

1/24/08

STATE OF CALIFORNIA  
DIVISION OF WORKERS' COMPENSATION

8

<b>JESSE CHAVEZ</b>  <i>Applicant,</i>  VS.  <b>BRINKS, INC.;</b> <b>LIBERTY MUTUAL</b> <b>INSURANCE COMPANY</b>  <i>Defendants.</i>
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Case No(s). **LBO 0389599**

**FINDINGS  
AND ORDER**

Law Offices of Perona, Langer & Peck, attorney for applicant, with no appearance by or on behalf of applicant

Law Offices of Harrison, Eichenberg & Murphy, by Deborah L. Gilman, Esq., attorney for defendant.

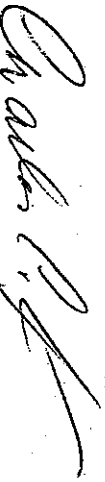
The above-entitled matter having been heard by and submitted for decision by Charles C. Ringwalt, Workers' Compensation Administrative Law Judge, is made as follows.

**FINDINGS OF FACTS**

1. Jesse Chavez, born August 18, 1977, while employed as a guard/driver, on June 30, 2007, at Monrovia, California, by Brinks, Inc., sustained injury arising out of and in the course of employment to his left knee.
2. At the time of injury, the employer's workers compensation insurance was Liberty Mutual Insurance Company.
3. Applicant was properly notified of the MPN and defendant tendered all treatment necessary to cure or relieve from the effects of injury.
4. Applicant is entitled to medical treatment only through the Medical Provider Network.

ORDER

IT IS ORDERED that the applicant is entitled to medical treatment only through the Medical Provider Network.

DATED: 2/7/08   
CHARLES C. RINGWALT  
Workers' Compensation Administrative Law Judge

*A Petition for Reconsideration from this decision shall be filed only at the Long Beach district office of the Workers' Compensation Appeals Board.*

Filed at Long Beach, California.

Served by mail on 2/7/08 on  
parties as shown on the Official Address  
Record effected on the above date.

By: 50 S. Drake







1 **John Mendoza, ESQ**  
2 **PERONA, LANGER, BECK, & SERBIN**  
3 A Professional Corporation  
4 300 East San Antonio Drive  
5 Long Beach, CA 90807  
6 (562) 426-6155

7 **Attorneys for Applicant**

8 **WORKERS' COMPENSATION APPEALS BOARD**  
9 **STATE OF CALIFORNIA**

10 **Jesse Chavez**

11 **WCAB NO. LBO 0389599**

12 **Applicant,**

13 **PETITION FOR RECONSIDERATION**

14 **vs.**

15 **Brinks, Inc.;**  
16 **Liberty Mutual Company**  
17 **Defendants,**

18 **COMES NOW APPLICANT, Jesse Chavez adjusted by and through Perona,**  
19 **Langer, Beck and Serbin and files this Petition for Reconsideration to the Finding and**  
20 **Order which was issued February 4, 2008, on the following grounds:**

21 **STATEMENT OF FACTS**

22 On June 30, 2007, Jesse Chavez was injured in the course and scope of his employment  
23 for Brinks, Inc. He treated with various physicians, and has now elected to treat with Dr.  
24 Rick Pospisil, M.D. at his own expense. Applicant, at this time, does not desire to entrust  
25 his personal health into the care of the defendant's MPN physicians. The injured worker  
26 does not trust the competency nor the integrity of the defendant's MPN.  
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1           **AN INJURED WORKER IS NOT REQUIRED TO TREAT WITH AN MPN WHEN**  
2           **THE APPLICANT PROVIDES FOR TREATMENT AT HIS OWN EXPENSE.**

3           The very title of Labor Code §4600 expressly provides, "Medical treatment provided by  
4           employer" (Emphasis added). Labor Code §4600 and §4616 do NOT apply to medical  
5           treatment "provided at the employee's own expense".

6           If, and ONLY if, applicant desires that medical expenses be paid for by defendant, then,  
7           under the specific and limited scheme set forth within Labor Code §4600(c), the applicant  
8           must treat with a physician within the Medical Provider Network (MPN). However, nothing  
9           within California law limits the right of the employee to provide, at his own expense, a  
10          consulting physician or any attending physicians who he desires.

