WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DANIEL HABTES, *Applicant*

vs.

UNITED FACILITY SOLUTIONS DBA COMMAND GUARD SERVICES; insured by REDWOOD FIRE AND CASUALTY INSURANCE COMPANY dba BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants*

Adjudication Number: ADJ16041060
Van Nuys District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant filed a Petition for Reconsideration (Petition) of the Findings and Award (F&A) issued on September 5, 2025, wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that applicant, while employed by defendant on April 3, 2022, sustained injury arising out of and in the course of employment to his head, neck, jaw, mouth, teeth (6 through 11), and traumatic brain injury (TBI); that after utilization review (UR) deferral for disputed body part was resolved, the February 9, 2024, request for authorization (RFA) of Dr. Prasad was subject to "prospective review" rather than "retrospective review"; the UR decision dated May 15, 2025, was untimely; and the inpatient rehabilitation program requested in the RFA was reasonable and medically necessary.

Defendant asserts the time to complete UR does not start until the body part dispute is resolved and applicant either resends the original or new RFA to defendant; the F&A is not supported by substantial evidence; that independent medical review (IMR) is applicant's exclusive remedy; and that an IMR decision issued after trial is new and material evidence.

Applicant filed an Answer.

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

We have considered the allegations of the Petition and the Answer and the contents of the Report of the WCJ with respect thereto.

After our review of the record and for the reasons discussed below, we will deny reconsideration.

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.
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> (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.
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> (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. 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 October 21, 2025, and 60 days from the date of transmission is Saturday, December 20, 2025. 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.) As December 20, 2025, is a Saturday, the time is extended to the next business day, or to Monday, December 22, 2025. This decision issued by or on December 22, 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

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

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 shall be notice of transmission.

According to the proof of service, the Report was served on October 21, 2025, and the case was transmitted to the Appeals Board on October 21, 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 October 21, 2025.

II.

Applicant was found outside on April 3, 2022, face down with a puddle of blood and teeth near him. He was taken by ambulance to the emergency room where he was noted to have a history of seizures. (Exhibit F, Laura Beltran, RN, April 3, 2022, PDF page 2; Exhibit 4, Lawrence Richman, MD, November 19, 2024, page 5.)[2] PQME Dr. Richman noted applicant had retrograde amnesia as he had no recollection of the minutes preceding the injury and anterograde amnesia in not recalling events until he was in the hospital. (Exhibit 4, Lawrence Richman, MD, November 19, 2024, page 31.)

Defendant denied applicant's claim on June 27, 2022. (Exhibit G.)

On December 4, 2023, defendant accepted applicant's injury to the head, neck, mouth/jaw, and teeth #6-11, while continuing to dispute the eyes, ears, nervous system, and brain. (Exhibit D.)

Dr. Prasad was authorized to treat applicant's head and neck. (Exhibit 2). On February 12, 2024, Dr. Prasad issued an RFA seeking inpatient post-acute comprehensive rehabilitation for a diagnosis of TBI. (Exhibit 3.)

Defendant deferred UR of the RFA on February 15, 2024, citing the brain as a disputed body part. (Exhibit 5.)

On November 19, 2024, PQME Dr. Richman issued a report after evaluating the applicant finding industrial injuries of traumatic brain injury, lighting up of photogenic epilepsy,

[2] Panel Qualified Medical Examiner (PQME) Richman's November 19, 2024, report is in evidence twice as both Exhibit 4 and Exhibit E.

posttraumatic head syndrome, cerebral concussion, convergence insufficiency, posttraumatic headaches, and anxiety associated with hyperventilation syndrome. (Exhibit 4, Lawrence Richman, MD, November 19, 2024, page 31.)

On April 10, 2025, defendant deposed PQME Dr. Richman. (Exhibit C.)

Thereafter, on May 7, 2025, defendant accepted the TBI, while maintaining denial of eyes, ears, and nervous system. (Exhibit M.)

On May 15, 2025, defendant issued a UR denial of the RFA. (Exhibit P.)

In the September 5, 2025, F&A the WCJ found in the pertinent part that defendant's UR decision was untimely and, therefore, it was appropriate to consider and find the requested treatment reasonable and necessary.

It is from these findings that defendant seeks reconsideration.

III.

A.

Defendant seeks to have us read section 4610 as providing that the time to complete UR does not start until a body part dispute is resolved *and applicant resends the original or new RFA to defendant*. We decline to do so.

