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

**CESAR AURIGUE, *Applicant***

**vs.**

**UNITED AIRLINES; permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ12640335**
**San Francisco District Office**

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

Applicant filed a Petition for Reconsideration (Petition) of the Findings of Fact (Findings) dated September 3, 2025, wherein the workers' compensation administrative law judge (WCJ) found in part that when defendant requested additional information, defendant issued a timely decision denying a Request for Authorization (RFA) for a functional restoration program.

The Petition asserts that the defendant's decision is untimely.

We did not receive an Answer from defendant.

The WCJ's Report and Recommendation (Report) recommends the Petition be denied.

We have considered the allegations of the Petition and the contents of the Report of the WCJ with respect thereto. After review of the record and for the reasons discussed below, we will grant reconsideration, rescind the Findings and substitute a new Findings, which finds that the RFA denial was untimely, and defers the issue of whether the requested treatment was reasonable and necessary. We will return the case to the WCJ for further proceedings consistent with this opinion, including a decision on the issue of the requested treatment.

## I.

Former Labor Code section 5909[1] 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. (Former 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.

(Lab. Code, § 5909.)

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. This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) 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 September 29, 2025, and 60 days from the date of transmission is Friday, November 28, 2025. Friday, November 28, 2025, is the day after Thanksgiving and a State holiday. The following two days, Saturday and Sunday, are a weekend, meaning the time to act is extended to Monday, December 1, 2025. This decision issued by or on December 1, 2025, 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

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

act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

According to the proof of service, the Report was served on September 29, 2025, and the case was transmitted to the Appeals Board on September 29, 2025. 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 September 29, 2025.

**II.**

As found by the WCJ, applicant while employed on August 19, 2019, as a ramp agent, sustained injury arising out of and occurring in the course of his employment, to his left ankle, low back, right shoulder, and left hip.

On April 10, 2024, Leslie H. Kim, M.D., issued an Orthopaedic Agreed Medical Evaluation Report. Dr. Kim reported applicant "sustained acute left foot trauma in the course of his usual ramp service work" that "resulted in a comminuted displaced calcaneus fracture and minimally displaced cuboid fracture. Appropriate surgical treatment with open reduction and internal fixation was performed." "[T]he primary left foot injury was compounded by secondary right shoulder and "hip" pain. Concurrent back pain is also recorded in the treatment records." "The treating physicians attributed these additional symptoms to the patient's altered gait with limited weightbearing on the left side and the use of crutches." (Exhibit B, Leslie H. Kim, M.D., page 39.)

In a July 31, 2024, supplemental report Dr. Kim reviewed a lumbar MRI. "Absent a history of a specific spine injury, abnormal mechanical loading of the lumbar spine due to the patient's abnormal gait and posture after foot injury and surgery is implicated as the most likely cause of current spine disability." (Exhibit A, July 31, 2024, Leslie H. Kim, M.D., page 3.)

It appears at some point the applicant came under the care of Dr. Babak Jamasbi as primary care physician. On March 19, 2025, Dr. Jamasbi submitted an RFA for "CARF Accredited Northern California Functional Restoration Program." "This is a formal request for 80 hours of initial trial at the CARF Accredited NCFRP at $475/hr. Attached to the RFA is the Initial Evaluation report requesting 80 hours of the program." The request notes:

> NCFRP is a CARF ACCREDITED continuous course interdisciplinary treatment Functional Restoration Program administered with an initial trial of 80 hours and not to exceed a duration of 160 hours as supported by the MTUS/ODG.
>
> According to the MTUS Guidelines total treatment duration should generally not exceed 4 weeks (20 full days) or the equivalent in part day sessions. NCFRP is a continuous course interdisciplinary treatment program designed to be consistent with the MTUS recommendations administered in 160 hours or 30 part-day sessions over the duration of 6 weeks.

(Exhibit 1, March 19, 2025, RFA, page 1, emphasis in the original.)