11          Labor Code §4605 provides as follows:

12          "Nothing contained in this chapter shall limit the right of the employee to provide, at his own  
13          expense, a consulting physician or any attending physicians whom he desires".

14          What does this mean? The plain meaning of this statute is obvious. "Nothing" means  
15          nothing. There is no provision of law that may limit the injured worker from providing, at his  
16          own expense, his own treating physician.

17          In *Credit Bureau of San Diego v. Johnson* 61 Cal.App. 2d Supp 834, the court  
18          discussed an injured worker's right to provide, at his own expense, a physician of his own  
19          choosing. In that case, the court discussed the injured workers' right to pay for and choose  
20          his own doctor. The court properly concluded the obvious:

21          "The right to make lawful contracts are rights enjoyed by the citizens under the protection of  
22          the Fourteenth Amendment of the Constitution of the United States." *Supra*

23          Clearly, Labor Code §4616 (the provision of Chapter 2 of Article 2 that implements the use  
24          of the MPN), applies to instances where the injured worker is not treating at his own  
25          expense. However, the courts have appropriately recognized that it is a fundamental  
26          constitutional right for a citizen to be permitted to pay for his own medical treatment (even in  
27          a workers compensation case) and, where he desires to pay for his own treatment, the  
28          injured worker has an unfettered constitutional right to select the identity of his own

1 physician. It strains the imagination to think that a citizen's right to treat with whoever he  
2 good and well desires to pay is even capable of being challenged. While this sort of  
3 argument might be expected in, say, communist China, its almost unbelievable that this  
4 would be argued in the United States.

5 Finally, Cal.Reg. §9785 expressly permits injured workers to treat with physicians of  
6 their own choosing, when said physicians are provided at the injured worker's expense.

7 Cal. Reg. §9785(a)(1) provides as follows:

8 "the "primary treating physician" is the physician who is primarily responsible for managing  
9 the care of an employee, and who has examined the employee at least once for the  
10 purpose of rendering or prescribing treatment and has monitored the effect of the treatment  
11 thereafter. The primary treating physician is the physician selected by the employer, or, the  
12 employee pursuant to Article 2 (commencing with section 4600) of Chapter 2 of Part 2 of  
13 Division 4 of the Labor Code?or in accordance with the physician selection procedures  
14 contained in the medical provider network?" (Emphasis added.)  
15 Contained within Article 2 of Chapter 2 of Part 2 is Labor Code §4605, which, as discussed  
16 more fully hereinabove, gives the injured worker the unfettered right to treat with any  
17 physician at his own expense.

18 Thus, not only does Labor Code §4605 (and the cases interpreting that statute) permit  
19 applicant to designate, at his own expense, a physician of his own choosing, but so also  
20 does Cal.Reg. 9785(a)(1) expressly codify the identity of a §4605 doctor as a "primary  
21 treating physician".

22 In the instant case, applicant has elected to treat, at his own expense, with Dr. Rick  
23 Pospisil, M.D.. Further, applicant does not trust the physicians within defendant's MPN to  
24 properly or adequately render medical treatment to the applicant. Applicant strongly objects  
25 to being compelled to treat with the defendant's MPN, or being compelled to receive  
26 treatment from any physician with whom he does not consent.

27 //

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1           **2. AN INJURED WORKER CAN NOT BE FORCED TO RECEIVE TREATMENT FROM**  
2           **ANY PHYSICIAN AGAINST HIS WILL**

3           Again, it is readily conceded that, other than in cases where the injured worker provides the  
4           medical care at his own expense, that Labor Code §4616 compels the injured worker to  
5           treat with the defendant's MPN. However, when the injured worker has provided the  
6           medical treatment at his own expense, not only is he freely permitted to treat with said  
7           physician, moreover, he may not be compelled to treat with a physician with whom he  
8           desires not to treat.

9           In Credit Bureau of San Diego, Supra, the court stated:

10          "it is the right of the injured employee to refuse the assistance of a physician so supplied  
11          [that is, a physician paid for and supplied by the employer] and to independently contract  
12          for a physician of his own choice and at his own expense. Credit Bureau of San Diego, Inc.  
13          v. Johnson (1943, Cal App Dept' Super Ct) 61 Cal App 2d Supp 834, 142 P2d 963, 1943  
14          Cal App LEXIS 726."