As relevant here, section 4610 provides "[u]tilization review of a treatment recommendation shall not be required while the employer is disputing liability for injury or treatment of the condition for which treatment is recommended pursuant to Section 4062." (Lab. Code § 4610(l).) Further:

> (m) If utilization review is deferred pursuant to subdivision (l), and it is finally determined that the employer is liable for treatment of the condition for which treatment is recommended, the time for the employer to conduct retrospective utilization review in accordance with paragraph (2) of subdivision (i) shall begin on the date the determination of the employer's liability becomes final, *and the time for the employer to conduct prospective utilization review shall commence from the date of the employer's receipt of a treatment recommendation after the determination of the employer's liability*.

(Lab. Code § 4610(m), emphasis added; see also Cal. Code Reg., title 8, § 9792.9.1(b)(2).)

Prospective and retrospective review are defined as follows:

> "Prospective review" means any utilization review conducted, except for utilization review conducted during an inpatient stay, prior to the delivery of the requested medical services.

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> "Retrospective review" means utilization review conducted after medical services have been provided and for which approval has not already been given.

(Cal. Code Reg., title 8, § 9792.6.1(s) and (u).)

The language of the statute is clear.

Retrospective review shall begin on the date the determination of the employer's liability becomes final. This is because for retrospective review, medical services have already been provided, and prompt determination of medical reasonableness is desirable to allow the parties to informally resolve payment disputes or move to bill review.

Prospective review, however, occurs prior to delivery of medical services and is even more time sensitive as any delay in review potentially delays an applicant's access to what may be reasonable medical treatment. The time for the employer to conduct prospective review commences *from the date of receipt of an RFA* after determination of liability. Therefore, the time for review commences once two events occur: defendant receives the RFA *and* liability has been determined.

Here the RFA for inpatient post-acute comprehensive rehabilitation for TBI was received by defendant on February 12, 2024. Defendant then disputed the body part. (Exhibit 5.) The body part dispute was resolved on May 7, 2025. (Exhibit M.)

Defendant's liability was determined May 7, 2025. The time to conduct UR commences from the date of receipt, February 12, 2024, *after* determination of liability on May 7, 2025. Therefore, time commences on May 7, 2025.

This timeframe is consistent with section 4610.

> [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.)

Here defendant had both the request (RFA) and the information reasonably necessary to make the determination (in this case the determination of liability) on May 7, 2025. Therefore, defendant had five business days, without considering weekends, from May 7, 2025, or until May 14, 2025, to issue a decision.

Defendant issued its decision on May 15, 2025. (Exhibit P.) Therefore, UR is untimely.

Although the plain language of the statute directs the outcome, a background review of UR is instructive.

Section 4610, covering utilization review, was first enacted October 1, 2003, (effective January 1, 2004), as part of Statutes 2003, chapter 639, § 28 (Senate Bill (SB) 228). After amendments effective January 1, 2013, (Stats. 2012, ch. 363, § 43 (SB 863),) and January 1, 2017, (Stats. 2016, ch. 868, § 3 (SB 1160),) the section reached its current form. In enacting SB 863 the legislature specifically found and declared regarding section 4610:

> (a) That Section 4 of Article XIV of the California Constitution authorizes the creation of a workers' compensation system that includes adequate provision for the comfort, health and safety, and general welfare of workers and their dependents to relieve them of the consequences of any work-related injury or death, irrespective of the fault of any party and requires the administration of the workers' compensation system *to accomplish substantial justice in all cases expeditiously*, inexpensively, *and without encumbrance of any character*, all of which matters are expressly declared to be the social public policy of this state.
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> ***
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> (d) That *the current system of resolving disputes over the medical necessity* of requested treatment *is* costly*, time consuming*, and does not uniformly result in the provision of treatment that adheres to the highest standards of evidence-based medicine, adversely affecting the health and safety of workers injured in the course of employment.

(Stats. 2012, ch. 363, § 1 (SB 863), emphasis added.)

It would be anomalous to interpret section 4610 as argued by defendant. Not only would the requirement to resend or send a new RFA for previously requested treatment obviously and undoubtedly lead to delays in treatment, but it would also encumber applicant with the duty to monitor a claim until the dispute is resolved and then either resend the original RFA or have a treating physician send a new RFA. Such interpretation is plainly not tenable nor warranted.

