

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

RAMONA MELERO, *Applicant*

vs.

**DOROTHY SHEA ENDEAVORS;
ALLIANZ RESOLUTION MANAGEMENT,
administered by ESIS, *Defendants***

**Adjudication Number: ADJ3937799
Santa Barbara District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted both applicant, and defendant's Petitions for Reconsideration of the Findings of Fact and Order (F&O) issued on December 31, 2020, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues.¹ This is our Opinion and Decision After Reconsideration.

The WCJ found that defendant timely completed utilization review ("UR") in this matter and that no grounds existed to reverse the Independent Medical Review ("IMR") decision, which denied applicant's request for home health care.

Applicant contends that the utilization reviewer improperly delayed the request in this matter to require the primary treater to state the number of weeks that home health care was required.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsiderations and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, and

¹ Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board and a new panel member was appointed in her place.

for the reasons stated in the WCJ's Report, as our Decision After Reconsideration we affirm the December 31, 2020 F&O.

FACTS

Per the WCJ's Report:

Applicant sustained an industrial injury that was resolved by way of a Stipulated Findings and Award with a provision for future medical care.

Dr. Alan Moelleken, M.D. issued a medical report together with a request for Authorization (RFA) on or about December 18, 2019. The RFA was for Applicant to receive twenty-three (23) hours per week of home care/attendant care.

Defendant received the 12/28/2019 report and RFA on January 28, 2020.

On February 3, 2020, the utilization reviewer requested additional information from Dr. Moelleken.

On February 11, 2020 utilization review issued a denial of the requested treatment. Following trial, the WCJ opined the utilization review was performed in a timely manner and pursuant to *Dubon* and therefore the WCJ lacked jurisdiction to act on the utilization review determination.

(WCJ's Report, p. 2.)

DISCUSSION

I.

Only the Appeals Board is statutorily authorized to issue a decision on a petition for reconsideration. (Lab. Code, §§ 112, 115, 5301, 5901, 5908.5, 5950; see Cal. Code Regs., tit. 8, §§ 10320, 10330.)² The Appeals Board must conduct de novo review as to the merits of the petition and review the entire proceedings in the case. (Lab. Code, §§ 5906, 5908; see Lab. Code, §§ 5301, 5315, 5701, 5911.) Once a final decision by the Appeals Board on the merits of the petition issues, the parties may seek review under Labor Code section 5950, but appellate review is limited to review of the record certified by the Appeals Board. (Lab. Code, §§ 5901, 5951.)

² The use of the term 'appeals board' throughout the Labor Code refers to the Appeals Board and not a DWC district office. (See e.g., Lab. Code, §§ 110, et. seq. (Specifically, § 110 (a) provides: "'Appeals board' means the Workers' Compensation Appeals Board. The title of a member of the board is 'commissioner.'") Section 111 clearly spells out that the Appeals Board and DWC are two different entities.

Former Labor Code section 5909 provided that a petition was denied by operation of law if the Appeals Board did not “act on” the petition within 60 days of the petition’s filing with the ‘appeals board’ and not within 60 days of its filing at a DWC district office. A petition for reconsideration is initially filed at a DWC district office so that the WCJ may review the petition in the first instance and determine whether their decision is legally correct and based on substantial evidence. Then the WCJ determines whether to timely rescind their decision, or to prepare a report on the petition and transmit the case to the Appeals Board to act on the petition. (Cal. Code Regs., tit. 8, §§ 10961, 10962.)³ Once the Appeals Board receives the case file, it also receives the petition in the case file, and the Appeals Board can then “act” on the petition.

If the case file is never sent to the Appeals Board, the Appeals Board does not receive the petition contained in the case file. On rare occasions, due to an administrative error by the district office, a case is not sent to the Appeals Board before the lapse of the 60-day period. On other rare occasions, the case file may be transmitted, but may not be received and processed by the Appeals Board within the 60-day period, due to an administrative error or other similar occurrence. When the Appeals Board does not review the petition within 60 days due to irregularities outside the petitioner’s control, and the 60-day period lapses through no fault of the petitioner, the Appeals Board must then consider whether circumstances exist to allow an equitable remedy, such as equitable tolling.

