

1 **WORKERS' COMPENSATION APPEALS BOARD**
2 **STATE OF CALIFORNIA**
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5 **PEDRO DE DIOS,**

6 *Applicant,*

7 **vs.**

8 **CARROLL'S TIRE WAREHOUSE;**
9 **REDWOOD FIRE & CASUALTY**
10 **INSURANCE COMPANY,**

11 *Defendants.*

Case Nos. **ADJ528481 (FRE 0244364)**
ADJ602408 (FRE 0247847)

OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION AND
DECISION AFTER
RECONSIDERATION

12 Defendant seeks reconsideration of the June 17, 2013 Joint Findings And Award of the workers'
13 compensation administrative law judge (WCJ), who awarded applicant reimbursement of "self-procured
14 medical treatment for marijuana" pursuant to Finding number 8, which states in full as follows:

15 "It is found that applicant needed to self-procure medical treatment because
16 medications were being denied, and he is to provide a statement of self-
17 procured costs for marijuana for the periods from the date of injury to the
date of trial to the extent that he obtained marijuana by medical
prescription."

18 The WCJ otherwise found that applicant incurred industrial injury to his back, neck and bilateral
19 shoulders, but not his psyche, while working for defendant as a tire technician on May 24, 2006
20 (ADJ528481), and May 29, 2007 (ADJ602408), causing a period of temporary disability, 35% permanent
21 disability in ADJ528481, 5% permanent disability in ADJ602408, and a need for future medical
22 treatment.

23 Defendant contends that Finding number 8 and the award of reimbursement of applicant's self-
24 procured marijuana purchases are improper because they are contrary to federal law and are not part of
25 applicant's reasonable medical treatment. Defendant challenges no other part of the WCJ's June 17,
26 2013 decision.

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1 An answer was not received.¹

2 The WCJ provided a Report and Recommendation on Petition for Reconsideration (Report)
3 recommending that reconsideration be denied.

4 Reconsideration is granted and the portions of the WCJ's June 17, 2013 decision regarding
5 reimbursement of self-procured marijuana are reversed as our Decision After Reconsideration. Health
6 and Safety Code section 11362.785(d) provides that no health insurance provider or health care service
7 plan is liable "for any claim for reimbursement for the medical use of marijuana," and defendant is not
8 liable for applicant's cost of self-procuring marijuana in this case.

9 **BACKGROUND**

10 It is admitted that applicant incurred the orthopedic injuries found by the WCJ and defendant does
11 not dispute the findings regarding temporary and permanent disability. However, defendant does dispute
12 Finding number 8, which appears to obligate defendant to reimburse applicant for marijuana he self-
13 procured.

14 In his Report, the WCJ explains that in issuing Finding number 8 he relied upon the opinion of
15 the parties' Agreed Medical Examiner Peter Mandell, M.D., who wrote in his report of January 27, 2012,
16 as follows:

17 "Mr. De Dios indicates that after I last saw him, he was getting treatment.
18 He saw Dr. Singh for pain management. He would see him for checkups
19 and medicine. He last saw him about a month ago. At that point, he
20 concluded that medical treatment wasn't really helping him, so he has no
intention of going back to see the doctors. This is nothing against Dr.
Singh. All of the doctors haven't been able to help him.

21 "What has helped him is when he went to Medicann in Fresno. They
22 prescribe medical marijuana. He started doing that about a year after his
23 injury. That's the only thing that seems to help. He sees those doctors once
a year and last saw them in February or March 2011. He does have a new
appointment coming up...

24 ¹ We are aware of applicant's "Request For Findings And Award To Be Amended/Corrected" (Request) that was filed on July
25 1, 2013. The Request identifies an apparent clerical error in the WCJ's Opinion on Decision (Opinion) wherein the temporary
26 and permanent disability indemnity rate is incorrectly stated to be "\$181.96," contrary to the parties' stipulation that the rate is
27 \$187.96. We take no action on applicant's Request because statements in the Opinion are not findings, and the \$187.96
stipulated rate is correctly stated in the body of the June 17, 2013 Joint Findings And Award. However, should the apparent
error in the WCJ's Opinion interfere with proper payment of the indemnity due applicant, he may present the issue to the WCJ
for correction upon return of the case to the trial level.

1 "Mr. De Dios indicates that since I last saw him, he did get conservative
2 treatment, including pain management. He got some epidural injections.
3 The only thing that's helped him, he tells me, is medical marijuana. That's
4 prescribed through Medicann. In fact, he has reached the point where he
5 no longer is interested in getting any other medical treatment except for the
6 medical marijuana...

7 "I was asked my opinion about medical marijuana. I am not an expert on
8 this subject. I do understand that certain individuals gain a great deal of
9 relief from using that modality to treat their symptoms. Mr. De Dios says
10 he is one of them. From an un-expert point of view, if this material helps
11 him and others don't, he should be allowed to have it. I would be more
12 than happy to defer to a medical marijuana expert to discuss this in greater
13 detail."

14 DISCUSSION

15 The medical marijuana program that was promulgated in California through the Compassionate
16 Use Act of 1996 (Act) authorizes an individual to use marijuana for medical purposes under certain
17 specified conditions, including obtaining an identification card. (Health & Saf. Code, §§ 11365.2
18 et. seq.) Unless allowed by the Act, the furnishing of marijuana to anyone for any purpose is illegal
19 under state law. (Health & Saf. Code, § 11360(a).) Moreover, Health and Safety Code section
20 11362.785(d) expressly provides that nothing in the Act, "shall require a governmental, private, or any
21 other health insurance provider or health care service plan to be liable for any claim for reimbursement
22 for the medical use of marijuana."

23 In this case, applicant did not show that he met any of the requirements of the Act for lawful use
24 of medical marijuana. But even if he had, there is no expert medical opinion supporting his use of
25 medical marijuana in this case. To the contrary, Dr. Mandell expressly notes in his January 27, 2012
26 report that he is *not* an expert on the subject, and that he is relying entirely upon applicant's statements in
27 proffering an "un-expert point of view" that applicant "should be allowed to have it" if it works for him.

Opinion based upon conjecture instead of expertise is not substantial medical evidence that
supports a finding that a defendant must pay for a specific treatment modality because it is reasonably
required to cure or relieve the effects of an industrial injury. (*Heggin v. Workmen's Comp. Appeals Bd.*
(1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d
372 [35 Cal.Comp.Cases 525].)