Also attached to the request is a March 6, 2025, Initial Evaluation and Interdisciplinary Conference report consisting of fourteen pages, (Exhibit 1, March 19, 2025, RFA, PDF pages 3-16,) a March 6, 2025, Initial Evaluation Medical Report by Timothy S. Lo, M.D., M.P.H., consisting of six pages, a March 6, 2025, Initial Evaluation Psychology Report, by Samantha L Jackson, Psy.D., six pages, and a March 6, 2025, Initial Evaluation Musculoskeletal Report, Oliver Mok, PT, MSPT, DPT, consisting of three pages, with an additional two page NCFRP Grid Report attachment. (Exhibit 1, March 19, 2025, RFA, PDF pages 17-33.)

On March 26, 2025, defendant issued a request for additional information, which stated in relevant part that: "Date request was first received by United Continental Holdings, Inc.: Monday, March 24, 2025." "Date request received by Genex: Monday, March 24, 2025." "Please indicate how the 80 hours will be allocated. Please list the specific techniques and the functional deficits that will be addressed and the hours per technique." (Joint Exhibit 1, PDF page 1.)

In response on March 26, 2025, (Facsimile header date of March 27, 2025), there is a Northern California Functional Restoration Program (NCFRP) fax cover sheet, with attached one page NCFRP "Program Description." (Joint Exhibit 2, pages 1-2.)

On April 1, 2025, defendant again issued a request for additional information stating in relevant part that "the original question was not answered. Please indicate specific details for the claimant. Please indicate the therapies that will be requested and how many hours per therapy being requested [*sic*]. Then please indicated the functional deficits that will be addressed with those therapies." (Exhibit C.)

On April 7, 2025, defendant issued a letter titled "Recommendation: Conditionally Non-Certify." The letter states "we are conditionally denying this review due to lack of information. If

the requesting provider does submit the requested information in the future, we will reconsider the request." (Exhibit D, PDF page 2.)

The parties proceeded to expedited trial at which evidence was admitted, and no testimony was taken. (Minutes of Expedited Hearing (MOH), June 25, 2025.) Issues submitted for decision consisted of "[w]hether there was a timely UR [utilization review] decision to the 3/19/2025 Dr. Jamasbi RFA for Functional Restoration Program," and "[w]as the treatment requested in the 3/19/2025 Dr. Jamasbi RFA medically necessary to cure or relieve the effects of the industrial injury?" All other issues were deferred. (MOH, June 25, 2025, page 2, lines 19-26.)

On September 3, 2025, the WCJ issued a finding that there was a timely utilization review (UR) decision. (Findings, page 1.) The WCJ explained defendant's March 26, 2025, request for additional information was a timely UR decision. (Findings, Opinion on Decision, pages 7-8.)

Applicant seeks reconsideration of the finding that defendant issued a timely decision denying the RFA for a functional restoration program.

**III.**

Section 4600 requires the employer to provide reasonable medical treatment to cure or relieve from the effects of the industrial injury. (Lab. Code, § 4600(a).) An employers' review of an employees' medical treatment requests are governed solely by UR. (Lab. Code, § 4610(g); *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Sandhagen*) (2008) 44 Cal.4th 230, 236 [73 Cal.Comp.Cases 981].) Section 4610 provides time limits within which a UR decision must be made by the employer. (Lab. Code, § 4610.) These time limits are mandatory.

In *Dubon v. World Restoration, Inc.* (*Dubon II*) (2014) 79 Cal.Comp.Cases 1298 (Appeals Board en banc), 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. (*Dubon II*, *supra*, pages 1299, 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." (*Dubon II*, *supra*, page 1299.)

Pursuant to section 4610 only a licensed physician may "modify or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve or due to

incomplete or insufficient information under subdivisions (i) and (j)." (Lab. Code, § 4610(g)(3)(A).)

> [P]rospective 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*.

(Lab. Code, § 4610(i)(1), emphasis added.)

The "RFA shall be deemed to have been received by the claims administrator or its utilization review organization by facsimile or by electronic mail on the date the form was received if the receiving facsimile or electronic mail address electronically date stamps the transmission when received. *If there is no electronically stamped date recorded, then the date the form was transmitted shall be deemed to be the date the form was received by the claims administrator or the claims administrator's utilization review organization*." (Cal. Code Reg., tit. 8, § 9792.9.1(a)(1), emphasis added.)

