WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JOSE LOPEZ FRANCO, ***Applicant***

vs.

JDMC MEDINA CONSTRUCTION; STATE COMPENSATION INSURANCE FUND, ***Defendants***

Adjudication Number: ADJ12511409
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the March 21, 2025 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a mason on August 8, 2019, sustained industrial injury to his rib, spine and pelvis, and claims to have sustained injury to his head. The WCJ found that the Request for Authorization (RFA) submitted by applicant's treating physician on November 27, 2024 did not qualify for expedited review and was otherwise timely decided. Accordingly, the WCJ determined that the Workers' Compensation Appeals Board (WCAB) was without jurisdiction to hear or decide the medical treatment dispute.

Applicant contends that defendant's failure to have the RFA reviewed by a physician within 72 hours, even if just to determine if expedited review is required, renders its untimely, vesting the WCAB with jurisdiction over the dispute. Applicant further contends the treatment described in the RFA is medically necessary.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, substitute new findings of fact that the December 11, 2024 UR decision was untimely, and return this matter to the trial level for further proceedings.

FACTS

Applicant claimed injury to rib, spine, pelvis and head while employed as a mason by defendant JDMC Medina Construction on August 8, 2019. Applicant sustained industrial injury when he fell into a trench approximately 15 feet deep and struck his head, losing consciousness. Applicant was transported to Cedars-Sinai Medical Center and was diagnosed with a laceration of the liver, closed fracture of multiple ribs on the right side, closed unburst fracture of second thoracic vertebra, fall, and multiple fractures of pelvis without disruption of pelvic ring. (Ex. 10, Report of Serina Hoover, Psy.D., dated October 13, 2024, at pp. 3-4.) Defendant admits injury to the rib, spine and pelvis, but disputes injury to the head. (Expedited Minutes of Hearing (Minutes), dated February 10, 2025, at p. 2:4.)

On November 27, 2024, requesting physicians David Patterson, M.D., of Casa Colina Hospital and Centers for Healthcare submitted an RFA for utilization review. (Ex. AA, Request for Authorization, dated November 27, 2024.) The request indicated the need for "Expedited Review" based on an imminent and serious threat to the employee's health. Authorization was requested for a "supported living program x3 months for safety, medical case management, medication management nursing and productive day." Attached to the RFA is a "Pre-Admission Screening" narrative report signed by Karen Pray, RN, which details applicant's relevant background history, diagnoses, history of falls or other safety issues, vital signs, and clinical presentation. The report discusses applicant's current functional levels, including his need to utilize a cane for ambulation, and the rationale for treatment at Casa Colina. The report is undated, but reflects vital signs documented on February 19, 2024. (*Id.* at p. 4.)

On December 3, 2024, defendant's Utilization Review provider, Genex Services, issued an unsigned letter to Dr. Patterson, indicating that "this request for expedited review is not "reasonably supported by evidence establishing that the injured worker faces an imminent and serious threat to his or her health; or that the standard timeframe for utilization review under

8 CCR Sec. 9792.9.l(c)(3) 'would be detrimental to the injured worker's condition.'" (Ex. BB, Letter from Genex to David Patterson, M.D., dated December 3, 2024, at p. 1.) The letter states that Utilization Review would be accomplished under the standard timeframes set forth in Rule 9792.9.1(c)(3), and that the "review is being forward to our clinical staff to begin their analysis." (*Ibid*.)

On December 11, 2024, Genex issued its determination that the treatment in the November 27, 2024 RFA be "conditionally non-certified." (Ex. B, Utilization Review Determination, dated December 11, 2024, at p. 1.) The determination notes that two prior requests for additional information submitted on December 4, 2024 and December 6, 2024 had gone unanswered. (*Id.* at p. 2.) The determination is signed by physician George Christolias, M.D.

On February 10, 2025, the parties proceeded to Expedited Hearing and framed the issue of whether the RFA submitted on November 27, 2024 qualified for expedited or standard review timelines. (Minutes, at p. 2:11.) The parties also framed the related issues of timeliness of the corresponding utilization review determination and the medical necessity of the underlying treatment described in the RFA. (*Ibid*.) The parties submitted the matter for decision on the documentary record.

