

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

**CLARA GOLDASSIO, *Applicant***

**vs.**

**WALMART, INC.;  
ACE AMERICAN INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ14305554  
Santa Rosa District Office**

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

Applicant seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on March 4, 2026, wherein the WCJ found that applicant did not timely raise the issue of the timeliness of a December 3, 2024 utilization review (UR) determination. He ordered that the request for court review was dismissed as untimely.

Applicant contends that the evidence required the WCJ to find that the UR determination was untimely under Labor Code section 4610, and that accordingly, as permitted by the Appeals Board's en banc holding in *Dubon v. World Restoration, Inc., et al.* (2014) 79 Cal.Comp.Cases 1298 (*Dubon II*), the WCJ should have found that the requested treatment, a left shoulder total replacement and left biceps tenotomy surgery, is reasonable and necessary based on medical reports that were offered into evidence but neither admitted nor considered by the WCJ.

We did not receive an Answer from defendant. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ, which recommends that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and return this matter to the trial level for further proceedings consistent with this decision.

## FACTS

At trial, the parties agreed to submit issues including permanent disability, apportionment, need for further medical treatment, and applicant's contention that the UR determination non-certifying shoulder surgery was untimely. (Minutes of Hearing and Summary of Evidence dated December 30, 2025, page 2, lines 40-41; Pre-Trial Conference Statement dated October 21, 2025, page 3.)

The WCJ chose to bifurcate the trial and submit only the issue of whether the applicant's request for authorization of shoulder surgery was timely denied, and if not, whether or not it is reasonably necessary to treat applicant's admitted industrial injury of April 15, 2019 to her neck, bilateral shoulders, back, and bilateral wrists while employed as a department manager for defendant. (Minutes of Hearing and Summary of Evidence dated December 30, 2025, page 2, lines 8-16 and 40-47.)

At trial, the WCJ admitted the UR determination of December 3, 2024 as Defense Exhibit A. The UR determination, unfavorable to applicant, indicates on its face that the request for authorization was received on November 22, 2024, a completed medical record was received on November 29, 2024, and the date of the decision to non-certify a left shoulder replacement, biceps tenotomy, and surgical assistant was December 3, 2024. Also admitted were a subsequent UR determination dated December 23, 2024, which simply rejects a request of December 3, 2024 as an "inappropriate duplicate" of the previous request (Defense Exhibit B), and an Independent Medical Review (IMR) determination dated February 3, 2025, upholding the UR denial of December 3, 2024 (Defense Exhibit C). (Minutes of Hearing and Summary of Evidence dated December 30, 2025, page 4, lines 5-12.)

The WCJ also admitted four reports of Qualified Medical Evaluator (QME) Michael G. Ridgeway, D.C., as Joint Exhibits J1 through J4, but declined to admit seven exhibits offered by applicant: six reports of treating physician Neena Pourtaheri, M.D. (Applicant's Exhibits 1 through 6) and an e-mail from applicant's attorney to the carrier, including RFA, dated September 11, 2024 (Applicant's Exhibit 7). (*Id.* page 3, lines 9-47.) The WCJ did not identify any objection or grounds to exclude applicant's exhibits, but indicated in the minutes of hearing that "[a] decision regarding their admissibility will be made at the time a decision on this issue is rendered." (*Id.* page 4, lines 1-3.)

On March 4, 2026, the WCJ issued an F&O, with the following pertinent findings of fact:

3. A request for authorization for shoulder and bicep surgery was received on 11/22/2024.
4. The issue of whether the UR denial issued 12/3/2024 [sic].
5. The issue was submitted to the court for consideration December 30, 2025.
6. The issue was not submitted to the court for decision timely.
7. The request for court review is moot.

(F&O, page 1, Findings 3-7.)

These findings are followed by an order that reads as follows: “It is ordered that the request for court review is dismissed as untimely.” The WCJ made no decision with respect to whether applicant’s exhibits were admissible.

## DISCUSSION

### I

Former Labor Code<sup>1</sup> section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
  - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
  - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on April 13, 2026 and 60 days from the date of transmission is Friday, June 12, 2026. This decision is issued by or

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<sup>1</sup> Any further section references are to the California Labor Code unless otherwise noted.

on Friday, June 12, 2026 so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on April 13, 2026, and the case was transmitted to the Appeals Board on April 13, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 13, 2026.

## II

Section 4600(b) provides that “medical treatment that is reasonably required to cure or relieve the injured worker from the effects of the worker’s injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27.” (Lab. Code, § 4600(b).) Section 5307.27 specifies that these guidelines refer to the Medical Treatment Utilization Schedule (MTUS). (Lab. Code, § 5307.27(a).) The MTUS can be found in AD Rules 9792.20 through 9792.27.23 (Cal. Code Regs., tit. 8, §§ 9792.20-9792.27.23). The MTUS is presumptively correct on the extent and scope of treatment and is the primary source of guidance for physicians. (Lab. Code, § 4604.5(a); Cal. Code Regs., tit. 8, § 9792.21(c).) However, the MTUS may be rebutted, and treatment may be warranted based on recommendations outside the MTUS in limited situations. (Cal. Code Regs., tit. 8, § 9792.21(d); see also Lab. Code, § 4604.5(d).)

If a UR decision is untimely, the determination of medical necessity must be made by the WCAB based on substantial medical evidence consistent with the MTUS. (*Dubon II, supra*, 79 Cal.Comp.Cases at 1300.)

As explained below, in this case, the UR determination of December 3, 2024 (Defense Exhibit A) was not timely, but additional evidence is necessary in order for the WCJ to determine medical necessity as required under *Dubon II*.

