**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**JUAN FRAUSTO, *Applicant***

**vs.**

**DOMESTIC LINEN SUPPLY;**
**TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,**
**administered by TRAVELERS, *Defendants***

**Adjudication Number: ADJ12056705**
**Van Nuys District Office**

# OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant Travelers Property Casualty Company of America (defendant) seeks reconsideration of the September 24, 2024 Findings of Fact and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a driver on October 19, 2018, sustained industrial injury to his head, brain, eyes, ears, back, face, neck, right foot, urological dysfunction, sexual dysfunction, teeth, TMJ, and sleep. The WCJ found that the Workers' Compensation Appeals Board (WCAB) has jurisdiction to resolve the instant medical dispute and ordered defendant to continue to authorize medical treatment at the Centre for Neuro Skills (CNS) unless and until defendant can establish a material change in applicant's condition or circumstance.

Defendant contends that the evidence does not support a finding of WCAB jurisdiction, nor does the evidence support a finding that defendant must continue to authorize treatment at CNS.

We have received an Answer from applicant. 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, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

**FACTS**

Applicant sustained injury to his head, brain, eyes, ears, back, face, neck, right foot, and teeth, and in the form of temporomandibular joint (TMJ) disorder, sleep disorder, urological dysfunction, and sexual dysfunction, while employed as a driver by defendant Domestic Linen Supply on October 19, 2018. Applicant sustained injury when he was ejected from the truck he was driving in a "rollover type motor vehicle accident." (Ex. 3, Report of Vibhay Prasad, M.D. and CNS, dated February 6, 2023, at p. 5.) Applicant received inpatient rehabilitation treatment following the injury and was discharged home on November 11, 2018. (*Ibid.*) Applicant later was admitted to CNS where he received outpatient therapy. Applicant's treatment at CNS was certified as medically necessary by defendant's Utilization Review provider on February 2, 2023, April 26, 2023, June 29, 2023, and November 14, 2023. (Exs. 1-4, Utilization Review Authorizations, various dates.)

On April 1, 2024, treating physician Vibhay Prasad, M.D., at the CNS authored a Request for Authorization (RFA), diagnosing a Traumatic Brain Injury (TBI), and requesting authorization for continued outpatient day treatment program at the CNS. (Ex. 3, Report of Vibhay Prasad, M.D. and CNS, dated February 6, 2023, at p. 5.) The attached PR-2 interim report noted a history of industrial injury resulting in a "bilateral frontal lobe contusion with subarachnoid hemorrhage as well as a basilar skull fracture and pneumocephalus." (*Id.* at p. 7.) Applicant was noted to have missed 4-5 sessions in the past month and was experiencing feelings of homesickness and an impacted schedule. Applicant's symptoms, including headaches, mood, and sleep had all improved with therapy and resuming educational activities. Applicant was noted to be continuing his outpatient physical therapy to the left wrist and using a CPAP machine at night. (*Ibid*.)

On April 10, 2024, defendant's UR provider issued a determination that the requested day treatment program at CNS was not medically necessary. (Ex. 13, Utilization Review Determination, dated April 10, 2024, at p. 1.) The rationale for the decision noted that although applicant "declines in performance without structure," and that "it is anticipated that the individual will require long-term therapeutic programming, including daily structure and therapy,"

there had nonetheless been "very little improvement over all areas tested." (*Id.* at p. 3.) Because applicant had "met most of his goals, with little improvement in the remaining unmet goals over the past 2 months," and because it was "unclear how long this therapy is planned to continue or how the conclusion was reached that he will need long term treatment," the requested treatment was non-certified. (*Ibid*.)

The parties proceeded to Expedited Hearing on June 26, 2024, and framed issues of whether applicant had experienced a change of circumstances in his condition, whether the WCAB has jurisdiction resolve the dispute, and whether defendant was obligated to continue authorizing the requested treatment at CNS. (Minutes of Hearing, dated June 26, 2024, at p. 2:13.)

