WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

EDDIE MENDOZA, ***Applicant***

vs.

BASMAT, INC., dba MCSTARLITE COMPANY; SENTRY CASUALTY COMPANY, ***Defendants***

Adjudication Number: ADJ15838301
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact and Order (FF&O) issued on September 9, 2025 by the workers compensation administrative law judge (WCJ), wherein, the WCJ found, in pertinent part, that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to his head, neck, and back, that there has not been a change of circumstances shown regarding the applicant's need for continued care at Casa Colina at this time, and ordered defendant to pay Casa Colina for applicant's ongoing medical care after July 24, 2024, in an amount to be adjusted by the parties, with jurisdiction reserved.

Defendant contends that the WCJ erred in ignoring evidence provided by defendants establishing a change in circumstances, and that the utilization review (UR) and subsequent independent medical review (IMR) which denied the July 10, 2024 request for authorization (RFA) for continued 24-hour residential care is controlling.

Applicant filed an Answer to the Petition for Reconsideration (Answer) requesting the Petition be denied.

The WCJ prepared a Report and Recommendation (Report), recommending that the Petition be denied.

We have considered the Petition, Answer and the contents of the Report. Based upon our preliminary review of the record, we will grant reconsideration to further study the issues presented herein.

Our order granting reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.[1]

I.

Former 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. (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 20, 2025, and 60 days from the date of transmission is Friday, December 19, 2025, This decision is issued by or on Friday, December 19, 2025, so that we have timely acted on the petition as required by section 5909(a).

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[1] All further statutory references are to the Labor Code, unless otherwise noted.

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, the Report was served on October 20, 2025, and the case was transmitted to the Appeals Board on October 20, 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 20, 2025.

II.

As found by the WCJ in the FF&O, and consistent with the parties' stipulation on the record, applicant, while employed on February 7, 2022 by defendant as a laborer, sustained injury AOE/COE to his head, neck, and back. The sole issue at trial was whether defendant should be ordered to pay Casa Colina for ongoing medical care after July 2024. The parties offered joint and separate exhibits, which were entered into evidence. Neither party offered witness testimony, and the WCJ ordered the matter submitted for decision on the documentary record. (Minutes of Hearing, (MOH), 6/19/25, at p.1: 3-10.)

On September 9, 2025, the WCJ issued a FF&O in which it was found that "There has not been a change of circumstance shown regarding applicant's need for continued care at Casa Colina at this time.", and ordered defendant to pay Casa Colina for Applicant's ongoing medical care after July 24, 2024 in an amount to be adjusted by the parties with jurisdiction reserved. (FF&O, at pp. 1-2.)

It is from this FF&O that defendant seeks reconsideration.

III.

Our preliminary review of this matter indicates the following:

Roger Bertoldi, M.D. who was selected as an Agreed Medical Evaluator (AME) by the parties in the area of neurology, evaluated applicant and issued a report dated June 28, 2023. Dr Bertoldi reviewed applicant's history at Casa Colina Hospital and Centers for Healthcare, Pre-

Admission Screening report. It appears that applicant was first admitted to Casa Colina on or about April 20, 2022, just over two months post injury, for complaints associated with applicant's traumatic brain injury (TBI). The initial recommended admission was two weeks for evaluation and treatment. Dr. Bertoldi's report further indicates applicant's next admission was on May 02, 2022, for four weeks rehabilitation and treatment of TBI. (Ex. Z, AME Roger Bertoldi M.D., 6/28/23, p. 13,14.)

An initial UR dated May 19, 2022, approved the transitional living center residential program at (Casa Colina) including post-acute rehabilitation to include, PT, OT, ST, and Neuropsychology up to 6 hours per day, 24-hour nursing oversight, Medical management (days) at a quantity (QTY) of 30.00. (Ex. 17, UR 5/19/22. p. 1.)

A subsequent UR, dated June 21, 2022, approved the same residential treatment program. (Ex. 16, UR 6/21/2022, p.1.)

A third UR, dated August 18, 2022, approved continued Casa Colina Transitional living center interdisciplinary rehabilitation program with 6 hours of therapy stay from 08/19/22 to 10/18/22. (Ex. 15, UR 8/18/2022, p.1.)

On June 18, 2024, the parties executed a Stipulation and Order, which was approved by the WCJ. The Stipulation states:

> "Applicant is authorized to treat at Casa Colina through the inpatient program. Defendant contends treatment is authorized through 7/19/24."
>
> (Stipulation and Order, 6/18/24.)

On July 10, 2024, applicant's treating physicians, Marline Sangnil, M.D. and David Patterson, M.D., issued an RFA requesting continued 24-hour residential care at Casa Colina Apple Valley, which was denied by UR on July 15, 2024 (Ex. F.)

On July 30, 2024, a UR decision issued denying the appeal of continued 24-hour residential care at Casa Colina Apple Valley). (Ex. E.)

On July 25, 2024, IMR upheld the UR denial for continued 24-hour residential care. (Ex. H, IMR, 7/25/2024.)

As stated by the WCJ in the Opinion:

> The deposition of Dr. Patterson dated April 18, 2025, at page 24, he testified that there has been no change of circumstances and that the applicant still has findings consistent with a traumatic brain injury which still requires ca[r]e. Dr. Patterson further testified at page 30 of his deposition that the benefit of having the applicant at the Casa Colina Apple Valley facility was because of

the applicant's behavioral issues, issues with substance abuse and it is a more protective environment. He also noted various disadvantages since applicant would benefit from further cognitive rehab and would be better served at the Transitional Living Center.

Labor Code section 4600(a) provides that an industrially injured worker is entitled, at his/her 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,*79 Cal.Comp.Cases 910, the Appeals Board held the burden of proof shifts to the employer to establish that the termination of continued provision of medical services is due to a change in the employee's circumstances or condition showing that the services are no longer
reasonably required to cure or relieve the injured worker from the effects of the industrial injury. (Opinion on Decision p. 4.)

The IMR dated July 25, 2024 (Ex. H) upheld the UR dated July 15, 2024 denying the continued 24-hour residential care at Casa Colina. Applicant did file an IMR appeal, however the parties went off calendar on September 17, 2024, and proceeded to do additional discovery including the deposition of Dr. Patterson on April 18, 2025.

Overall, after reviewing the extensive documentary record, it appears that the defendant has not met it's burden of proof since Dr. Patterson, applicant primary treater at Casa Colina, has opined that there is not change of circumstances regarding the applicant's need for continued medical care at Casa Colina. Therefore, it is found that defendant is to pay Casa Colina for the applicant's medical care after July 24, 2024, in an amount to be adjusted between the parties with jurisdiction reserved.
(Opinion, at pp. 2-3.)

IV.

We highlight several legal principles that may be relevant to our review of this matter.

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 employer's 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." (*Id.* at p. 1299.)

In so holding, the majority opinion in *Dubon II* noted that "[t]he legislature has made it abundantly clear that medical decisions are to be made by medical professionals." (*Id*. at p. 1309.)

Section 4610(k) mandates a UR denial remains effective for 12 months absent a documented change of circumstances.

> A UR decision to modify or deny a treatment recommendation "remains 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, or another physician within the requesting physician's practice group, 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).)

Section 4610(i)(4)(C) sets forth the requirement for notice of denial to the employee's physician and the creation of an agreed upon care plan with the employee physician.

> "In the case of concurrent review, medical care shall not be discontinued until the employee's physician has been notified of the decision and a care plan has been agreed upon by the physician that is appropriate for the medical needs of the employee." (Lab. Code, § 4610(i)(4)(C).)

Here, based upon the existing record, we cannot discern such a care plan having been implemented or created by the parties.

V.

Any decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [520 P.2d 978, 113 Cal. Rptr. 162] [39 Cal.Comp.Cases 310]*; Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [475 P.2d 451, 90 Cal. Rptr. 355] [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's*

Comp. Appeals Bd. (1970) 1 Cal.3d 627, 635 [463 P.2d 432, 83 Cal. Rptr. 208] [35 Cal.Comp.Cases 16].)

Further, decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra,* 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id*. at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).)

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (§§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [65 Cal. Rptr. 2d 431, 62 Cal.Comp.Cases 924] ["The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims."]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [72 Cal. Rptr. 2d 898, 63 Cal.Comp.Cases 261]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases805]; *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66Cal.Comp.Cases 584].)

The Appeals Board also has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Here, we note that the RFA in question issued over one year ago, or on July 10, 2024, and subsequent thereto, there has been additional medical reporting as well as a deposition of applicant's treating physician relative to the continued need for the care set forth in the RFA. This information may be relevant to our deliberation.

As such, it appears that the existing record may not properly set forth all relevant issues and include all evidence sufficient to support the decision, findings, award, and legal conclusions of the WCJ. It is also unclear as to whether further development of the record may be necessary with respect to the issues noted above.

VI.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com.* (*Savercool*) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com.* (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].)

Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal.2d 360, 364, ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."; see also generally Lab. Code, § 5803, "The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefore.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd*. (1967) 67 Cal.2d 483, 491 [62 Cal.Rptr. 757, 432 P.2d 365]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc*. (1963) 215

Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd*. (Pointer) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer,* supra, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; Kramer, supra, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

> Section 5901 states in relevant part that: "No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …"

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

Accordingly, we grant defendant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to WCABmediation@dir.ca.gov.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings of Fact and Order issued on September 9, 2025, is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 19, 2025

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

EDDIE MENDOZA
SOLOV TEITELL
LAUGHLIN FALBO

VC/bp

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