On March 21, 2025, the WCJ issued the F&O, determining in relevant part that "the Request for Authorization dated November 26, 2024 and faxed to Utilization Review on November 27, 2024 did not qualify for expedited review under 8 CCR 9792.9.1(c)(4)." (Finding of Fact No. 2.) The WCJ found that defendant's UR determination issued on December 11, 2024 was timely, and that the WCAB had no jurisdiction to determine the medical dispute as a result. (Findings of Fact Nos. 3 & 4.)

Applicant's Petition contends that the RFA submitted on November 27, 2024 was marked as requiring expedited review, requiring a determination within 72 hours, but that defendant failed to respond in any way until December 4, 2024, after the expedited review timeframe had elapsed. Accordingly, applicant contends defendant's Utilization Review was untimely, vesting with the Appeals Board the jurisdiction to decide the underlying medical dispute. (Petition, at p. 6:3.) Applicant further contends that the medical record substantiates the medical necessity of the requested treatment.

Defendant's Answer responds that the applicable rules governing expedited utilization review allow "a non-physician to respond to RFAs related to an expedited review that fail to meet a threshold requirement: supporting evidence." (Answer, at p. 2:12.)

The WCJ's Report reviews the report of Karen Pray, RN, attached to the RFA submitted by Dr. Patterson on November 27, 2024, and observes that the report itself appears to be undated, and does not constitute a bona fide request for emergency medical services to treat an acute injury. (Report, at p. 3.) The WCJ also reviews the reporting of QME Dr. Hoover but identifies no discussion of "imminent threat to the patient's health, potential loss of function, nor potential harm for the review to be conducted within the normal time frame." (*Id.* at p. 4.) The WCJ observes that the applicable rules for expedited review require the requesting physician to certify in writing and document the need for an expedited review. Because Dr. Patterson failed to do so in this instant matter, the WCJ concludes that the utilization review of the November 27, 2024 was appropriately accomplished under normal timeframes, and the resulting December 11, 2024 UR decision was valid and binding. (*Ibid.*)

DISCUSSION

I.

Former Labor Code[1] 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

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

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 April 28, 2025, and 60 days from the date of transmission is June 27, 2025. This decision is issued by or on June 27, 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 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 April 28, 2025, and the case was transmitted to the Appeals Board on April 28, 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 April 28, 2025.

II.

Labor Code section 4610 provides for a Utilization Review process to evaluate requested medical treatment, and subdivision (i)(3) makes specific provision for expedited review as follows:

> If the employee's condition is one in which the employee faces an imminent and serious threat to the employee's health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the employee's life or health or could jeopardize the employee's ability to regain maximum function, decisions to approve, modify, or deny requests by physicians prior to, or concurrent with, the provision of medical treatment services to employees shall be made in a timely fashion that is appropriate for the nature of the employee's condition, but not to exceed 72 hours after the receipt of the information reasonably necessary to make the determination.

(Lab. Code, § 4610(i)(3).)

Administrative Director (AD) Rule 9792.9.1(c) (Cal. Code Regs., tit. 8, § 9792.9.1(c)) describes the timelines in which review of an RFA must be accomplished. The rule provides, in relevant part:

> (3) Prospective or concurrent decisions to approve, modify, delay, or deny a request for authorization shall be made in a timely fashion that is appropriate for the nature of the injured worker's condition, not to exceed five (5) business days from the date of receipt of the completed DWC Form RFA.
>
> (4) Prospective or concurrent decisions to approve, modify, delay, or deny a request for authorization related to an expedited review shall be made in a timely fashion appropriate to the injured worker's condition, not to exceed 72 hours after the receipt of the written information reasonably necessary to make the determination. The requesting physician must certify in writing and document the need for an expedited review upon submission of the request. A request for expedited review that is not reasonably supported by evidence establishing that the injured worker faces an imminent and serious threat to his or her health, or that the timeframe for utilization review under subdivision (c)(3) would be detrimental to the injured worker's condition, shall be reviewed by the claims administrator under the timeframe set forth in subdivision (c)(3).

Thus, an RFA marked for expedited review will normally require the claims administrator to review the request within 72 hours, unless the request is not reasonably supported by "evidence establishing that the injured worker faces an imminent and serious threat to his or her health." If the request for expedited review is not substantiated, the time for review would be five business days or 14 calendar days if the employer requests additional information from the treating physician. (Cal. Code Regs., tit. 8, § 9792.9.1(c)(4).)

