

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

MARICELA LEON, *Applicant*

vs.

**ADVANCE BUIDING MAINTENANCE INC.;
SECURITY NATIONAL INSURANCE COMPANY;
Adjusted by AMTRUST CONCORD, *Defendants***

**Adjudication Number: ADJ15513907
Redding District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION AND
DECISION AFTER RECONSIDERATION**

Applicant seeks reconsideration of the February 8, 2023, Findings of Fact wherein the workers' compensation administrative law judge (WCJ) found that the WCAB did not have jurisdiction to address the reasonableness and necessity of medical treatment because the December 7, 2022, utilization review (UR) determination was timely.

Applicant contends that the UR decision was untimely because the decision was not served on applicant's counsel within two days of the decision date as required by California Code of Regulations, title 8, section 9792.9.1(e)(3).

We have reviewed the record in this matter. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that the petition be denied. For the reasons discussed below, we will grant applicant's Petition, rescind the Findings of Fact, and return this matter to the trial level for further proceedings and a new decision.

Labor Code section 4600 requires the employer to provide reasonable medical treatment to cure or relieve from the effects of an industrial injury. (Lab. Code, § 4600(a).) Employers are required to establish a UR process for treatment requests received from physicians. (Lab. Code,

§ 4610; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230, 236.)

In *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298, 1299 (Appeals Bd. en banc) (*Dubon II*), the Appeals Board held that if a UR decision is untimely, the UR decision is invalid and not subject to independent medical review (IMR). The *Dubon II* decision further held that the Appeals Board has jurisdiction to determine whether a UR decision is timely. (*Id.*) If a UR decision is untimely, the determination of medical necessity for the treatment requested may be made by the Appeals Board. (*Id.* at p. 1300.) However, “where a UR decision is timely, IMR is the sole vehicle for reviewing the UR physician’s expert opinion regarding the medical necessity of a proposed treatment.” (*Id.* at pp. 1310-1311; see also Lab. Code, §§ 4062(b), 4610.5.)

After *Dubon II*, in a significant panel decision, the Appeals Board held that a UR decision that is timely made, but is not timely communicated, is untimely. (*Bodam v. San Bernardino County/Dept. of Social Services* (2014) 79 Cal.Comp.Cases 1519.)¹ In *Bodam*, the employer did not notify the requesting physician of its UR decision within 24 hours and did not send written notice of the UR decision to the physician, applicant, or applicant’s attorney within two business days after the UR decision was made. (*Id.* at p. 1523.) The UR decision was therefore deemed untimely, and the Appeals Board had authority to determine the issue of medical necessity for the disputed treatment.

Here, “[w]as the 12/07/2022 UR determination made in a timely fashion?” was an issue raised at trial. (January 10, 2023, Minutes of Hearing and Summary of Evidence, p.2.) The WCJ considered whether the UR determination was timely made but did not take the next step and analyze whether the determination was timely communicated to applicant’s attorney. Given the holding in *Bodam*, the WCJ was required to address this issue in order to determine timeliness. In addition, it is defendant’s burden to show the UR decision was timely.

Therefore, we grant reconsideration, rescind the Findings of Fact, and return this matter to the trial level for further proceedings and a new decision consistent with this opinion.

¹ In *Bodam*, the panel held:

- (1) A defendant is obligated to comply with all time requirements in conducting UR, including the timeframes for communicating the UR decision;
- (2) A UR decision that is timely made but is not timely communicated is untimely;
- (3) When a UR decision is untimely and, therefore, invalid, the necessity of the medical treatment at issue may be determined by the WCAB based upon substantial evidence. (*Bodam, supra*, at p.1512.)

For the foregoing reasons,

IT IS ORDERED that lien applicant's Petition for Reconsideration of the February 8, 2023 Findings of Fact is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the February 8, 2023 Findings of Fact is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings and a new decision consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 12, 2023

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

**MARICELA LEON
LEEP TESCHER HELFMAN AND ZANZE
HANNA, BROPHY, MacLEAN, McALEER & JENSEN, LLP**

MWH/mc

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