



New Case Brief
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Deanna Brasher v. Nationwide Studio Fund
and State Compensation Insurance Fund
September 5, 2006 – 71 CCC ____

An employer (carrier) has four possible responses to a treating physician's recommendation for spinal surgery: 1] Authorize the surgery; 2] Object to the surgery pursuant to §4062(b); 3] Submit for Utilization Review; or 4] Pursue both options 2 and 3 either simultaneously, or by filing an objection after utilization review denial, meeting the timelines for each process.

Deanna Brasher sustained an industrial injury to her spine on April 22, 2002. Dr. Park, applicant's treating physician, requested approval for a spinal cord stimulator trial. Defendants referred the request for surgery to utilization review (UR), and the request was denied. Defendants also filed an Objection to Treating Physician's Recommendation for Spinal Surgery with the Administrative Director (AD). The (DWC) Medical Unit required UR and appeal from the denial of spinal surgery, prior to the selection of a second opinion surgeon under Labor Code §4062(b).

At the April 18, 2006 trial the WCJ found that defendant's objection to the treating physician's request for spinal surgery was timely and that the procedure instituted by the (DWC) Medical Unit requiring UR and appeal before the AD selected a second opinion surgeon under Labor Code §4062(b), was contemplated by §§4062 and 4610. The WCJ denied applicant's request for surgery, without prejudice, pending the second opinion. Applicant argued that the remedy for the Medical Unit's failure to select a second opinion surgeon within 10 days after defendant's objection and further failure of the second opinion surgeon to issue a report within 45 days of the request for surgery should require the defendant to authorize the surgery.

The WCAB analyzed the interplay between §4062 concerning the treating physician's recommendation and the UR statute, §4610, indicating the case presented novel issues when these two sections were compared. Referencing the matter of *Sandhagen v. Cox & Cox*, (2005) 70 CCC 208, the WCAB pointed out that the Medical Unit overlooked the fact that an employer need not always conduct UR. The WCAB further indicated that the employer (carrier) will bypass UR in many cases and simply object under 4062(b) especially if it is a spinal surgery issue, in that if the UR report concludes the surgery is justified, the dispute is over and defendant would then have to authorize the surgery.

By not being allowed to proceed under Labor Code §4062(b) defendants lose the right to have a California Board eligible orthopedic surgeon, or neurosurgeon examine the applicant, as well as make a determination before any surgery is reviewed. The WCAB found that to require that all cases go through UR and then on to second opinion surgery would cause further delay not contemplated by the statute and imposes further hardship and is an unwarranted obstacle for the applicant seeking surgery. The WCAB determined the Medical Unit erred when it rejected defendant's timely objection and directed the defendants to pursue UR before commencing the second opinion process.

Since defendants in this case were misled by the Medical Unit, the WCAB did not deny defendant's right to a second opinion and allowed for the completeness of the record, remanding it back to the WCJ for determination.