It is well-settled that the Appeals Board has broad equitable powers. (*Kaiser Foundation Hospitals v. Workers’ Compensation Appeals Board* (1978) 83 Cal.App.3d 413, 418 [43 Cal.Comp.Cases 785] citing *Bankers Indem. Ins. Co. v. Indus. Acc. Com.* (1935) 4 Cal.2d 89, 94-98 [47 P.2d 719]; see *Truck Ins. Exchange v. Workers’ Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers’ Comp. Appeals Bd. (Lutz)* (2013) 218 Cal.App.4th 258, 268 [78 Cal.Comp.Cases 758]; *Dyer v. Workers’ Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [59 Cal.Comp.Cases 96].) It is an issue of

³ Petitions for reconsideration are required to be filed at the district office and are not directly filed with the Appeals Board. (Cal. Code Regs., tit. 8, § 10995(b); see Cal. Code Regs., tit. 8, § 10205(l) [defining a “district office” as a “trial level workers’ compensation court.”].) Although the Appeals Board and the DWC district office are separate entities, they do not maintain separate case files; instead, there is only one case file, and it is maintained at the trial level by DWC. (Cal. Code Regs., tit. 8, § 10205.4.)

When a petition for reconsideration is filed, the petition is automatically routed electronically through the Electronic Adjudication Management System (EAMS) to the WCJ to review the petition. Thereafter, the entire case file, *including the petition for reconsideration*, is then electronically transmitted, i.e., sent, from the DWC district office to the Appeals Board for review.

fact whether an equitable doctrine such as laches applies. (*Kwok, supra* 2 Cal.App.5th at p. 402.) The doctrine of equitable tolling applies to workers' compensation cases, and the analysis turns on the factual determination of whether an opposing party received notice and will suffer prejudice if equitable tolling is permitted. (*Elkins v. Derby* (1974) 12 Cal.3d 410, 412 [39 Cal.Comp.Cases 624].) As explained above, only the Appeals Board is empowered to make this factual determination.⁴

In *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493], the Appeals Board denied applicant's petition for reconsideration because it had not acted on the petition within the statutory time limits of Labor Code section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board's decision holding that the time to act on applicant's petition was tolled during the period that the file was misplaced, especially in light of the fact that the Appeals Board had repeatedly assured the petitioner that it would rule on the merits of the petition. (*Id.*, at p. 1108.)

Like the Court in *Shipley*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." (*Ibid.*) The touchstone of the workers' compensation system is our constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.) "Substantial justice" is not a euphemism for inadequate justice. Instead, it is an exhortation that the workers' compensation system must focus on the *substance* of justice, rather than on the arcana or minutiae of its administration. (See Lab. Code, § 4709 ["No informality in any proceeding . . . shall invalidate any order, decision, award, or rule made and filed as specified in this division."].)

With that goal in mind, all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) If a timely filed petition is never considered by the Appeals Board because it is "deemed denied" due to an administrative irregularity not within the control of the parties, the petitioning party is deprived of their right to a decision on the merits of the petition.

⁴ Labor Code section 5952 sets forth the scope of appellate review, and states that: "Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence." (Lab. Code, § 5952; see Lab. Code, § 5953.)

(Lab. Code, §5908.5; see *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 754-755 [33 Cal.Comp.Cases 350]; *LeVesque, supra* 1 Cal.3d 627, 635.) Just as significantly, the parties' ability to seek meaningful appellate review is compromised, raising issues of due process. (Lab. Code, §§ 5901, 5950, 5952; see *Evans, supra*, 68 Cal.2d 753.)

Substantial justice is not compatible with such a result. A litigant should not be deprived of their due process rights based upon the administrative errors of a third party, for which they bear no blame and over whom they have no control. This is doubly true when the Appeals Board's action in granting a petition for reconsideration has indicated to the parties that we will exercise jurisdiction and issue a final decision on the merits of the petition, and when, as a result of that representation, the petitioner has forgone any attempt to seek judicial review of the "deemed denial." Having induced a petitioner not to seek review by granting the petition, it would be the height of injustice to then leave the petitioner with no remedy.

