

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

SAMUEL COVINGTON, *Applicant*

vs.

**COSTCO WHOLESALE CORPORATION, permissibly self insured;
administered by HELMSMAN MANAGEMENT,
*Defendants***

**Adjudication Number: ADJ12205629
Oakland District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

The Appeals Board previously granted reconsideration to further study the factual and legal issues in this case.¹ This is our decision after reconsideration.

Applicant, in pro per, seeks reconsideration of the April 6, 2023 Findings of Fact wherein the workers' compensation administrative law judge (WCJ) found that applicant sustained injury to his right ankle arising out of and in the course of employment (AOE/COE) and that applicant was not entitled to further medical treatment for his industrial injury.

Applicant contends that based on the medical evidence, he will require further medical treatment.

Defendant filed an answer. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. Based on our review of the record, and for the reasons discussed herein, we affirm the WCJ's decision, except that we will amend the Findings of Fact to find that applicant is entitled to future medical care.

¹ Commissioner Palugyai, who was on the panel that issued the order granting reconsideration, no longer serves on the Appeals Board. Another panelist was appointed in her place.

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).) An award of medical care “reasonably required to cure or relieve the injured employee of the effects of his or her injury” is not an award of a specific treatment.

Whether a specific treatment is reasonable and necessary is typically determined through utilization review (UR). 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.)

In this case, we disagree with the WCJ’s conclusion that they “[do] not have the power to award a future medical” based on the panel qualified medical evaluator (QME)’s present reporting. (Report and Recommendation p. 3.) Specifically, we note that applicant need not establish that he will certainly need future medical care for an award of future medical care to issue and the appropriate way for a defendant to dispute whether treatment is reasonable and necessary is through the UR process. (See Lab. Code, § 4610.)²

Therefore, we affirm the Findings of Fact, except that we amend it to find that applicant is entitled to future medical care to cure or relieve him from the effects of the industrial injuries.

² In this case, applicant submitted treatment records (Exh. AA, Concentra Medical Center Medical Reports, pp. 64-65 (service dated May 13, 2021)) that show that applicant continued to seek and receive medical treatment to his right ankle long after the September 27, 2020 PQME report by Dr. Patrick McGahan relied on by the WCJ in which Dr. McGahan opined that “no further treatment warranted for the right ankle” because of the industrial injury.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued by the WCJ on April 6, 2023 is **AFFIRMED EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

4. Applicant is entitled to further medical care to cure or relive from the effects of this industrial injury.

AWARD

Award is made in favor of SAMUEL COVINGTON and against COSTCO WHOLESALE CORPORATION, permissibly self insured; administered by HELMSMAN MANAGEMENT as follows:

All further medical treatment reasonably required to cure or relieve from the effects of the injury herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 23, 2024

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

**SAMUEL COVINGTON (pro per)
LAW OFFICES OF GILSON DAUB**

LN/pm

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