15          In the case at bar, applicant has selected his own physician and at his own expense.  
16          Applicant has an absolute right to make decisions pertaining to the medical treatment to his  
17          own body. Applicant does not trust the physicians within defendant's MPN. It is a fact that  
18          defendant, who, ultimately controls the identity of those within the defendant's MPN, has a  
19          strong and irreconcilable conflict of interest, adverse to applicant. The physicians within the  
20          MPN are beholden to defendant in that they are subject to removal from the MPN by  
21          defendant without cause. The defendant seeks to defend itself from liability within the  
22          workers compensation claim.

23          Further, as regards defendant's MPN physicians, applicant fears for his bodily health  
24          and believes that the defendant's physicians do not have applicant's health as a priority.

25          Applicant believes that each of the defendant's physicians lack competence to  
26          provide adequate medical treatment in applicant's case.

27          Moreover, the court is also without legal authority to compel an injured worker to receive  
28          treatment with any given physician. While it is clear that a party or the court may compel an

1 injured worker to see a physician for EXAMINATION, the issue of treatment is a totally  
2 different matter. The courts have stated that an injured worker can not be forced to treat  
3 with a doctor, not even by the court.  
4 It is the right of the injured employee to refuse the assistance of a physician so supplied and  
5 to independently contract for a physician of his own choice and at his own expense. Credit  
6 Bureau of San Diego, Inc. v. Johnson (1943, Cal App Dep't Super Ct) 61 Cal App 2d Supp  
7 834, 142 P2d 963, 1943 Cal App LEXIS 726.  
8 The board is without legal authority and completely without jurisdiction to order? the injured  
9 worker to treat with any physician. This result flies in the face of the fundamental  
10 constitutional freedoms guaranteed by the Fourteenth Amendment to the United States  
11 Constitution. While the court may compel an evaluation, the court is without power to  
12 compel a citizen to treat with any given medical care provider.

### 13 CONCLUSION

14 Applicant is unequivocally permitted to provide any physician at his own expense. An  
15 injured worker can not be forced to submit to medical treatment by a physician he does not  
16 trust. The workers compensation appeals board is not empowered to force a citizen to  
17 submit to treatment by any physician. The reports of all treating physicians, including  
18 treating physicians selected pursuant to Labor Code §4605, are admissible.

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25 Dated: February 15, 2008

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PERONA LANGER BECK & SERBIN  
By John A. Mendoza  
Attorneys for Applicant

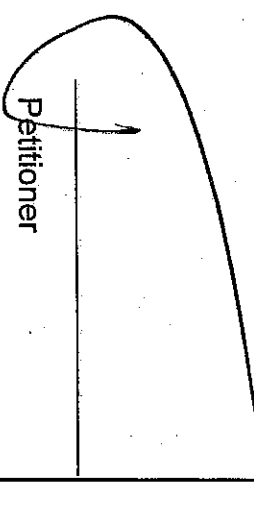
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VERIFICATION

I, the undersigned, say that I am, the applicant in the above-entitled action, I have read the foregoing petition for reconsideration and know the contents thereof, and that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters that I believe it to be true.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on February 15, 2008 at Long Beach, California.

  
\_\_\_\_\_  
Petitioner

**PROOF OF SERVICE**

1  
2  
3 STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

4 I am employed in the county of Los Angeles, State of California in the offices of a  
5 member of the Bar of this Court. I am over the age of 18 and not a party to the within action;  
6 my business address is 300 San Antonio Drive, Long Beach, California 90807-0948.

7 On the date given, I served the following documents: **Petition for Reconsideration**  
8 on the interested parties

9  by placing the original thereof enclosed in a sealed envelope addressed as follows:

10 Workers' Compensation Appeals Board  
11 300 Oceanate Street, Ste 200  
12 Long Beach, CA 90802

13  by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

14 Jesse Chavez  
15 5800 Marmion Way, #204  
16 Los Angeles, CA 90042

Rick F. Pospisil M.D.  
2677 Zoe Ave., Suite 114  
Huntington Park, CA 90255

17 Liberty Mutual  
18 P.O. Box 29073  
19 Glendale, CA 91209

20 Harrison, Eichenberg, & Murphy LLP  
21 140 Chaparral Court Suite 250  
22 Anaheim Hills, CA 92808

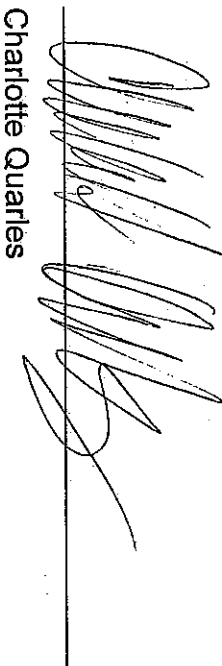
23  **BY FIRST CLASS MAIL (C.C.P. SECTIONS 1013a, et seq.):** I caused said document(s)  
24 to be deposited in the United States Mail in a sealed envelope with postage fully prepaid at  
25 Long Beach, California, following the ordinary practice at my place of business of collection  
26 and processing of mail on the same day as shown on this declaration.

27 I declare under penalty of perjury under the laws of the State of California and of the  
28 United States of America that the above is true and correct.

I declare that I am employed in the office of a member of the bar of this Court at  
whose direction the service is made.

DATED: \_\_\_\_\_

2/15/08



Charlotte Quarles

6X  
STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION  
WORKERS' COMPENSATION APPEALS BOARD

CASE NO. LBO 389599

JESSE CHAVEZ

vs.

BRINKS INC.;  
LIBERTY MUTUAL  
INSURANCE COMPANY

Administrative Law Judge:

Charles C. Ringwalt

REPORT AND RECOMMENDATION  
OF WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE ON  
PETITION FOR RECONSIDERATION

INTRODUCTION

Applicant, born August 18, 1977, sustained injury to his left knee while employed by Brinks, Inc. June 30, 2007.

The employer's workers' compensation insurance carrier was Liberty Mutual Insurance Company.

Defendant filed for an expedited hearing for a finding that applicant was not "entitled" to treat outside the MPN.

Applicant has filed a timely petition for reconsideration from a finding of fact that applicant is "entitled to medical treatment only through the MPN."

Applicant contends that such finding precludes his self-procuring treatment at his own expense.

#### DISCUSSION

Petitioner is correct in that I cannot stop him from treating outside the MPPN. Whether the doctor outside the MPPN can collect from the applicant is another question. (See Labor Code § 3751(b));

“If an employee has filed a claim form pursuant to Section 5401, a provider of medical services shall not, with actual knowledge that a claim is pending, collect money directly from the employee for services to cure or relieve the effects of the injury for which the claim form was filed, unless the medical provider has received written notice that liability for the injury has been rejected by the employer and the medical provider has provided a copy of this notice to the employee. Any medical provider who violates this subdivision shall be liable for three times the amount unlawfully collected, plus reasonable attorney’s fees and costs.”

As injury has not been rejected, I can not say that applicant can treat outside the MPPN without implying that there would be an enforceable contract between the medical provider and the applicant. To eliminate any ambiguity I recommend an amendment.

#### RECOMMENDATION

It is recommended that the petition be granted and Finding of Fact Number 4 be amended to insert after “medical treatment” and between

“only” “From defendant Liberty Mutual Insurance Company” so that it reads:

“4. Applicant is entitled to medical treatment from defendant Liberty Mutual Insurance Company only through the MPN.”

It is further recommended that the order be amended to read:

“IT IS ORDERED that the Applicant is entitled to medical treatment from defendant Liberty Mutual Insurance Company only through the MPN.”



CHARLES C. RINGWALT  
Workers' Compensation  
Administrative Law Judge  
DIVISION OF WORKERS' COMPENSATION

DATED AT LONG BEACH, CALIFORNIA  
Served on 2/22/88 by mail on parties  
checked on the Official Address  
Record Effective On Above  
Date by SD S. Drake

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

Case No. LBO 389599

OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION

**JESSE CHAVEZ,**

*Applicant,*

vs.

**BRINKS, INC.; LIBERTY MUTUAL  
INSURANCE COMPANY,**

*Defendant(s).*

Applicant seeks reconsideration of the Findings and Order issued February 7, 2008, wherein the workers' compensation administrative law judge (WCJ) found that applicant sustained an industrial to his left knee on June 30, 2007, while employed as a guard/driver. The WCJ also found that "applicant was properly notified of the MPN [Medical Provider Network] and defendant tendered all treatment necessary to cure or relieve from the effects of the injury.". The WCJ ordered that applicant was only entitled "to medical treatment . . . through the Medical Provider Network".