A defendant has an affirmative duty to investigate the need for medical treatment. UR and IMR processes do not abrogate the claims administrator's duty to investigate whether benefits are due. (Cal. Code Regs., tit. 8, § 10109; see also *Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 159, 165 [48 Cal.Comp.Cases 566]). Defendant, having previously received the RFA, is in the best position to investigate and provide benefits due once a liability dispute is resolved.

Although defendant seeks to characterize its review as retrospective, as opposed to prospective, such distinction, no matter how misguided, is of no importance. In this case, because the prospective request was received before liability was determined, both retrospective and prospective review must result in a decision withing five working days of the liability determination date. (Lab. Code § 4610(i)(1) and (m).)

We also note defendant's argument in the Petition seeking to have the language in the denial decision, "Request for Authorization dated 11/20/2024, which was first received by Marcela Palid of Redwood Fire and Casualty Insurance Company on 05/07/2025", be interpreted as something other than the receipt of an RFA on May 7, 2025. Such argument is just that, argument with no evidentiary value. While receipt of the RFA on May 7, 2025, is not relevant to our analysis, we note the language referred to by defendant could also be taken as defendant having denied a later second request for the same treatment without timely denying the original February 12, 2024, request. Under any interpretation, the UR decision of the original RFA is untimely.

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 is 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].) As noted above, section 4610 provides the 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.)

Although defendant contends that independent medical review (IMR) is applicant's exclusive remedy, IMR does not apply where, as here, UR is untimely. Where the UR decision is untimely the determination of medical necessity for the treatment requested may be made by the Appeals Board.

B.

Although timely Utilization Review was not completed, applicant remains with the burden of establishing the treatment requested is reasonable. (Lab. Code § 5705.) For the treatment to be found industrial, the applicant must establish that the treatment is reasonable under the Medical Treatment Utilization Schedule (MTUS). (Lab. Code §§ 4600(b), 5307.27; Cal. Code Reg., title 8, §§ 9792.20-9292.27.23.) This is because "to carry this burden, the employee must present substantial medical evidence." (*Dubon v. World Restoration*, (2104) (*Dubon II*) 79 Cal.Comp.Cases 1298, 1312, (Appeals Board en banc).)

The RFA at issue seeks inpatient post-acute comprehensive rehabilitation for traumatic brain injury (TBI). (Exhibit 3.)

The relevant MTUS for traumatic brain injury recommends inpatient comprehensive integrated interdisciplinary rehabilitation when there are indications of "[s]ufficient residual symptoms and/or signs of mostly acute TBI to necessitate ongoing and daily treatment, be it medical, physical therapy, occupational therapy, or other." "Most patients will have incurred severe TBI, but occasionally, patients with moderate TBI may also be benefited by these programs." Frequency/Dose/Duration is listed as: "[h]ighly variable and depends on clinical status, including symptoms, signs, functional deficits, rate of progress, need for individualized care (e.g., coaching), etc." (Cal. Code Reg., title 8, § 9792.24.5; MTUS, *American College of Occupational and Environmental Medicine*, Traumatic Brain Injury, effective November 15, 2017, page 210: "Inpatient: Comprehensive Integrated Interdisciplinary Rehabilitation.")[3]

Although the RFA and its associated attachments persuasively document the medical reasonableness of inpatient post-acute comprehensive rehabilitation, perhaps the most succinct statement is provided in the Pre-Admission Evaluation Report dated January 19, 2024, which states:

> Daniel Habtes should participate in an inpatient neurorehabilitation treatment program at CNS for the continued medical management of cognitive, linguistic and physical deficits related to his traumatic brain injury and subsequent decline in functional abilities. This includes deficits in the areas of balance, instrumental activities of daily living performance, attention, concentration, memory, problem-solving, expressive and receptive language, and emotional-psychological stability. Neuroplasticity occurs optimally in the setting of intensive, aggressive, repetitive

[3] The MTUS in general may be accessed online at: https://www.dir.ca.gov/dwc/MTUS/MTUS.html. The guideline for Traumatic Brain Injury may be accessed at: https://www.dir.ca.gov/dwc/DWCPropRegs/MTUS-Evidence-Based-Updates/Final-Regulations/Traumatic-Brain-Injury.pdf.