If an employer cannot make a timely decision "because the employer or other entity is not in receipt of, or in possession of, all of the information reasonably necessary to make a determination, the employer shall immediately notify the physician and the employee, in writing, that the employer cannot make a decision within the required timeframe, and specify the information that must be provided by the physician for a determination to be made. Upon receipt of all information reasonably necessary and requested by the employer, the employer shall approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1), (2), or (3) of subdivision (i)." (Lab. Code, § 4610(j)(2).)

If the "claims administrator or reviewer is not in receipt of all of the information reasonably necessary to make a determination," then the "reviewer or non-physician reviewer shall request the information from the treating physician within five (5) business days from the date of receipt of the request for authorization." (Cal. Code Reg., tit. 8, § 9792.9.1(f)(1)(A) and (f)(2)(A).)

> If the information reasonably necessary to make a determination under subdivision (f)(1)(A) that is requested by the reviewer or non-physician reviewer is not received within fourteen (14) days from receipt of the completed request for authorization for prospective or concurrent review, or within thirty (30) days of the request for retrospective review, the *reviewer shall deny the request* with the stated condition that the request will be reconsidered upon receipt of the information.

(Cal. Code Reg., tit. 8, § 9792.9.1(f)(3)(A), emphasis added.) And finally:

> Upon receipt of the information requested pursuant to subdivisions (f)(1)(A), (B), or (C), the claims administrator or reviewer, for prospective or concurrent review, shall make the decision to approve, modify, or deny the request for authorization within five (5) business days of receipt of the information.

(Cal. Code Reg., tit. 8, § 9792.9.1(f)(4).)

It is apparent there are two definite, but separate, deadlines for action in response to an RFA: five days and fourteen days.

Defendant is required to act within "five normal business days from the receipt of a request for authorization." (Lab. Code, § 4610(i)(1).) This required act may include a request for additional information. (Cal. Code Reg., tit. 8, § 9792.9.1(f)(2)(A).) The five-day deadline starts when defendant date stamps the RFA as received, or if there is no electronically stamped date recorded, then the date RFA was transmitted to defendant. (Cal. Code Reg., tit. 8, § 9792.9.1(a)(1).)

Here, the record does not contain a copy of the RFA that is date stamped by defendant. There is a copy of the RFA which includes an electronic header dated March 20, 2025, including "Fax Multi TX Report" with "Transaction OK," however this is an electronic confirmation of transmission, not receipt. (Exhibit 2, PDF page 3.) Therefore, we presume that the RFA was transmitted on March 20, 2025. In the absence of defendant having provided a RFA electronically date stamped when received, defendant is deemed to have received the RFA on the date transmitted, which is March 20, 2025. (Cal. Code Reg., tit. 8, § 9792.9.1(a)(1).) Due to the weekend, five normal business days from Thursday, March 20, 2025, is Thursday, March 27, 2025.

Defendant's request for additional information was sent March 26, 2025, and therefore is timely. (Joint Exhibit 1, PDF page 1.)[2]

Unless defendant receives the requested information, defendant is required within fourteen days to "deny the request with the stated condition that the request will be reconsidered upon receipt of the information." (Cal. Code Reg., titl. 8, §9792.9.1(f)(3)(A).) This is because a decision must be issued in "no event more than 14 days from the date of the medical treatment

[2] The fact that defendant states in the request for additional information that it received the RFA on March 24, 2025, is of no significance here. Only defendant's electronic date stamp when received or the date transmitted are considered when applying the five normal business days deadline. (Cal. Code Reg., titl. 8, §9792.9.1(a)(1).)

recommendation by the physician." (Lab. Code, § 4610(i)(1).) Fourteen days from March 20, 2025, is April 3, 2025.

Here, defendant did not timely issue a UR decision. The March 26, 2025, request for additional information does not meet the plain language requirements for a decision as it does not conditionally deny the request. (Joint Exhibit 1, PDF page 1; Cal. Code Reg., tit. 8, § 9792.9.1(f)(3)(A).)

