

STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

Case No.: OAK 244369

SONJA RALEY

Applicant

vs.

FREMONT UNIFIED SCHOOL
DISTRICT and ALAMEDA COUNTY
SCHOOLS INSURANCE GROUP

Defendants.

FINDINGS and AWARD

The above-entitled matter having been heard and regularly submitted, Stanley E. Shields, Workers' Compensation Administrative Law Judge, now makes his decision as follows:

FINDINGS OF FACT

1. The Utilization Review conducted by Defendant was not timely.
2. The Utilization Review conducted by Defendant did not comply with Labor Code Section 4610(e).
3. Applicant is entitled to continuing chiropractic treatment, including osseous adjustments, electrical stimulation, traction therapy, ultrasound or comparison dual inclinometer cervical and lumbar ROM evaluation and a comparison electronic muscle test evaluation both with computer analysis.

AWARD

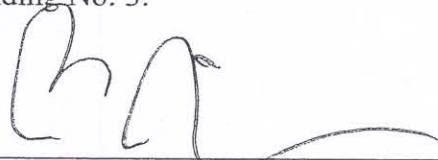
AWARD IS MADE in favor of Sonja Raley and against Fremont Unified School District and Alameda County Schools Insurance Group as follows:

- (a) Future medical treatment consistent with Finding No. 3.

Dated: November 23, 2005

Filed and Served by mail on: 11/28/05
On all parties on the
Official Address Record.

By: *Sen May*



Stanley E. Shields
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

BACKGROUND

Applicant Sonja Raley sustained injury to her bilateral wrists in the cumulative period to December 27, 1995, while employed by Fremont Unified School District. Her case was resolved by a Stipulated Award on February 19, 1998. The Award provided that she had sustained a 35% permanent disability and that there “may be” need for medical treatment to cure or relieve from the effects of the injury. There is no indication that either party sought to alter or amend this Award within five years of the date of injury.

The record reflects that Ms. Raley has treated with Daniel Klein, D.C., since shortly after her injury occurred, with such treatment continuing to the present date.

The current controversy involves a non-certification of various modalities of treatment by Utilization Review. Specifically, on November 1, 2004, the following items were non-certified: “continuing chiropractic treatment including osseous adjustments, electric stimulation, traction therapy, ultrasound or comparison dual inclinometer cervical and lumbar ROM evaluation and a comparison electronic muscle test evaluation both with computer analysis.” The non-certification is on Rehab West stationery and bears the signature of Lawrence Pohl, M.D., M.P.H.

To resolve the dispute, Ms. Raley was scheduled to see a “panel” Qualified Medical Evaluator, Richard Skala, D.C. Dr. Skala examined on January 6, 2005, issuing his report on February 16, 2005. In that report, he took a thorough history, conducted a physical examination, reviewed a large quantity of medical records, and rendered his conclusions (discussed below). In

response to a letter inquiry from Defendant's counsel, Dr. Skala issued a supplemental report dated March 23, 2005.

NEED FOR MEDICAL TREATMENT

As set out above, the only Utilization Review Notice in evidence is dated November 1, 2004.

Labor Code Section 4610(g) provides, in pertinent part:

In determining whether to approve, modify, delay, or deny requests by physicians prior to, retrospectively, or concurrent with the provision of medical treatment services to employees all of the following requirements must be met:

- (1) Prospective or concurrent decisions shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five working days from the receipt of the information reasonably necessary to make the determination, but in no event more than 14 days from the date of the medical treatment recommendation by the physician. In cases where the review is retrospective, the decision will be communicated to the individual who received services, or the individual's designee, within 30 days of receipt of information that is reasonably necessary to make this determination.

Here, all of the items non-certified by Utilization Review had been requested, and in many cases performed, well over 30 days prior to the non-certification.

In *Sandhagen v. Cox & Cox Construction* (2004) 69 Cal.Comp.Cases 1452, an *en banc* decision, the WCAB ruled that the Utilization Review time deadlines set forth in Labor Code Section 4610(g)(1) are mandatory, that a Defendant who fails to meet the deadlines is precluded from using the Utilization Review Process, and that the U.R. report generated is inadmissible as to the particular medical treatment issue in controversy.

Based upon Labor Code Section 4610(g)(1) and *Sandhagen*, I find Defendant's denial of the various modalities of treatment set out in its November 1, 2004 letter to be untimely.

As a separate and distinct ground for rejection of the Utilization Review evidence, I note that Labor Code Section 4610(e) provides:

No person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services, and where these services are within the scope of the physician's practice, requested by the physician may modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.

Here, part of the requested treatment was chiropractic. Dr. Pohl, the Utilization Review doctor, holds himself out as a doctor of medicine and a doctor of public health, but not as a doctor of chiropractic. Chiropractic care clearly involves services outside Dr. Pohl's scope of practice and, by statute, he may not modify, delay or deny any such requests.

Even if Dr. Pohl's letter were timely and he were competent to evaluate the specific clinical issues, his specific references to the ACOEM Guidelines make no sense. He states, referring to page 265 of the Guidelines, that "ACOEM guidelines do not support chiropractic treatment beyond the first month of symptoms in the management of injuries to the hands and wrists." Chiropractic care is nowhere mentioned on page 265. Page 265 does contain a section relating to modalities of treatment for "acute hand, wrist, or forearm symptoms." (Emphasis added.) Ms. Raley's symptoms are not acute; they are chronic. Dr. Pohl's two references to page 269 of the Guidelines again do not correspond to anything contained on that page.

Finally, the modalities of treatment recommended by the treater are specifically endorsed by the Qualified Medical Evaluator as follows:

It is my opinion that the treatment plan provided by Dr. Klein for Ms. Raley, moving forward from this time on, continues to be appropriate and judicious and meets the intent of the recent changes in the labor code as well as the obligation of the primary treating physician.

Skala report, 3/23/05, p. 3.

Dr. Skala also noted in his original report that Ms. Raley

Derives considerable benefit from the conservative treatment methods of her PTP when necessary. She reports that response to treatment is generally dramatic and occurs in a reasonably short period of time following a few visits.

Skala report, 2/16/05, p. 4.

For all the reasons set forth above, I will find Applicant to be entitled to the medical treatment previously non-certified by Utilization Review letter dated November 1, 2004.

Dated: November 22, 2005



Stanley E. Shields
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

NOTICE

Pursuant to Board Rule 10840 (Cal. Code Reg., tit. 8, Subsection 10840), as amended effective February 1, 1993, any Petition for Reconsideration from this decision, order or award shall be filed only at the Oakland District Office of the Workers' Compensation Appeals Board, and not with any other Board Office. Petitions for Reconsideration received in any Board Office other than the Oakland District Office will neither be accepted for filing nor deemed filed for any purpose.

On 11/28/05, this notice was
Served by mail on all parties listed on the
Official Address Record
By: [Signature]