

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

**FRANK DIAZ, *Applicant***

**vs.**

**PACIFIC COAST FRAMERS INC and  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ14244911**

**Anaheim District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on May 24, 2023, wherein the WCJ found in pertinent part that the August 31, 2022 Utilization Review [UR] was timely so the Appeals Board does not have jurisdiction to determine whether the medical treatment and services requested by Lawrence Miller, M.D., pertaining to the Casa Colina referral, is reasonably required to cure or relieve applicant from the effects of his industrial injury.

Applicant contends that Dr. Miller's August 22, 2022, Request for Authorization (RFA) required expedited review and the August 31, 2022 UR decision was not timely, so applicant is entitled to the treatment requested by Dr. Miller.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We received an Answer from defendant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, and for the reasons discussed below, we will deny reconsideration.

## **BACKGROUND**

The factual background of applicant's injury claim, relevant to the issues addressed herein, is summarized as follows:

Applicant claimed injury to his head, neck, back, shoulders, chest, ribs, hips, and buttocks, while employed by defendant as a construction worker on April 16, 2020.

On August 22, 2023, treating physician Dr. Miller issued an RFA wherein he requested a re-evaluation with neurologist, Dr. Nudleman, a re-evaluation with Dr. Salkinder, an ENG/VNG [electronystagmography/videonystagmography] examination, six sessions of vestibular rehabilitation, a nurse evaluation for home care needs, and a request for 30-day inpatient at Casa Colina with physiatrist Dr. Patterson and neuropsychological evaluation with Dr. Elizabeth Cisneros. (See Joint Exh. X, Lawrence Miller, M.D., August 22, 2023, p. 1.) Regarding the 30-day Casa Colina inpatient request, Dr. Miller stated, "This is an expedited request." (Joint Exh. X, p. 3.) The August 31, 2022, UR recommendation, stated that the request was first received by State Compensation Insurance Fund on August 26, 2022, and was received by Genex (UR) on August 30, 2022. The UR recommendation certified/authorized the requested treatment except for the 30-day Casa Colina inpatient request that was non-certified. (Joint Exh. Y, p. 4.) It also stated that Dr. Miller's request for expedited review was not "accompanied by evidence reasonably establishing that the injured worker faces an imminent and serious threat to his ... health; or that the timeframe for utilization review under 8CCR 9792.9.1(c)(3) would be detrimental to the injured workers' condition." (Joint Exh. Y, p. 6.)

The parties made various trial appearances, and at the April 24, 2023, trial the matter was submitted for decision. The issues identified by the parties were:

1. Whether the UR denial, dated August 31st, 2022, in regard to PTP Dr. Lawrence Miller's RFA, dated August 22nd, 2022, was untimely inasmuch as applicant contends the RFA called for expedited review.
2. Whether the WCAB has jurisdiction to decide the medical necessity [as to the] (sic) Casa Colina referral under Dubon II.  
(Minutes of Hearing and Summary of Evidence, April 24, 2023, p. 2.)

## DISCUSSION

Pursuant to Labor Code section 4610:

(a) For purposes of this section, “utilization review” means utilization review or utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians, as defined in Section 3209.3, prior to, retrospectively, or concurrent with the provision of medical treatment services pursuant to Section 4600. ...

(i)(3) If the employee's condition is one in which the employee faces an imminent and serious threat to the employee's health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decision making process, as described in paragraph (1), would be detrimental to the employee's life or health or could jeopardize the employee's ability to regain maximum function, decisions to approve, modify, or deny requests by physicians prior to, or concurrent with, the provision of medical treatment services to employees shall be made in a timely fashion that is appropriate for the nature of the employee's condition, but not to exceed 72 hours after the receipt of the information reasonably necessary to make the determination.

(Lab. Code, § 4610.)

Administrative Director Rule 9792.9.1 states in part:

(c)(3) Prospective or concurrent decisions to approve, modify, delay, or deny a request for authorization shall be made in a timely fashion that is appropriate for the nature of the injured worker's condition, not to exceed five (5) business days from the date of receipt of the completed DWC Form RFA.