Here, the RFA submitted by Dr. Patterson on November 27, 2024 was marked as requiring expedited review. (Ex. AA, Request for Authorization, dated November 27, 2024.) The record reflects no response from defendant within the 72 hours required by AD Rule 9792.9.1(c)(4). The first response from defendant occurred on December 3, 2024, when defendant's Utilization Review provider, Genex Services, issued an unsigned letter to Dr. Patterson indicating that "this request for expedited review is not 'reasonably supported by evidence establishing that the injured worker faces an imminent and serious threat to his or her health; or that the standard timeframe for utilization review' under 8 CCR Sec. 9792.9.l(c)(3) 'would be detrimental to the injured worker's

condition.'" (Ex. BB, Letter from Genex to David Patterson, M.D., dated December 3, 2024, at p. 1.)

Applicant contends that defendant's UR decision was not timely because it was not accomplished within 72 hours of the submission of an RFA marked as requiring expedited review. Citing to our panel decision[2] in *Correa v. Display Products* (2024) 89 Cal.Comp.Cases 1075 [2024 Cal. Wrk. Comp. P.D. LEXIS 198], applicant contends that the determination of whether an RFA substantiates the need for expedited review must be accomplished by a physician or other medical professional, and that a failure to do so within the required 72 hours for expedited review renders any subsequent UR decision untimely. (Petition, at p. 6:3.)

The WCJ's Report responds that while "the *Correa* court offered a reasonable and perhaps Utopian point of view that a physician rather than a claims professional should determine whether the injured worker faces an imminent and serious threat to his health, or that the timeframe for non-expedited review would be detrimental to the injured worker's condition, there is simply no legal requirement for it." (Report, at p. 5.)

In *Correa, supra*, 89 Cal.Comp.Cases 1075, applicant's treating physician submitted an RFA marked as requiring Expedited Review. However, defendant's UR provider did not issue a decision within 72 hours as required under AD Rule 9792.9.1(c)(4). Rather, defendant argued after the fact that the underlying RFA failed to establish the need for expedited review because the request described applicant's condition only in general terms and did not address the effect of applicant's injuries on her activities of daily living. The WCJ disagreed and determined that *because the issue of whether an injured worker faces an imminent health risk is itself a medical issue*, "a medical professional, rather than a claims administrator, must evaluate whether the record supports the need for expedited review." (*Id.* at p. 1080.) Finding that defendant failed to timely conduct UR, the WCJ determined that the WCAB had jurisdiction to hear and decide the medical treatment dispute. Following defendant's Petition for Reconsideration, we agreed with the WCJ's analysis:

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[2] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

> In the instant matter, there was no evidence of any medical review of the need for expedited review, because the record did not reflect *any action* taken by defendant within the requisite 72 hours afforded under Rule 9792.9.1(c)(4). The WCJ concludes that, "to allow defendant an opportunity to retroactively attack WCAB jurisdiction for want of 'urgency,' without responding in some fashion with the same urgency requested by the physician and demanded by the statute and regulation, is to defeat the purpose of having an expedited review procedure … Without a determination by a medical professional that the situation does not warrant expedited review, made within 72 hours of the receipt of the request, this Court was unwilling to second-guess the determination of applicant's treating doctor, a medical professional who did make such a determination."

(*Correa, supra*, 89 Cal.Comp.Cases 1075, 1080-1081.)

Our decision in *Correa* also discussed our prior jurisprudence in this area, including *RJ Hall v. Western Medical* (December 13, 2017, ADJ9619437) [2017 Cal. Wrk. Comp. P.D. LEXIS 581], where we concluded that "defendant is not authorized to disregard the treating physician's characterization of an RFA … No statute or case allows a defendant to ignore the statutory and regulatory time frames for acting by simply declaring that the RFA did not meet the criteria for expedited treatment." (*Id.* at pp. 3–4.) We also acknowledged that in *Diaz v. Pacific Coast Framers* (August 14, 2023, ADJ14244911) [2023 Cal. Wrk. Comp. P.D. LEXIS 211], we held that defendant properly reviewed an RFA marked for expedited review under the non-expedited timeframe. However, the UR decision in *Diaz* was prepared by a UR physician and specifically addressed the issue of whether the RFA established an imminent and serious threat to applicant's health. We therefore concluded in *Correa* that because the defendant offered no evidence of a timely review of the RFA by an appropriate medical professional, the UR decision rendered more than 72 hours after receipt was untimely. (*Correa, supra*, at p. 5.)

