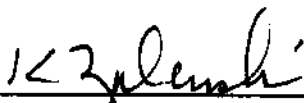
6 1. The dispute between defendant and Fremont Surgery Center over payment for the January 26,
7 2015 and July 22, 2015 dates of service is a billing dispute subject to independent bill review.

8 **WORKERS' COMPENSATION APPEALS BOARD**

9
10 

11 **JOSÉ H. RAZO**

12 **I CONCUR,**

13 

14 **KATHERINE ZALEWSKI**

15 **CONCURRING, BUT NOT SIGNING**

16
17 **FRANK M. BRASS**



18
19
20 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

21 **NOV 08 2017**

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

24 **COSTFIRST CORPORATION**
25 **FROST LAW**
26 **JESSICA SENQUIZ**

27 **MWH/ebc**