Applicant contends that the WCJ erred by ordering that "applicant is entitled to medical treatment only through the Medical Provider Network" arguing: (1) that an injured worker is not required to treat with a Medical Provider Network when the applicant provides for treatment at his own expense; and (2) that an injured worker cannot be forced to receive treatment from any physician against his will. Defendant filed an answer.

In the Report and Recommendation on Petition for Reconsideration (Report), the WCJ set forth the factual and legal bases for the decision. The WCJ also recommended that the decision be corrected to clarify the decision so that it addresses the liability of defendant for applicant's medical treatment and is not subject to the implication that applicant is somehow ordered to desist

1 from treatment, at his own expense, outside of the Medical Provider Network<sup>1</sup>

2 Based upon our review of the record, and for the reasons set forth in the WCJ's Report,  
3 which we adopt and incorporate, we will grant applicant's Petition for Reconsideration, affirm the  
4 WCJ's decision except that it will be amended, pursuant to the recommendation of the WCJ, to  
5 amend Finding of Fact number 4 and the Order to clarify the decision so that it specifically  
6 addresses the liability of defendant for applicant's medical treatment.

7 We observe that the heading(s) of the WCJ's underlying decision and/or his or her Report  
8 reference(s) the "Division of Workers' Compensation," but not the "Workers' Compensation  
9 Appeals Board." Of course, it is solely the Workers' Compensation Appeals Board (Appeals  
10 Board) that has "judicial" authority (Lab. Code, § 111(a)) and original jurisdiction (Lab. Code, §§  
11 5300(a), 5301) over workers' compensation claims. Pursuant to its statutory authority, however,  
12 the Appeals Board *delegates* its judicial powers to the workers' compensation administrative law  
13 judges (WCJs) to conduct trials and render initial determinations in workers' compensation cases.  
14 (Lab. Code, §§ 5309, 5310.) Unless the Appeals Board grants reconsideration (Lab. Code, § 5900  
15 et seq.), a decision of a WCJ is the decision of the Appeals Board. (Cal. Code Regs., tit. 8, §  
16 10348.) Therefore, we hereby order that the phrase "State of California, Division of Workers'  
17 Compensation" is stricken from the heading(s) of the WCJ's underlying decision and/or his or her  
18 Report and that the phrase "State of California, Division of Workers' Compensation, Workers'  
19 Compensation Appeals Board" is substituted therefor.

20 For the foregoing reasons,

21 **IT IS ORDERED** that applicant's Petition for Reconsideration is **GRANTED**.

22 ///

23 ///

24 ///

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1 In the Report, the WCJ notes that Labor Code section 3751(b) subjects a health care provider to "three times the amount unlawfully collected, plus reasonable attorney's fees and costs" for collecting payment directly from an employee for treatment of an industrial injury where the medical services provider knows that a workers' compensation claim has been filed.

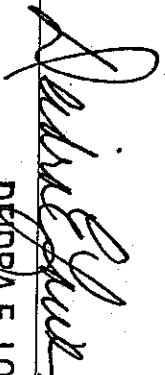
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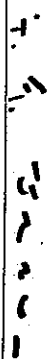
1 IT IS ORDERED that the applicant is entitled to medical treatment from defendant, Liberty  
2 Mutual Insurance Company, only through the Medical Provider Network.  
3  
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5 WORKERS' COMPENSATION APPEALS BOARD  
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8   
9 ALFONSO J. MORESI  
10

11 I CONCUR,  
12

13   
14 DEIDRA E. LOWE  
15


16   
17 FRANK M. BRASS  
18



19 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA  
20 APR 21 2008  
21

22 SERVICE MADE BY MAIL ON ABOVE DATE ON THE PERSONS LISTED BELOW AT  
23 THEIR ADDRESSES AS SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD:  
24

25 Perona, Langer, Beck & Serbin  
26 Harrison, Eichenberg & Murphy  
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JS/lara

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IT IS FURTHER ORDERED as the Appeals Board's Decision After Reconsideration that the Findings and Order issued February 7, 2008, is **AFFIRMED**, except that it shall be **AMENDED** as follows:

FINDINGS OF FACT

\* \* \*

4. Applicant is entitled to medical treatment from defendant, Liberty Mutual Insurance Company, only through the Medical Provider Network.

\* \* \*