Based on our review of the facts in the instant matter we believe a similar analysis is applicable. Here, a treating physician has submitted an RFA marked as requiring expedited review. The record reflects no response by defendant within the mandated 72-hour timeframe, or indeed any response of any nature until six days later. The December 3, 2024 response from defendant's Utilization Review provider, Genex Services, states only that expedited review is not "supported by evidence establishing that the injured worker faces an imminent and serious threat to his or her health; or that the standard timeframe for utilization review … would be detrimental to the injured worker's condition." (Ex. BB, Letter from Genex to David Patterson, M.D., dated December 3, 2024, at p. 1.) The letter is nonspecific as to the basis for the review, the evidence relied on, and

the identity of the person(s) conducting the review. The letter further indicates that only as of December 3, 2024, six days after an initial request for urgent medical treatment was received, was the request being forwarded "to our clinical staff to *begin* their analysis." (*Ibid*., italics added.)

The manifest purpose in requiring expedited review under section 4610(i)(3) and AD Rule 9792.9.1(c)(4) is to allow for prompt provision of medical treatment in the event that applicant is faced with "an imminent and serious threat to his or her health, or that the [standard] timeframe for utilization review … would be detrimental to the injured worker's condition." (Cal. Code Regs., tit. 8, § 9792.9.1(c)(4).) The evaluation of whether the need for expedited review has been substantiated by the requesting physician is an inherently medical determination. As we wrote in *Correa, supra*:

> Pursuant to Rule 9792.9.1(c)(4), an RFA marked for expedited review involves two determinations, both of which are medical in nature. The reviewer must make an initial determination as to whether the request is reasonably supported by evidence establishing that the injured worker faces an imminent and serious threat to their health, or that the timeframe for non-expedited review would be detrimental to the injured worker's condition. Thereafter, the reviewer must determine whether the requested medical treatment is reasonably medically necessary, as supported by evidence-based medicine and applicable treatment guidelines. **Both determinations involve an evaluation of medical issues, including the severity of the condition or diagnosis, the likelihood of imminent and serious threat to the applicant's health, factors mitigating or exacerbating the condition, and the interplay between evidence-based medicine, treatment guidelines, and the requested medical treatment modalities. Given the medical determinations inherent in evaluating both the urgency of the RFA as well as the requested treatment, we agree with the WCJ that the determination should be made by a medical professional, rather than a claims professional.** We further agree that the initial review of whether the evidence supports expedited review should be accomplished within the timeframe described in AD Rule 9792.9.1(c)(4).

(*Correa, supra*, 89 Cal.Comp.Cases 1075, 1080-1081.)

We also observe that the requirement for a medical professional to timely evaluate a request for expedited review submitted by a treating physician is consonant with our legislative mandate to liberally construe workers' compensation laws with the purpose of extending their benefits for the protection of persons injured in the course of employment. (Lab. Code, § 3202; *Smyers v. Workers' Comp. Appeals Bd.* (1984) 157 Cal.App.3d 36 [49 Cal.Comp.Cases 454]; *Painter v. Workers' Comp. Appeals Bd.* (1985) 166 Cal.App.3d 264 [50 Cal.Comp.Cases 224].)

And as we noted in *Correa, supra*, to allow a claims administrator to make an after-the-fact determination as to whether an RFA substantiated the need for expedited review would effectively vitiate the expedited review procedure mandated by section 4610(i) and AD Rule 9792.9.1(c)(4).

Accordingly, we conclude that in order to accomplish a meaningful assessment of whether a request for urgent review is substantiated in the medical record, a determination as to whether the RFA establishes the need for expedited review must be made and communicated by a medical professional within the timeframe required for expedited review under AD Rule 9792.9.1(c)(4).