Section 4610(i) requires that prospective or concurrent UR decisions be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five normal business days from the receipt of a request for authorization for medical treatment and supporting information reasonably necessary to make the determination, but in no event more than 14 days from the date of the medical treatment recommendation by the physician. (Lab. Code, § 4610.) At the time of the December 3, 2024 UR determination in this case, former AD Rule 9792.9.1(f) (Cal. Code Regs., tit. 8, § 9792.9.1)<sup>2</sup> imposed the further requirement that where the claims administrator or reviewer is not in receipt of all of the information reasonably necessary to make a determination, a reviewer or non-physician reviewer shall request the information from the treating physician within five business days from the date of receipt of the request for authorization. (Former Cal. Code Regs., tit. 8, § 9791.1(f)(1)(A) and (2)(A).)

Although the UR determination states that a “completed medical” was received on November 29, 2024, it also states that the request for authorization was received on November 22, 2024, and there is no evidence that a reviewer or non-physician reviewer either requested missing information from the treating physician within five business days from the date of receipt of the request for authorization as required by former AD Rule 9792.9.1(f), or made a UR determination as required by section 4610(i)(1). We note that the latest possible date for either a UR determination or request for required information in this case would have been December 2, 2024, counting five “business days” after the receipt of the request for authorization on November 22, 2024, but excluding the following days: Saturday, November 23, 2024, Sunday, November 24, 2024, Thursday, November 28, 2024 (Thanksgiving Day), Saturday, November 30, 2024, and Sunday, December 1, 2024. Although state workers do not work on the Friday after Thanksgiving, it is generally not considered a business day for purposes of statutory and regulatory timeframes governing UR. (See *Cal. Dep't of Corr. & Rehab. Parole & Cmty. Servs. v. Workers' Comp. Appeals Bd. (Gomez)* (2018) 83 Cal.Comp.Cases 530 (writ den.); *Pa'u v. Department of*

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<sup>2</sup> This regulation has since been amended, effective April 1, 2026. Current AD Rule 9792.9.6(b)(1) imposes essentially the same requirement.

*Forestry/CalFire* (2019) 84 Cal. Comp. Cases 815 (Appeals Board Significant Panel Decision); Govt. Code, § 6700(a)(20).)

Contrary to the WCJ's conclusion that he did not have jurisdiction to address the untimely UR determination, the statutes and regulations do not include an "expiration date" for an existing UR determination except under limited circumstances. Section 4610(k) states that: "A utilization review decision to modify or deny a treatment recommendation shall remain effective for 12 months from the date of the decision *without further action by the employer* with regard to a further recommendation by the same physician. . . for the same treatment unless the further recommendation is supported by a documented change in the facts material to the basis of the utilization review decision." (Lab. Code, § 4610(k), emphasis added.) We do not interpret section 4610(k) as setting an overall one year expiration period for a UR determination; instead, it sets the parameters for both employees and employers to engage in the UR process when the physician continues to recommend the same treatment. The phrase "*without further action by the employer*" means that an employer need not take action during the one year period when it receives duplicate recommendations for the same treatment. While it is true that here applicant could simply resubmit the request after one year under section 4610(k), it appears that subdivision (k) is designed to avoid clogging the system with multiple duplicate requests and to achieve finality. We do not see that requiring applicant to resubmit the request when there is already an existing UR determination is consistent with the statutory framework.

Otherwise, the statutes and regulations do not provide any specific limitations on the period of time within which the WCAB may act. Section 4604 states that: "Controversies between employer and employee arising under this chapter shall be determined by the appeals board, upon the request of either party, except as otherwise provided by Section 4610.5." Section 4610.5 sets forth the process for an employee to challenge a timely UR determination by way of independent medical review (IMR); it does not address the WCAB's jurisdiction to consider an untimely UR determination. (See *Dubon II*, *supra*, 79 Cal.Comp.Cases at 1300.) Hence, the WCAB has the jurisdiction to consider the issue under the authority conferred by sections 4604, 5300, 5301, and 5304.

Under *Dubon II*, the WCJ therefore has jurisdiction to determine the issue of whether the left shoulder replacement, biceps tenotomy, and surgical assistant requested by Dr. Pourtaheri are

reasonable and necessary. That determination will require development of the record to obtain current medical evidence addressing criteria set forth in the current MTUS.

The WCJ may and ordinarily should receive the reports of attending or examining physicians as evidence either at or subsequent to a hearing and may use them as proof of any fact in dispute. (Lab. Code, § 5703.) Absent an objection or other grounds to exclude applicant's exhibits, which consisted of the reports of Dr. Pourtaheri and a communication that included her request for authorization, those exhibits ought to have been admitted into evidence by the WCJ and considered prior to issuing a decision. A supplemental report of Dr. Pourtaheri should also be solicited by the WCJ to ensure the availability of current, germane medical evidence from a physician who has already reported in the case. (See *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 613 (Appeals Board en banc); *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) Generally, unless stipulated by the parties, the opinions of a QME are not pertinent when the issue is a dispute over a request for medical treatment. (See Cal. Code Regs., tit. 8, § 35.5(g)(2); see also Lab. Code, § 4610.)

Accordingly, we grant the Petition for Reconsideration, and as our decision after reconsideration, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration of the Findings and Order of March 4, 2026 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued by the WCJ on March 4, 2026 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ PAUL F. KELLY, COMMISSIONER**

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



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

**June 9, 2026**

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

**CLARA GOLDASSIO  
LAW OFFICE OF RICHARD J. MEECHAN  
MULLEN & FILIPPI**

**CWF/pm**

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