WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

DIMIDRIOS KOKKINIAS, ***Applicant***

vs.

SONFARREL,
INCORPORATED; COMPWEST INSURANCE COMPANY, ***Defendants***

Adjudication Number: ADJ11091794
Van Nuys District Office

OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact and Order (F&O) issued on April 27, 2022, wherein the workers' compensation administrative law judge (WCJ) found that (1) the Utilization Review (UR) determination of Dr. Patterson's May 17, 2021 RFA was untimely based upon the lack of evidence that it was timely communicated to applicant or applicant's primary treating physician (PTP); (2) the UR determination of Dr. Rho's June 9, 2021 RFA was untimely because it was issued on June 19, 2021; (3) the WCJ has jurisdiction to award medical treatment found to be reasonable and necessary; and (4) all of the parties' exhibits offered at trial are admitted into evidence.

The WCJ ordered that defendant timely authorize (1) continued home health aide services of 12 hours per day, 7 days per week for three months; (2) continued RN/LVN weekly visits for medication management for three months; (3) Humatrope per Dr. Patterson's May 17, 2021 RFA; and TFE injection of applicant's left L3, 4, per Dr. Rho's June 9, 2021 RFA. The WCJ further ordered that applicant's treatments following the three-month period ordered above are subject to UR and IMR.

Defendant contends that the WCJ erroneously determined that the UR determinations of Dr. Patterson's May 17, 2021 RFA were untimely. Defendant also contends that the WCJ erroneously determined that the left L 3, 4, TFE injection requested by Dr. Rho's June 9, 2021 RFA was reasonable and necessary.

We did not receive an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have reviewed the Petition for Reconsideration and the contents of the Report. Based upon our review of the record, we will deny the Petition.

FACTUAL BACKGROUND

On January 12, 2022, the matter proceeded to trial of the following issues:

1. Need for further medical treatment.

2. Applicant raises whether defendant failed to timely conduct Utilization Review of the Dr. Patterson May 17, 2021 RFA, and thus the determination of medical necessity would then be made by the WCAB.

3. Applicant raises whether defendant failed to timely conduct Utilization Review of the Dr. Rho, June 9, 2021 RFA and thus the determination of medical necessity would then be made by the WCAB.

4. Applicant raises whether applicant's home health assistance and RN/LVN treatment for medical management should continue to be authorized absent a documented change in medical circumstances warranting discontinuation of services in accordance with the Patterson vs. The Oaks Farm.

5. Defendant raises the issue of whether the WCAB lacks jurisdiction over the May 24, 2021 UR denials which are related to home health assistance care, RN/LVN treatment, and medication management.
(Minutes of Hearing, January 12, 2022, pp: 2:18-3:6.)

The parties stipulated that while employed as a technician on November 6, 2017, applicant sustained injury arising out of and in the course of employment to his head, brain, neck, and back, and claims to have sustained injury to his left wrist, right hip, right shoulder, and arm. (*Id*., p. 2:5-9.)

In the Report, the WCJ states:

> All issues were deferred when this matter proceeded to trial except the issue of the timeliness of Utilization Reviews and issues regarding necessity for home health care, RN/LVN treatment on medication management. . . .
> . . .
> The Petition for Reconsideration . . . points to the fact that the proofs of service for the UR denials issued on May 24, 2021 were timely and contained a proof of service that was correctly addressed to Applicant's counsel and therefore pursuant to evidence Code section 641 is presumed to have been received by Applicant. It is also argued that the mere assertion, arguably made by Applicant's counsel, that it

was not received, is not evidence and is not sufficient to overcome the presumption that if it was mailed it was received.

This WCJ accepts that the proofs of service regarding the UR denials, with the exception of one, do appear to have been mailed to applicant's counsel. However, that does not meet the requirement of Labor Code section 4610.

. . .

[A] UR decision not only must be timely made; it must be timely communicated. A UR decision that is not timely communicated is of no use and defeats the legislative intent of a UR "process that balances the interests of speed and accuracy, emphasizing the quick resolution of treatment requests ... " (*Sandhagen*, *supra*, 44 Cal. 4th at p. 241.). Thus, section 4610 . . . imposes further mandatory time requirements for communicating a UR decision. These time limits run from the date the UR decision is made, even if the UR decision is *made* in less than the five days allowed . . .

While there was a proof of service via mail, that does not meet the requirements of this statute which was specifically enacted to ensure that treatment decisions could be handled quickly and efficiently in order to avoid delays in providing care to injured workers. The denials offered by Defendants gave no indication that treating doctor, Dr. Patterson, was notified via fax, phone or email within 24 hours of issuance of the review, or that the decision was communicated to applicant's attorney within either two or five business days. See Bodam v. San Bernardino County, 79 CCC 1519.) It is not enough that the denials were mailed in the regular course of business. Seemingly, if that were all that was required of a Defendant, there would have been no need to include the mandatory requirements of Labor Code section 4610.