In this case, the WCJ issued the Findings and Order on December 31, 2020, and applicant filed a petition for reconsideration on January 25, 2021. According to EAMS, the WCJ generated a report and transmitted the petitions to the Appeals Board on February 4, 2021. However, neither the Report, the Petition for Reconsideration, nor the EAMS case file was timely transmitted to the Appeals Board for determination. The file was first transmitted to the Appeals Board on July 21, 2022. The Appeals Board granted reconsideration within 60 days thereafter on September 19, 2022. We have determined that the facts of this case warrant tolling and that we have jurisdiction to decide applicant's petition for reconsideration on the merits.

II.

Applicant only challenges the finding that defendant timely completed UR.

The Administrative Director's regulations generally require that a request for authorization ("RFA") of medical treatment be submitted on DWC Form RFA. (See Cal. Code Regs., tit. 8, §§ 9792.9.1, 9792.6.1(t).) "The utilization review process begins when the completed DWC Form RFA, or a request for authorization accepted as complete under section 9792.9.1(c)(2), is first received by the claims administrator, or in the case of prior authorization, when the treating physician satisfies the conditions described in the utilization review plan for prior authorization." (Cal. Code Regs., tit. 8, §§ 9792.6.1(y).)

Defendant generally has five business days to conduct prospective unitization review of the RFA. (Cal. Code Regs., tit. 8, § 9792.9.1(c).) When a defendant does not timely conduct UR,

the dispute is subject to an expedited hearing and determination by the WCAB as to the reasonable and medical necessity of the medical treatment. (*Dubon v. World Restoration, Inc.*, (2014) 79 Cal. Comp. Cases 1298 (Appeals Board en banc) (writ den.) (*Dubon II*); see *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230; § 5502.) However, a defendant may delay UR for multiple reasons, including where additional information is required to complete the review. (Cal. Code Regs., tit. 8, § 9792.9.1(f)(1)(A).) In such a case, prospective UR may be conducted up to 14 calendar days from receipt of the original RFA. (Cal. Code Regs., tit. 8, § 9792.9.1(f)(3).)

Here, the evidence shows that defendant properly issued a delay letter within 5 business days of its receipt of the RFA. (Defendant's Exhibit A.) The evidence further shows that defendant completed its UR determination within 14 days. (Defendant's Exhibit B.)

Defendant delayed UR to clarify the specific treatment required within the home health care plan and to verify the number of weeks requested. (Defendant's Exhibit A.) Applicant argues that the reasons for defendant's delay were already known to defendant at the time of the delay, and thus defendant improperly delayed the determination in this matter. However, there is no evidence in the record establishing this argument. The adjuster was not called to testify. The relevant portions of the claims file are not in evidence. Without any evidence establishing this argument, we are compelled to affirm the WCJ's decision. (See *Hamilton v. Lockheed Corporation* (2001) 66 Cal. Comp. Cases 473 (Appeals Board en banc).)⁵

We have considered the possibility of developing the record on this point, however, given the passage of time since this initial dispute arose and given that the parties may at this point simply resubmit the matter to UR and/or IMR, the more prudent procedure would be to simply return this case to the trial level.

Accordingly, as our Decision After Reconsideration we will affirm the Findings of Fact and Order issued on December 31, 2020.

⁵ Notwithstanding the lack of evidence, we would remind defendant of its duty under AD Rule 10109 to conduct a good faith investigation of a claim and that defendant "may not restrict its investigation to preparing objections or defenses to a claim, but must fully and fairly gather the pertinent information, whether that information requires or excuses benefit payment." (Cal. Code Regs., tit. 8, § 10109(b)(1).)

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that Findings of Fact and Order issued on December 31, 2020, by the WCJ is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 7, 2025

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

**RAMONA MELERO
HOURIGAN, HOLZMAN & SPRAGUE, LLP
LEWIS BRISBOIS BISGAARD & SMITH LLP**

EDL/mc

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