Here, there is no evidence that a medical professional evaluated whether the RFA submitted on November 27, 2024 established the need for expedited review, or that any such determination was communicated to the prescribing physician within 72 hours of defendant's receipt of the RFA. As a result, defendant's December 11, 2024 Utilization Review decision was untimely, and the WCAB is vested with jurisdiction over the underlying medical treatment dispute. (*Dubon v. World Restoration* (2014) 79 Cal.Comp.Cases 1298 [2014 Cal. Wrk. Comp. LEXIS 131].) Accordingly, we will grant reconsideration, rescind the F&O, substitute new findings of fact that defendant's December 11, 2024 UR determination was untimely, and return this matter to the WCJ for determination of whether applicant has met the burden of establishing that the requested medical treatment is medically necessary under applicable medical treatment utilization schedule and recommended guidelines. (Lab. Code, §§ 4604.5; 5307.27 et seq.)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the Findings of Fact dated March 21, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of March 21, 2025 is **RESCINDED**, with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant Jose Lopez, while employed on August 8, 2019 as a mason at Beverly Hills, California, by JDMC Medina Construction, whose workers' compensation insurance carrier was State Compensation Insurance Fund, sustained injury arising out of and occurring in the course of employment to his rib, spine, and pelvis, and claims to have sustained injury arising out of and in the course of employment to head.
2. Defendant's Utilization Review determination dated December 11, 2024 was untimely.
3. The Workers' Compensation Appeals Board has jurisdiction to determine the issue of whether the treatment requested in the November 27, 2024 Request for Authorization is medically necessary.

IT IS FURTHER ORDERED, that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I DISSENT (See Dissenting Opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 18, 2025

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

JOSE LOPEZ FRANCO
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STATE COMPENSATION INSURANCE FUND

SAR/abs

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

DISSENTING OPINION OF COMMISSIONER RAZO

I respectfully dissent. From my review of the evidentiary record, the RFA submitted on November 27, 2024 failed to address, let alone substantiate, the issue of the need for expedited review. Moreover, I find no fault in defendant's utilization of clerical or administrative personnel to assist in the processing of the RFA prior to a licensed California physician rendering a final determination as to medical necessity. Finally, I discern no statutory or regulatory requirement for defendant to communicate a decision on whether an RFA qualifies for expedited review within the expedited review timeframe. Accordingly, and for the reasons set forth in the WCJ's Report, which I adopt and incorporate by reference herein, and for the following reasons, I would affirm the F&O.

Section 4610.5(i) provides timeframes for review of standard prospective treatment requests but also makes specific provisions for emergent situations. Subdivision (i)(3) allows for expedited review in the event that an employee "faces an imminent and serious threat to the employee's health, including, but not limited to, the potential loss of life, limb, or other major bodily function." (Lab. Code, § 4610.5(i)(3).) In addition to specific threats to the employee's wellbeing, the statute further provides for expedited review in the event that the standard 5 business day or 14 calendar day timeframes "would be detrimental to the employee's life or health or could jeopardize the employee's ability to regain maximum function." In either event, utilization review must be accomplished within 72 hours. (*Ibid*.)

AD Rule 9792.9.1(c)(4), promulgated under the authority of section 4610.5, describes the minimum showing necessary to invoke expedited review timeframes. The rule places the onus on the requesting physician to submit the information necessary to make this determination. The rule provides:

> The requesting physician must *certify in writing and document the need* for an expedited review upon submission of the request. A request for expedited review that is *not reasonably supported by evidence* establishing that the injured worker faces an imminent and serious threat to his or her health, or that the timeframe for utilization review under subdivision (c)(3) would be detrimental to the injured worker's condition, shall be reviewed by the claims administrator under the timeframe set forth in subdivision (c)(3).

(Italics added.)

Thus, the prescribing physician is tasked with clearly delineating the need for expedited review, in writing, and marshaling any relevant supporting documentation. In the event that the

requesting physician fails to reasonably support the request for expedited review, the timeframe for review reverts to the standard review periods afforded under subdivision (c)(3).

Here, I agree with the WCJ that the RFA submitted on November 27, 2024 fails to document the need for an expedited review. Neither the RFA nor the attached report from an evaluating nurse adequately raises or explains the nature of the imminent and serious threat to applicant's health. There is no attempt to address why an expedited review was necessary because the standard review window of five business days would be detrimental to the injured worker's condition. (Cal. Code Regs., tit. 8, § 9792.9.1(c)(3)-(4).) The attached reporting of Karen Pray, R.N., is undated, and makes no mention of an imminent threat to applicant's health beyond the fact that applicant is "at risk for falls." (Ex. AA, Request for Authorization, dated November 27, 2024.) It is unclear when this assessment was made, as the only date on the report reflects vital signs obtained nine months earlier, on February 19, 2024. Thus, there is little if any discussion of why urgent review was required, nor does the RFA adequately address why the applicant faced an imminent and serious threat to his health. I therefore concur with the WCJ the request for expedited review was not reasonably supported by evidence establishing that the injured worker faces an imminent and serious threat to his or her health, or that the timeframe for utilization review under subdivision (c)(3) would be detrimental to the injured worker's condition. Accordingly, the defendant appropriately issued its UR determination within the standard review timeframe, rendering the December 11, 2024 conditional non-certification both timely and binding.

In addition, our Rules provide for both physicians and non-physician reviewers to participate in the UR process. AD Rule 9792.7(b) (Cal. Code Regs., tit. 8, § 9792.7(b)) provides:

> (2) A reviewer who is competent to evaluate the specific clinical issues involved in the medical treatment services, and where these services are within the reviewer's scope of practice, may, except as indicated below, delay, modify or deny, requests for authorization of medical treatment for reasons of medical necessity to cure or relieve the effects of the industrial injury.
>
> (3) A non-physician reviewer may be used to initially apply specified criteria to requests for authorization for medical services. A non-physician reviewer may approve requests for authorization of medical services. A non-physician reviewer may discuss applicable criteria with the requesting physician, should the treatment for which authorization is sought appear to be inconsistent with the criteria. In such instances, the requesting physician may voluntarily withdraw a portion or all of the treatment in question and submit an amended request for treatment authorization, and the non-physician reviewer may

> approve the amended request for treatment authorization. Additionally, a non-physician reviewer may reasonably request appropriate additional information that is necessary to render a decision but in no event shall this exceed the time limitations imposed in section 9792.9(c)(1), (c)(2), or (d), or section 9792.9.1(c) and (d). Any time beyond the time specified in these sections is subject to the provisions of section 9792.9(h) or section 9792.9.1(f).

Thus, while the ultimate evaluation of the clinical issues involved in medical treatment services is made by a reviewer acting within their scope of practice, specific dispensation is made for interaction between the requesting physician and non-physician reviewers, including discussion of applicable medical necessity criteria. Accordingly, I discern no error in a non-physician reviewing the applicable guidelines for expedited review and making an appropriate determination as to non-final issues related to the processing of an RFA. (See also *Shreeve v. Village Shops* (April 26, 2019, ADJ693974 (OAK 0242212) [2019 Cal. Wrk. Comp. P.D. LEXIS 182].)

Finally, applicant's petition cites to no statutory or regulatory requirement for defendant to *communicate* a decision on whether an RFA qualifies for expedited review within the expedited review timeframe. In the absence of specific countervailing authority, I discern no good cause to find that a UR determination that was otherwise compliant with our Rules and applicable timeframes to be untimely. (Cal. Code Regs., tit. 8, § 9792.9.1(c).)

In summary, a physician who requests that a medical treatment request be reviewed on an expedited basis has the affirmative responsibility of documenting why the need is urgent and why standard review timeframes are inadequate. The RFA submitted on November 27, 2024 failed to substantively address the issues necessitating expedited review and was thus appropriately reviewed under standard UR review timeframes available for non-emergent treatment. In addition, our Rules specifically allow non-physician reviewers to participate in the *administrative processing* of UR requests, so long as the ultimate decision is rendered by an appropriate medical professional. Finally, I discern no statutory or regulatory authority requiring the communication of a decision regarding whether expedited review is appropriate within a specified timeframe.

For these reasons, I conclude the December 11, 2024 UR decision was timely, and that the WCAB lacks jurisdiction over the medical dispute as a result. I would affirm the March 21, 2025 Findings of Fact, accordingly.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 18, 2025

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

JOSE LOPEZ FRANCO
SOLOV TEITELL
STATE COMPENSATION INSURANCE FUND

SAR/abs

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