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STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

DEBORAH NISHIDA,

ADJ7449620

*Applicant,*

v.

THE COCA-COLA COMPANY,  
PSI,

**FINDINGS AND ORDER**

*Defendant,*

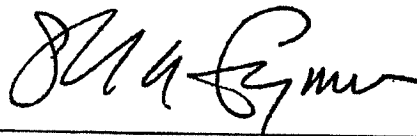
This matter having been heard and submitted, Stuart R. Crymes, Workers' Compensation Administrative Law Judge, now makes the following Findings and Orders as follows:

**FINDINGS OF FACT**

1. The jurisdictional facts set forth in the Stipulations With Request for Award dated 02/01/16, are adopted and incorporated herein.
2. All issues other than the issues set forth below, including without limitation the penalties per Labor Code Section 5814 generally and the petition for penalty dated 08/25/15, are deferred; jurisdiction is reserved.
3. The Administrative Director did not act without nor in excess of the Administrative Director's power with regard to the independent medical review determination dated 11/01/16.
4. The 11/01/16 determination was not the result of a plainly erroneous, express or implied finding of fact.
5. The independent medical review determination dated 11/01/16 is valid.
6. All other issues are deferred; jurisdiction is reserved.

**ORDER**

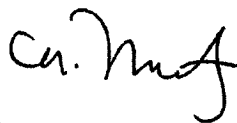
**IT IS ORDERED** that applicant's petition appealing the Administrative Director's independent medical review determination is denied.



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**STUART R. CRYMES**  
**Presiding**  
**Workers' Compensation**  
**Administrative Law Judge**

Served: 04/11/17  
On parties as shown on the  
Official Address Record.



By:             
**NORA MARTINEZ**

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STATE OF CALIFORNIA  
WORKERS' COMPENSATION APPEALS BOARD

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DEBORAH NISHIDA  
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**OPINION ON DECISION**

The matter was submitted for decision on the issues as outlined below.

**ADMINISTRATIVE DIRECTOR'S IMR DETERMINATION IS VALID**

In this case Utilization Review denied authorization for a proposed L5-L1 laminectomy and instrumented fusion because the proposed procedure failed to comply with ACOEM practice guidelines; to wit: the MRI did not establish spinal stenosis or spondylolisthesis. Although the MTUS/ACOEM guidelines note that patients with increased spinal instability after surgical decompression at the level of spondylolisthesis may be candidates for a fusion, Applicant's MRI did not show spinal instability or evidence of spondylolisthesis.

The ODG spinal instability criteria includes lumbar intrasegmental movements of more than 4.5 mm. There was no evidence that applicant has in intrasegmental movement in excess of 4.5 mm. Based on the foregoing finding, Utilization Review denied authorization for surgery.

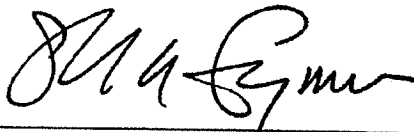
After applicant filed an Application for Independent Medical Review, Maximus issued a final determination letter dated 11/01/16 upholding the denial of utilization review. Maximus noted that there was an appropriate basis to deny authorization for surgery because there was no evidence of spinal stenosis or spondylothesis to warrant a fusion.

**LABOR CODE SECTION 4610.6 (h)**

The Legislature has determined that an IMR determination is presumptively correct and the grounds for appeal are strictly limited, including the following grounds: The administrative director acted without authority, the decision was procured by fraud, the physician reviewer had a conflict of interest, the decision was the result of bias or the decision was based on a plainly erroneous fact that is not a matter subject to expert opinion. None of the bases for appeal apply to the instant case.

The fact that Applicant's treating physician has issued a medical opinion regarding the ODG guidelines does not establish a clear error of fact. Applicant's request for the fusion operation has been reviewed by two medical experts and both have concluded that the request for surgery is not medically necessary. These

experts relied on ACOEM guidelines and ODG guidelines which are not plainly erroneous.

A handwritten signature in black ink, appearing to read "Stuart R. Crymes". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

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**STUART R. CRYMES**  
**Presiding**  
**Workers' Compensation**  
**Administrative Law Judge**