> treatment. CNS utilizes neuro-developmental sequence approaches in all areas to maximize improvement. These services cannot be easily duplicated in the home setting.

(Exhibit 3, PDF page 26.)

> These findings are buttressed by PQME Dr. Richman who states:
>
> In summary, this is a 30-year-old male with a prior history of childhood epilepsy which had resolved and was lit up by an incident of 4/3/22 when the patient slipped and fall, sustaining traumatic induced epilepsy, with recurrent episodes ever since. This is distinctly different from posttraumatic epilepsy, which is related to damage to the brain from blunt head trauma, penetrating objects, intracranial bleeding, etc. The injury lit up his preexisting quiescent photogenic epilepsy. His current seizures are mixed and not optimally controlled.
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> *Additionally, he is experiencing cognitive complaints, endorses the Clinical Dementia Rating Scale*, and was found to have abnormalities when evaluated at the Centre for Neuroskills. He has experienced headaches, dizziness, which in my opinion is related to a cervicogenic source, and convergence insufficiency.

(Exhibit 4, PQME Dr. Richman, November 19, 2024, page 34, emphasis added.)

In deposition PQME Dr. Richman was equivocal about whether the applicant would be better served by outpatient or inpatient treatment: "I would lean towards outpatient, but I can't say categorically that he must be outpatient. I would lean towards it." (Exhibit C, Deposition, April 10, 2025, page 38, lines 6-8.) PQME Dr. Richman is clearly not opposed to inpatient treatment. The fact that PQME Dr. Richman equivocally leans toward outpatient treatment in no way negates the findings of treating physician Prasad that applicant would benefit from inpatient post-acute comprehensive rehabilitation. (Exhibit 3.)

It is clear "the relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence. [citation]." (*Place v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525].) Here, Dr. Prasad's opinions as provided in the RFA and attached reporting are substantial medical evidence.

The applicant has established by a medical preponderance more than the minimal residual symptoms and/or signs of mostly acute TBI to necessitate ongoing and daily treatment sufficient to meet the MTUS for inpatient comprehensive integrated interdisciplinary rehabilitation.

C.

Defendant argues that the IMR decision issued after trial submission is new and material evidence that should be considered. (Petition, page 14 et seq.) In the Petition defendant specifically

identifies the "document at issue is an IMR determination dated August 15, 2025." (Petition, page 16, lines 7.)

UR and IMR reports are provided by non-attending, non-examining physicians and generally are therefore not admissible. (Lab. Code § 5703.) Section 4610, however, creates a limited exception to the section 5703 prohibition against admitting UR and IMR reports of non-attending, non-examining physicians "at any trial regarding a post-utilization review treatment dispute." *Willette v. Au Electric Corp*. (2004) (*Willette*) 69 Cal.Comp.Cases 1298, 1307 (Appeals Board en banc).) At the time *Willette* was decided a post utilization review dispute could involve sections 4610, 4062, 4062.1, and 4062.3. (*Willette*, *supra*, page 1301.)

Post-utilization review disputes are now limited to verified appeals from IMR decisions. (Lab. Code § 4610.6(h), effective January 1, 2013.) If an UR decision is untimely, the determination of medical necessity for the treatment requested may be made by the Appeals Board, outside of the UR process. (*Dubon v. World Restoration, Inc.* (*Dubon II*) (2014) 79 Cal.Comp.Cases 1298, 1300 (Appeals Board en banc).)

The initial determination of timeliness, of course, usually requires limited consideration of an UR decision. Once UR is found untimely, however, any reporting resulting from the untimely UR process, including an IMR report, is inadmissible as no longer meeting the section 4610 exception to admissibility as being part of "a post-utilization review treatment dispute" as expressed in *Willette*, *supra*. Here, due to the finding of untimeliness, it is clear we are not addressing a post-utilization review treatment dispute under section 4610.6(h). Therefore, any UR or IMR reports are not admissible.

Consequently, we do not further address the IMR report referenced by defendant in the Petition as it is not admissible.

V.

Following our independent review of the record occasioned by defendant's Petition, we are persuaded that the utilization review decision denying inpatient medical care for the applicant is untimely, and that the requested care is medically reasonable and based on substantial medical evidence.

Accordingly, we deny defendant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the September 5, 2025, Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 22, 2025

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

DANIEL HABTES
ARASH LAW
LAW OFFICES OF KAPLAN & BOLDY

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