While Defendant argues that there is no evidence offered by Applicant that these denials were not timely received, that is not accurate. Applicant offered a series of emails and letters to Defendant advising that they had not received any UR denials. Applicant's Exhibits 1 through 3 all speak to that issue. Defendant offers no comment as to the evidentiary value of those documents that do rebut the claim that the UR denials were received by Applicant's counsel and Dr. Patterson. There was no testimony provided by either side as the matter submitted on the record. The WCJ may rely on the evidence admitted and draw inferences from that evidence which form the WCJ' s opinion and beliefs as to the weight and credibility of the evidence offered. Here, the WCJ, after reviewing a series of letters from Applicant's counsel to the Defendant informing them that they did not have copies of any UR denials, reached a reasonably supported conclusion that they had not been communicated in accordance with Labor Code Section 4610. This conclusion is not rebutted by Defendant's indication that they were served in the course of the regular mail.

. . .

The series of emails to and from the parties reflect that Applicant's counsel engaged in ongoing attempts to obtain copies of the UR denials from the Defendant. Yet, it

was not until the hearing in August 31, 2021, that Defendant finally sent copies of the UR determinations to Applicant. Applicant had advised the defense attorney that their email sent on July 7, 2021, did not contain copies of the UR denials.

1. In the case where the UR process is insufficient, the WCAB is left to address needed medical treatment, but it was still 55 days before those copies were sent to Applicant's counsel. The court finds that the UR process was not timely.

2. The medical evidence reflects that the applicant was and is in need of substantial medical treatment owing to his serious condition. . . . [A]bsent any showing to the contrary, the court can rely on the medical evidence from the treating physicians based on their knowledge of the applicant's condition. Applicant has produced medical reports from Dr. Dr. Rho, Casa Colina, and Learning Services Home and Community that attest to Mr. Kokkinias' ongoing need for services. The court relies on these for that determination. Since there is no timely UR denial of these services, the WCJ continues to believe that these services are effective, reasonable, and necessary for Mr. Kokkinias.
(Report, pp. 1-8.)

Labor Code section 4600[1] requires the employer to provide reasonable medical treatment to cure or relieve from the effects of an industrial injury. (§ 4600(a).) Employers are required to establish a UR process for treatment requests received from physicians. (§ 4610; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Sandhagen*) (2008) 44 Cal.4th 230, 236.)

Section 4610 provides time limits within which a UR decision must be made by the employer. (§ 4610 et seq.) These time limits are mandatory. In *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298 (Appeals Board en banc) (*Dubon II*), the Appeals Board held that it has jurisdiction to determine whether a UR decision is timely. 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.) If the UR decision is timely, the Appeals Board has no jurisdiction to address disputes regarding the UR because "[a]ll other disputes regarding a UR decision must be resolved by IMR." (*Id*. at p. 1299.)

Subsequent to *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.) In *Bodam*, the employer did not notify the requesting physician of its UR decision within 24 hours and did not

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

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.

Turning to defendant's contention that the WCJ erroneously determined that the UR determinations of Dr. Patterson's May 17, 2021 RFA were untimely, we observe that section 4610 provides as relevant:

> (i) In determining whether to approve, modify, or deny requests by physicians prior to, retrospectively, or concurrent with the provisions of medical treatment services to employees, all of the following requirements shall be met:
>
> (1) Except for treatment requests made pursuant to the formulary, prospective or concurrent decisions shall 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. . . .
>
> (4) (A) Final decisions to approve, modify, or deny requests by physicians for authorization prior to, or concurrent with, the provision of medical treatment services to employees shall be communicated to the requesting physician within 24 hours of the decision by telephone, facsimile, or, if agreed to by the parties, secure email.
>
> (B) Decisions resulting in modification or denial of all or part of the requested health care service shall be communicated in writing to the employee, and to the physician if the initial communication under subparagraph (A) was by telephone, within 24 hours for concurrent review, or within two normal business days of the decision for prospective review, as prescribed by the administrative director. If the request is modified or denied, disputes shall be resolved in accordance with Section 4610.5, if applicable, or otherwise in accordance with Section 4062.

Here, we agree with the WCJ's reasoning, as stated in the Report, that in the absence of testimony or other evidence to rebut the statements contained in exhibits 1 through 3 that the UR determinations were not received by applicant's attorney and Dr. Patterson, the weight of the evidence is that the UR denials were untimely. Accordingly, we are unable to discern error in the WCJ's finding that the UR determinations of Dr. Patterson's May 17, 2021 RFA were untimely.

Turning to defendant's contention that the WCJ erroneously determined that the left L 3, 4, TFE injection requested by Dr. Rho's June 9, 2021 RFA was reasonable and necessary, we agree with the WCJ's reasoning, as stated in the Report, that the medical reports from Dr. Rho, Casa Colina, and Learning Services Home and Community demonstrate that the treatment sought by the June 9, 20201 RFA is reasonably required to cure or relieve the injured worker from the effects of his injury. Accordingly, we are unable to discern error in the WCJ's finding that the left L 3, 4, TFE injection requested by Dr. Rho's June 9, 2021 RFA was reasonable and necessary.

Accordingly, we will deny the Petition.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact and Order issued on April 27, 2022 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 5, 2022

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

DIMIDRIOS KOKKINIAS
ODJAGHIAN LAW GROUP
MALMQUIST, FIELDS & CAMASTRA

SRO/*pc*

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