(c)(4) Prospective or concurrent decisions to approve, modify, delay, or deny a request for authorization related to an expedited review shall be made in a timely fashion appropriate to the injured worker's condition, not to exceed 72 hours after the receipt of the written information reasonably necessary to make the determination. The requesting physician must certify in writing and document the need for an expedited review upon submission of the request. A request for expedited review that is not reasonably supported by evidence establishing that the injured worker faces an imminent and serious threat to his or her health, or that the timeframe for utilization review under subdivision (c)(3) would be detrimental to the injured worker's condition, shall be reviewed by the claims administrator under the timeframe set forth in subdivision (c)(3).

(Cal. Code Regs., tit. 8, § 9792.9.1.)

The Labor Code section 4610-time limits within which a UR decision must be made are mandatory. The Appeals Board has jurisdiction to determine whether a UR decision is timely.

However, the Appeals Board does not have jurisdiction to address whether treatment requested in a timely UR decision is reasonably required. The “IMR process is the exclusive mechanism for review of a utilization review decision.” (*King v. CompPartners, Inc.* (2018) 5 Cal.5th 1039, 1048 [83 Cal.Comp.Cases 1523]; *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298 (Appeals Board en banc).)

Here, as explained by the WCJ:

Dr. Miller was required to document at the time of submission of the RFA, that the applicant is facing an imminent or serious threat to his health or safety or that the normal UR timelines would be detrimental to the applicant’s life or health and the reasons, therefore. Dr. Miller did not do so. ... ¶ In total, between the two trials conducted in this case, applicant offered, and this Court admitted 22 separate exhibits. Of those exhibits, Applicant’s Exhibits 1 through 17 pre-date Dr. Miller’s report and RFA dated August 22, 2022. Despite Petitioner’s representation to the contrary, not one of those medical reports document that applicant is facing an imminent or serious threat to his health or safety or that applicant presented a danger to himself and to those around him. Further, none document that applicant required in-patient care at Casa Colina. (Report, p. 7.)

Having reviewed the trial record, we agree with the WCJ that none of the reports from Dr. Miller constitute evidence that applicant’s condition was an imminent and serious threat to his health that would warrant the 72-hour expedited review delineated in AD rule 9792.9.1(c)(4). Thus, the RFA “requesting 30-day inpatient at Casa Colina” does not require medical review to determine if it is subject to an expedited review, but instead is subject to review “by the claims administrator under the timeframe set forth in subdivision (c)(3).” (Cal. Code Regs., tit. 8, § 9792.9.1.)<sup>1</sup>

Further, in her Report the WCJ discusses the fact that in the Petition applicant raised issues that “were not raised at trial nor were they discussed by the parties during the three Expedited Hearings conducted on the issue of Dr. Miller’s RFA.” (Report, p. 9.) Although, the Appeals Board has the authority to address issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration (Lab. Code, §§ 5906, 5908; *Great Western Power Co. v. Industrial Acc. Com.* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]); *Pasquotto v.*

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<sup>1</sup> Again, it is important for treating physicians to understand that in order to warrant an expedited review of a Request for Authorization, the requesting physician must provide written information establishing and explaining why the injured worker faces an imminent and serious threat to his or her health. Absent that type of supporting evidence, the Request will be subject to the five business day timeframe. (Cal. Code Regs., tit. 8, § 9792.9.1(c)(3) and (c)(4).)

*Hayward Lumber* (2006) 71 Cal.Comp.Cases 223, 229 - 230, fn. 7 (Appeals Board en banc)), we do not address issues raised for the first time in the petition for reconsideration. To do so would clearly be contrary to due process. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151 [65 Cal.Comp.Cases 805]; *Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd. (Pinkney)* (1994) 26 Cal.App.4th 789 [59 Cal.Comp.Cases 461].)

Accordingly, we deny reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings and Order issued by the WCJ on May 24, 2023, is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**August 14, 2023**

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

**FRANK DIAZ  
SOLOV AND TEITELL, A.P.C.  
STATE COMPENSATION INSURANCE FUND, LEGAL**

**TLH/mc**

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *mc*