On September 24, 2024, the WCJ issued the F&O, determining in relevant part that the WCAB has jurisdiction to decide the dispute and that defendant must "continue authorizing brain injury rehab day treatment at the Centre for Neuro Skills," until such time as they could demonstrate a material change in applicant's circumstances. (Findings of Fact Nos. 5 & 6; Order, No. 1.) The accompanying Opinion on Decision explained that in *Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910 [2014 Cal. Wrk. Comp. P.D. LEXIS 98] (*Patterson*) (significant panel decision),[1] "the applicant does not have the burden of proving the ongoing reasonableness and necessity of the services … [r]ather, the employer has the burden to show that the continued provision of the services is no longer reasonably required due to a change in the applicant's condition or circumstances." (Opinion on Decision, at pp. 1-2.) The WCJ noted that there was "no evidence in the record of any change in applicant's condition or circumstance that reasonably supports the initiation of utilization review to re-evaluate his treatment." (*Id.* at p. 2.)

Defendant's Petition contends the WCAB lacks jurisdiction to decide the instant dispute because the Utilization Review decision was timely. (Petition, at p. 4:21.) Defendant distinguishes the present matter from the facts in *Patterson, supra*, noting that in this case defendant did not unilaterally cease authorization of treatment. Defendant further notes that "by the very nature of the limited duration in the PTP's request for the day treatment program since its inception, it was never intended that the day treatment program be forever or even ongoing." (*Id.* at p. 6:16.)

[1] A significant panel decision is a decision of the Appeals Board that has been designated by all members of the Appeals Board as of significant interest and importance to the workers' compensation community. Although not binding precedent, significant panel decisions are intended to augment the body of binding appellate and en banc decisions by providing further guidance to the workers' compensation community. (Cal. Code Regs., tit. 8, § 10305(r).)

Defendant contends that the April 10, 2024 UR decision itself demonstrates the change in circumstance required under *Patterson*, insofar as it documents a lack of recent progress resulting from applicant's ongoing treatment. (*Id.* at p. 6:22.)

Applicant's Answer responds that applicant requires ongoing treatment to maintain his current levels of functionality, and that the evidence supports a finding that continued brain injury rehabilitation at the CNS is reasonable and necessary. (Answer, at p. 4:21.)

The WCJ's Report notes that pursuant to *Patterson, supra*, "[i]n the absence of change in the Applicant's condition or circumstances, Defendant is obligated to continue providing Applicant with medical treatment as previously authorized until they are no longer reasonably required under section 4600 to cure or relieve the effects of the industrial injury." (Report, at p. 4.)

## DISCUSSION

### I.

Former Labor Code[2] 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."

[2] All further references are to the Labor Code unless otherwise noted.

Here, according to Events, the case was transmitted to the Appeals Board on October 28, 2024, and 60 days from the date of transmission is December 27, 2024. This decision is issued by or on December 27, 2024, 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 October 28, 2024, and the case was transmitted to the Appeals Board on October 28, 2024. 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 October 28, 2024.

**II.**

Section 4600(a) provides that an industrially injured worker is entitled, at their employer's expense, to medical treatment that is reasonably required to cure or relieve the effects of the industrial injury. (§ 4600(a).) The coverage of section 4600 extends to any medically related services that are reasonably required to cure or relieve the effects of the industrial injury, even if those services are not specifically enumerated in that section. (*Smyers v. Workers' Comp. Appeals Bd.* (1984) 157 Cal.App.3d 36, 41.)

In *Patterson*, *supra*, 79 Cal.Comp.Cases 910, the Appeals Board held that an employer may not unilaterally cease to provide treatment authorized as reasonably required to cure or relieve the effects of industrial injury upon an employee without substantial medical evidence of a change in the employee's circumstances or condition. The panel reasoned:

> Defendant acknowledged the reasonableness and necessity of [the medical treatment at issue] when it first authorized [that treatment], and applicant does

> not have the burden of proving [its] ongoing reasonableness and necessity. Rather, it is defendant's burden to show that the continued provision of the [treatment] is no longer reasonably required because of a change in applicant's condition or circumstances. Defendant cannot shift its burden onto applicant by requiring a new Request for Authorization and starting the process over again.
>
> (*Patterson, supra*, at p. 918.)

In *National Cement Co. v. Workers' Comp. Appeals Bd.* (*Rivota*) (2021) 86 Cal.Comp.Cases 595, the Second District Court of Appeal upheld the Appeals Board's application of *Patterson* to award an applicant continued inpatient care, stating:

> [T]he principles advanced in [*Patterson*] apply to other medical treatment modalities as well. Here ... Applicant had continued need for placement at Casa Colina. Further, [applicant's witness] stated that there was no change in Applicant's circumstance and no reasonable basis to discharge Applicant from care. The WCJ ... concluded that Applicant's continued care at Casa Colina was necessary, without ongoing RFAs, to ensure Applicant's safety and provide him with a stable living situation and uninterrupted medical treatment.
>
> (*Rivota*, *supra*, at p. 597.)

In upholding this application of *Patterson*, the *Rivota* court rejected the employer's attempt to distinguish it on the grounds that it had never authorized inpatient care for an unlimited or ongoing period, had never relinquished its right to conduct UR, and had never been subject to a finding that inpatient treatment was reasonable and necessary for the applicant under section 4600. (*Id*.)

In *Los Angeles County MTA v. Workers' Comp. Appeals Bd.* (*Burton*) 89 Cal.Comp.Cases 977 [2024 Cal. Wrk. Comp. LEXIS 55] (writ denied), applicant challenged defendant's Utilization Review non-certification of ongoing inpatient treatment, on the grounds that there had been no demonstrable change in applicant's condition such that a new Utilization Review determination was appropriate and necessary. The WCJ agreed and determined that applicant was entitled to continue her inpatient rehabilitation treatment until such time as defendant could establish a change in circumstance. The WCJ noted that "the whole point of *Patterson* is that a Form RFA is not required in certain circumstances involving care of an ongoing nature … [t]he decision is about when an RFA is required, and if one is not required in the first place, then there can be no valid UR therefrom, timely or otherwise." (*Id.* at p. 980.) Thus, defendant's submission of the RFA to UR was invalid without a precipitating change in circumstance. The Appeals Board denied

defendant's Petition for Reconsideration without further comment, and defendant's subsequent petition for writ of review was denied by the Second District Court of Appeal and the Supreme Court. (See *Los Angeles County MTA v. Workers' Comp. Appeals Bd.* (2024) 2024 Cal. LEXIS 6103.)

In the present matter, applicant's outpatient treatment at the CNS has been determined to be medically necessary on multiple occasions. (Ex. 10, Utilization Review Determination, dated November 14, 2023; Ex. 8, Utilization Review Determination, dated June 29, 2023; Ex. 6, Utilization Review Determination, dated April 26, 2023.) The most recent Utilization Review certification noted that applicant had sustained traumatic brain injury and was "currently enrolled in a supportive living program which is a combination of therapy and structured exercises," and that "without the program there was a reported decline in capacity of performing ADLs [activities of daily living] and increased headache symptoms due to fatigue and overstimulation." (Ex. 10, Utilization Review Determination, dated November 14, 2023, at p. 3.) The Utilization Review Determination noted that "given regression of symptoms which seem to be mitigated by the requested treatment, the request for Centre for Neuro Skills Day Treatment program … is certified." (*Ibid*.)

Following this determination of medical necessity, applicant's treating physician submitted a request for additional authorization for continued treatment on April 4, 2024. (Ex. 12, Request for Authorization, dated April 4, 2024.) Defendant's Utilization Review decision of April 10, 2024 noted a lack of recent progress, and specified uncertainty as to the scope of the treatment program request as bases for non-certification of ongoing treatment. (Ex. 13, Utilization Review Determination, dated April 10, 2024, at p. 3.)

However, as we held in *Patterson*, *supra*, 79 Cal.Comp.Cases 910, where a medical treatment authorized pursuant to section 4600(a) is determined to be medically necessary, defendant is obligated to continue providing that treatment until such time as there is a material change in circumstance. (*Id.* at p. 918.) We further noted that defendant cannot shift its burden onto applicant by requiring a new Request for Authorization and starting the process over again. (*Ibid*.)

Applying the *Patterson* analysis in the present matter, we observe that applicant's treatment at the CNS was determined to be medically necessary and that defendant duly authorized such treatment pursuant to section 4600(a). (Ex. 13, Utilization Review Determination, dated April 10,

2024, at p. 3.) Thus, any change to the established need for medical treatment would necessarily involve a change in applicant's condition or circumstance, such that a renewed review of the medical necessity of the requested treatment was appropriate and indicated. As the party with the affirmative of the issue, defendant would bear the burden of establishing the existence of a material change in applicant's medical condition or circumstance. (Lab. Code, § 5705.)

Here, we agree with the WCJ that defendant has not carried that burden. Defendant offers no medical reporting to establish a material change in applicant's condition that would otherwise necessitate a reevaluation of a medically necessary treatment modality. (Report, at p. 2.) We also observe that insofar as defendant's April 10, 2024 UR decision cites to a lack of significant interval change in applicant's condition in the two months prior to the request as a basis for non-certification, this actually supports applicant's position that there has been no material change in his condition. (Ex. 13, Utilization Review Determination, dated April 10, 2024, at p. 3; Answer, at p. 3:3.) In the event of a change in applicant's circumstance or medical condition, defendant would rightfully need to consider whether to authorize the requested treatment or to evaluate the medical necessity of the treatment through the UR process. (*State Compensation Insurance Fund v., Workers' Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230 [73 Cal.Comp.Cases 981].) However, pursuant to our holding in *Patterson*, *supra*, 79 Cal.Comp.Cases at p. 918, a change in circumstance is the *precipitating event that triggers the need to reevaluate medical necessity*. Defendant may not satisfy its burden of establishing such a material change in circumstance by offering a Utilization Review determination obtained after the fact. (*Id.* at p. 918.)

Defendant further contends we lack the jurisdiction to resolve the instant medical treatment dispute because the UR decision was valid and timely. (Petition, at p. 4:2.) 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 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.) As noted in the *Dubon II* decision, section 4604 provides that "[c]ontroversies 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." (*Id.* at p. 1305, emphasis in original.) Sections 4610 and 4610.5 expressly define a UR decision addressing treatment "based in whole or in part on medical necessity." In *Dubon II*, the Appeals Board found that sections

4610.5 and 4610.6 "specifically provide that where there is a dispute regarding a UR decision on 'medical necessity,' the dispute shall be resolved only by IMR." (*Id.* at p. 1309.) However, "where there is no timely UR decision subject to IMR, the issue of medical necessity must be determined by the WCAB." (*Id.* at p. 1312.)

Here, the lack of a material change in applicant's condition or circumstances obviates the need for a renewed evaluation of ongoing medical treatment. Utilization review is inapposite when medical treatment has been determined to be reasonable and necessary and when there has been no material change in the underlying condition or circumstances necessitating that medical treatment. (Lab. Code, § 4600(a).) In the absence of a change in circumstance, applicant's previously authorized treatment continues to be medically necessary. Because there is no reasonable basis to assert a dispute regarding the medical necessity of treatment that has already been determined to be reasonable and necessary, the Appeals Board retains its jurisdiction to determine the award of medical treatment. (Lab. Code, § 4604; *Dubon II*, *supra*, at p. 1305.)

In summary, we agree with the WCJ that defendant has not met its affirmative burden of establishing a material change in applicant's medical treatment or circumstance that would otherwise require defendant to either authorize the requested treatment or submit the request through Utilization Review. Because there was no valid medical dispute arising out of a change in condition or circumstance, we concur with the WCJ's determination that defendant is obligated to continue to provide treatment at the CNS, unless and until defendant demonstrates a material change in applicant's condition or circumstance. We will affirm the F&O, accordingly.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**JOSÉ H. RAZO, COMMISSIONER**
**PARTICIPATING NOT SIGNING**

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

**DECEMBER 27, 2024**

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

**JUAN FRAUSTO**
**THE LAW OFFICE OF ARASH KHORSANDI**
**HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

**SAR/abs**

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