WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DONALD TEPFER, ***Applicant,*** **vs.** **SAN DIEGO GAS & ELECTRIC COMPANY, Permissibly Self-Insured,** ***Defendant.***	**Case No. ADJ389041 (SDO 0311446)** **OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

DEIDRA E. LOWE

I CONCUR,

DEPUTY

PATRICIA A GARCIA

PARTICIPATING, BUT NOT SIGNING

MARGUERITE SWEENEY

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAR 0 8 2018

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

LAW OFFICES OF T. MAE YOSHIDA
SAMUELSEN, GONZALEZ, VALENZUELA & BROWN
SHARP HC MEMORIAL HOSPITAL

ebc

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

DONALD TEPFER, *Applicant,* v. **SAN DIEGO GAS & ELECTRIC COMPANY, permissibly self-insured and administered,** *Defendant.*	**Case No. ADJ389041** **REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

INTRODUCTION

Donald Tepfer, while employed on July 5, 2002, as an utility worker, at San Diego, California, by San Diego Gas & Electric Company, permissibly self-insured, sustained injury arising out of and in the course of employment to his left knee.

After trial, the Workers' Compensation Judge (WCJ) issued his Findings and Order on January 11, 2018, finding that the dispute between defendant and the lien claimant Sharp Memorial Hospital (hereinafter Sharp) was a billing dispute subject to independent bill review (IBR) and that lien claimant was ordered to take nothing.

Sharp has filed a timely and verified Petition for Reconsideration as to the issue of denial of its lien.

Sharp contends that:

1. By the Order, the Appeals Board acted without or in excess of its powers;
2. The evidence does not justify the Findings of Fact; and

3. The Findings of Fact do not support the Findings and Order and Opinion on Decision.

FACTS

Applicant underwent authorized industrial total knee replacement surgery to his left knee on January 8, 2015 at Sharp Memorial Hospital (Sharp).

Sharp submitted its billing to the self-insured and administered defendant, San Diego Gas and Electric (SDG&E). SDG&E issued an explanation of review (EOR) dated February 25, 2015 (exhibit A). This was based on a DRG 470 code, and payment, per the official medical fee schedule (OMFS) was issued in the amount of $21,855.60.

Sharp submitted a second bill review request. SDG&E issued the EOR for this request on March 25, 2015. There was no change.

Sharp contends that SDG&E's use of DRG 470 was in error, and that DRG 469 should be used. DRG 469 would result in an OMFS payment of $35,005.92. Sharp contends it is entitled to recover the difference, $13,150.32.

Trial was held and testimony completed. The WCJ found that the dispute was subject to IBR and that the WCAB did not have jurisdiction over the dispute.

DISCUSSION

Sharp contends that Title 8, Cal. Code Regs., § 9792.5.7(b)(2) should apply and that the DRG codes, 469 and 470 should be considered analogous:

> "(b) ... independent bill review shall only be conducted if the only dispute between the provider and the claims administrator is the amount of payment owed to the provider....Issue that are not eligible for independent bill review shall include:

(2) The proper selection of an analogous code or formula based on a fee schedule adopted by the Administrative Director...."

Sharp mistakenly contends that the two ICD-9 codes are analogous and thus, the dispute is not subject to IBR. The ICD-9 codes in question are separate and distinct. It is a situation of either-or, not that one is sufficiently similar to the other. Here, DRG 469 only applies if there is medical evidence that there were complications and/or co-morbidities; DRG 470 only applies if there are no complications and/or co-morbidities. These codes are not analogous. There are either complications and/or co-morbidities or there are not.

As set forth in the Opinion on Decision:

"Labor Code § 4603.6(a) provides in pertinent part:

> '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.'

The only issue that must be resolved is the DRG code to use. The only dispute is whether lien claimant is entitled to the agreed upon outstanding balance claimed.

The WCAB does not have jurisdiction to resolve the issue of the proper DRG code. Although the amount of payment depends on the procedure code used, the only dispute is the amount of the payment. Even though the parties agree as to the amount in dispute, this is subject only to Independent Bill Review (IBR).

There was no evidence submitted that a request for IBR was made. There is no petition appealing an IBR decision.

Based on the foregoing, it is found that lien claimant is not entitled to further payment. This dispute is subject to IBR."

The WCAB on reconsideration came to the same result addressing this issue in *Jessica Senquiz v. City of Fremont* (November 8, 2017) 2017 Cal. Wrk. Comp. P.D. LEXIS 522:

> "Using the correct procedure code is in fact the first step in determining the proper amount to be paid to a provider. Once the correct code is identified, the corresponding authorized payment amount can be identified.
>
> In the present case, the only issue that must be resolved in order to determine the amount lien claimant is owed under the OFMS is whether the relevant bills used the correct procedure codes. If the WCAB had jurisdiction to resolve that question, the WCAB would effectively be determining the amount due under the fee schedule."

Since the amount of the payment in this case depended on the procedure code to be used, the only dispute was the amount of the payment due, thus subjecting the dispute to IBR only.

As set forth above, there was no evidence submitted that an IBR request had been made.

RECOMMENDATION

Based on the foregoing, it is respectfully recommended that lien claimant Sharp Memorial Hospital's petition for reconsideration be denied.

DATED: February 8, 2018

CHARLES W. ELLISON II
WORKERS' COMPENSATION JUDGE

Served by mail on all persons shown on the official Address Record.
Dated: 2/8/18

BY: Julissa Moreno