The relevant dates are summarized and then discussed as follows:

**March 20, 2025: RFA transmitted**. (Exhibit 2, PDF page 3.)
March 26, 2025: Defendant's request for additional information. (Joint Exhibit 1.)
March 27, 2025: NCFR response to request and information. (Joint Exhibit 2.)
April 1, 2025: Defendant response receipt, request for additional information**.** (Exhibit C.)
**April 3, 2025: Fourteen day deadline from RFA for the defendant to issue a decision.**

While it may be that defendant did not have the information reasonably necessary to issue a decision when it issued the March 26, 2025 request, and when it again requested additional information on April 1, 2025 (Exhibit C), defendant did not issue a decision within fourteen days of the request for treatment as required by section 4610(i)(1).

Moreover, if defendant believed that it did not receive the necessary information, defendant was required within fourteen days of the RFA to "deny the request with the stated condition that the request will be reconsidered upon receipt of the information." (Cal. Code Reg., tit. 8, § 9792.9.1(f)(3)(A).) There is no provision in section 4610(i)(1) that allows defendant's subsequent documents to be curative. (See April 7, 2025, Exhibit D; April 11, 2025, Exhibit E; April 15, 2025, Joint Exhibit 3; April 21, 2025, Joint Exhibit 4; May 2, 2025, Exhibit F; and May 8, 2025, Exhibit G.)

To be clear, if the defendant had conditionally denied the request within fourteen days of the RFA as required, then defendant would have had five days from receiving the requested information to make the decision to approve, modify, or deny the request for authorization. (Cal. Code Reg., tit. 8, § 9792.9.1(f)(4).) Here, that did not happen.

Defendant failed to issue a timely UR decision.

## IV.

Although timely UR was not completed, applicant has the burden of establishing the treatment was reasonable and necessary. (Lab. Code, § 5705; *State Comp. Ins. Fund v. Workers'*

*Comp. Appeals Bd.* (*Sandhagen*) (2008) 44 Cal.4th 230.) Therefore, applicant must establish that the treatment was reasonable under the Medical Treatment Utilization Schedule (MTUS). (Lab. Code, §§ 4600(b), 4604.5, 5307.27; Cal. Code Reg., tit. 8, §§ 9792.20-9292.27.23.) This is because "to carry this burden, the employee must present substantial medical evidence." (*Dubon II, supra*, 1312.)

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that "[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record . . . the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete." (*McDuffie*, *supra*, at p. 141.)

As the issue of whether the treatment was reasonable and necessary was not reached by the WCJ in the findings, we return this matter to the WCJ in the first instance to consider this issue. In order to reach a decision, the WCJ may consider whether further development of the record is appropriate.

**V.**

Following our independent review of the record occasioned by applicant's Petition, we are persuaded that defendant's utilization review decision was untimely and, as such, a determination of the reasonableness and necessity of the medical treatment requested must be made.

We express no opinion as to the ultimate resolution of any issue in this matter.

Accordingly, we grant applicant's Petition for Reconsideration, rescind the September 3, 2025, Findings of Fact, substitute a new Findings of Fact that finds that the UR decision was untimely and defers the issue of whether the requested treatment was reasonable and necessary. We return the case to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the September 3, 2025, Findings of Fact is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the September 3, 2025, Findings of Fact is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant Cesar Aurigue, while employed on August 19, 2019, as a ramp agent, in San Francisco, California, by defendant UNITED AIRLINES, sustained injury arising out of and occurring in the course of his employment, to his left ankle, low back, right shoulder, and left hip.

2. At the time of the injury identified in Findings of Fact No. 1, the defendant employer was permissibly self-insured for purposes of workers' compensation liability.

3. The UR decision in response to the March 19, 2025 Dr. Jamasbi RFA for Functional Restoration Program issued on April 7, 2025, which is more than 14 days after the date of the RFA, so that the RFA is untimely under Labor Code section 4610.

4. The issue of whether the requested medical treatment is reasonable and necessary is deferred.

**IT IS FURTHER ORDERED** that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

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

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

**December 1, 2025**

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

**CESAR AURIGUE**
**BRITTANY HUYNH**
**PEARLMAN BROWN & WAX**

**PS/oo**

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