

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

OSCAR QUINONES, *Applicant*

vs.

**CORONA AUTO PARTS RECYCLING; STAR INSURANCE COMPANY; administered
by MEADOWBROOK INSURANCE, *Defendants***

**Adjudication Number: ADJ12994937
Riverside District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, and for the reasons stated below, we will deny reconsideration.

As relevant here, Administrative Director Rule 9792.6.1(t)(3) provides that the request for authorization "must be signed by the treating physician and may be mailed, faxed or e-mailed to, if designated, *the address, fax number, or e-mail address designated by the claims administrator for this purpose....*" (Cal. Code Regs., tit. 8, § 9792.6.1(t)(3), emphasis added.) We agree with the WCJ that applicant did not fax the request for authorization (RFA) to the fax number designated by defendant for that purpose. Consequently, we also agree that defendant's utilization review (UR) denial was not untimely.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DEIDRA E. LOWE, COMMISSIONER
CONCUR NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 27, 2021

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

**OSCAR QUINONES
LAW OFFICES OF LUCY BISHOP
GILSON DAUB**

PAG/pc

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

**REPORT & RECOMMENDATION ON PETITION FOR
RECONSIDERATION**

**I
INTRODUCTION**

1. Date of Injury: November 15, 2017
2. Age on DOI: 56
3. Occupation: Driver
4. Parts of Body Injured: Low back
5. Identity of Petitioner: Oscar Quinones
6. Timeliness: Petition was timely filed on October 28, 2021
7. Verification: The petition was verified
8. Date of Findings/Order: October 8, 2021

**II
FACTS**

Oscar Quinones, a 56 year old driver, sustained injury arising out of and in the course of his employment to his low back while employed by Corona Auto Parts Recycling on November 15, 2017. As a result of said injury applicant most recently has been treated by Kambiz Hannani MD. In February and March of 2021 Dr. Hannani had recommended treatment with Request for Authorization (RFA) dated February 15, 2021 and March 8, 2021 specifically recommending surgery consisting of L4-5 and L3-4 decompression. Additionally, Dr. Hannani requested authorization for preoperative clearance, sessions of physical therapy pre and post-op, raised toilet seat, one day hospital stay, and orthopedic assistance surgeon. RFA's were faxed by applicant's counsel directed to a general fax number of defendant on April 5, 2021. Prior to that date defendant had communicated to applicant's counsel on April 21, 2020 providing a specific and different fax number or e-mail address for purpose of utilization review requests. Ultimately, Utilization Review (UR) denied the care per decision dated April 19, 2021.

This matter proceeded to expedited hearing before the Honorable Workers Compensation Judge (WCJ) Jeffrey Wilson on August 23, 2021. Issues raised at that time were limited to whether Dr. Hannani's RFA's were properly sent to defendant to initiate the utilization review process, whether defendant timely conducted utilization review and hence issued timely denial, and lastly if defendant's denial was untimely, whether the recommended treatment is reasonable and necessary. In addition to documentary evidence offered by both parties, defendant produced testimony of witness Joseph Sgro, Vice President of Workers' Compensation Claims for AmeriTrust.

III DISCUSSION

In attempting to sort out the facts presented at hearing, there appears to be no question that Dr. Hannani issued reports and accompanying RFA's dated February 15, 2021 (Applicant Exhibit 1) and March 8, 2021 (Applicant's Exhibit 2). These exhibits clearly reflect that the RFA's were faxed to applicant's counsel on the following days and with receipt stamped on February 17 and March 10 respectively. No evidence has been provided as to whether Dr. Hannani served defendant with the RFA's, and if so when. While this question remains, there appears to be no question that applicant's counsel did serve defendant with the RFA's and related medical reports on April 5, 2021 by way of fax directed to defendant's adjuster Marquez Ford and at a fax #855-858-8817 (Applicant's Exhibits 4) and with fax confirmation received the same date (Applicant's Exhibit 5). The fax number addressed is a fax number referred to in a prior letter dated March 31, 2021 with AmeriTrust heading and issued by defendant's adjuster (Joint Exhibit 2). The fax number and an e-mail address was provided at that time in the context of allowing applicant to obtain medical records and to avoid duplication or incurring unnecessary litigation.

It is defendant's contention that the RFA's in question and April 5, 2021 proof of service were not received by the carrier until April 13, 2021, and with UR issuing denial on April 19, 2021. As April 17 and 18th fall on a Saturday and Sunday, UR denial was arguably timely and within the 5 business days required under CCR9792.9.1. Defendant further argues that applicant's counsel was provided with a direct and different fax # (855-603-8407) to address RFA's as noted in letter from defendant AmeriTrust directed to applicant's counsel dated April 21, 2020 (Defendant's Exhibit A). To further support this argument, defense witness Joseph Sgro testified generally that the fax number utilized by applicant's counsel in transmitting the RFA's is a general fax number for the organization, and not applicable to utilization review. Further, a team receiving documents under the general number may not be aware of the magnitude or importance of the RFA document. Hence, it is defendant's position that such documents should be interpreted as not received or unserved on such date.

In addressing the issues and evidence before this WCJ, there appears to be no question that defendant did establish a Utilization Review Process consistent with the mandate of Labor Code Section 4610 and to further comply with CCR9792.9.1. Communication was provided to applicant's counsel on April 21, 2020 (Defendant's Exhibit A) further supporting the process, and notifying that "All Utilization Review requests should be sent via fax to 855-603-8407, or via email to: authorizations@ameritrustgroup.com". In referring to this exhibit (inadvertently misdated 4/21/2021 in Minutes of Hearing, 8/23/2021, page 4, line 5), defense witness Joseph Sgro testified that such communication was part of the utilization plan to expedite treatment by requiring documents to be sent to those addresses particularly noted. It was expected that there would be

adherence to those requirements (Minutes of Hearing 8/23/2021, page 4, lines 8-10). The witness further noted the fax number utilized by applicant's counsel was not a proper UR fax number but rather a general organization fax, and with a receiving "team" not necessarily aware of the magnitude of the RFA/UR (Minutes of Hearing 8/23/2021, page 4, lines 13-17). While admitting that he was not the adjuster on this case (the adjuster had resigned), based on the witness' review of claim notes and records the RFA's noted above were received on April 13, 2021 and addressed within the statutory time frame.

While recognizing arguments raised by the parties, and evidence before the Board including in part hearsay testimony of witness Sgro, this WCJ determined that such evidence, on its face, does support a finding that the utilization review process was not appropriately initiated on April 5, 2021. The issue largely rested on whether applicant's attorney faxing a RFA to a general number different from a number designated by defendant for RFA service invokes the time limits set forth in CCR9792.9.1. In the present matter defendant did provide procedures for submission of RFAs and utilization review consistent with, and as required, under Labor Code 4610(g)(2)(A) and CCR 9792.9.1(a)(3). Further, defendant did provide applicant's counsel with notice of appropriate contact for UR purposes. While admittedly providing the parties with a general fax number to obtain records per letter of 3/21/2021 (Joint Exhibit 2), this is clearly a different fax number noticed for Utilization Review requests noted in communication April 21, 2020 (Defendant's Exhibit A). As there was a failure to fax RFA's in question to the designated fax number, this WCJ determined that the UR process was not initiated at that time or specifically on April 5, 2021. As the utilization review process as defined under the labor code was not appropriately initiated, applicant has failed to meet its burden of proof that utilization review was untimely.

IV **RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied.

DATE: 11/10/2021
Jeffrey Wilson
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE