WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

AUDREY BELL, *Applicant*

vs.

DISNEYLAND, permissibly self-insured, *Defendant*

Adjudication Number: ADJ15245137
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant Audrey Bell seeks reconsideration of the Findings and Order on Appeal of Administrative Director's IMR Determination (F&O) issued on October 20, 2025, wherein the workers' compensation administrative law judge (WCJ) affirmed the IMR (Independent Medical Review) determination dated January 23, 2025 by the DWC Administrative Director (AD) which upheld defendant's utilization review (UR) determination dated November 20, 2024 to deny treatment consisting of home health aide assistance for applicant for four hours per day, seven days per week, for six months.

Applicant contends that, where the IMR determination found that "some home health is reasonable," it is inconsistent, inaccurate, and erroneous to deny the same treatment.

We received an Answer from defendant. The WCJ issued a Report and Recommendation by Workers' Compensation Judge on Petition for Reconsideration (Report) recommending that we deny applicant's Petition for Reconsideration.

We have considered the Petition for Reconsideration, the Answer, the contents of the Report, and have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant the Petition for Reconsideration. Our order granting the Petition for 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 for Reconsideration 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[1] section 5950 et seq.

I.

Preliminarily, we note that 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.

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 November 12, 2025, and 60 days from the date of transmission is Sunday, January 11, 2026. The next business day that is 60 days from the date of transmission is Monday, January 12, 2026. (See Cal. Code Regs., tit. 8 § 10600(b).)[2] This decision is issued by or on January 12, 2026, 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.

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:
Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 November 12, 2025, and the case was transmitted to the Appeals Board on November 12, 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 November 12, 2025.

II.

On October 13, 2025, the matter proceeded to Expedited Trial on the following issue: "Whether the Court should order a new Independent Medical Review Officer based on applicant's argument as set forth in her Appeal, dated February 21, 2025." (Minutes of Hearing, October 13, 2025, p. 2:10-12.) According to the parties' stipulation, applicant was employed as a security guard and sustained injury arising out of and in the course of employment to her left shoulder and cervical spine. (*Id*., p. 2:5-6.)

The pertinent facts to this dispute are as follows:

> On September 19, 2024 the applicant self-procured a "Nurse Case Management Multidisciplinary Analysis and Assessment Report" from IW Care Connection, Inc. that recommended, in relevant part, "[a]ssistance from a home health aide for 1 hour per day, 7 days per week for help with nutritional needs, to include food shopping and meal preparation", "[s]tand-by assistance from a home health aide for 1 hour per day, 7 days per week for help with dressing, grooming and hygiene", "[a]ssistance from a home health aide 1 hour per day, 7 days per week to help with washing and drying hair," "[a]ssistance from a home health aide 1 hour per day, 7 days per week to include light home cleaning and laundry tasks", and "[h]ousekeeping services to provide a deep cleaning in the home every 4 weeks" The report also concluded that the applicant "…does not require help with ambulation". [This report is admitted as applicant's Exhibit 2 entitled IW Care Connection

Home Health Assessment and Report, dated October 18, 2024, and prepared by Karen Bell, RN.]

On November 8, 2024, Dr. Babak Samimi issued a Request for Authorization (RFA) seeking a "Home Care Assessment" (even though one had already been secured), and "Home Health Aide Assistance" for "4 Hours/7 Days per week." [3] This RFA was faxed to defendant on November 13, 2024. Although the "To:" and the "Company:" fields were blank, the parties did not dispute that the fax went through to the defendant on November 13, 2024. The RFA was not designated as an "expedited review," and as such, Utilization Review ("UR") had five working days to issue a determination (i.e., until November 20, 2024).

On November 15, 2024 Dr. Samimi issued a RFA seeking, in relevant part "Home Health Aide Assistance" for "4 Hours/7 Days per week for 6 months". The court notes that the implied indefinite time for the requested assistance in the RFA two days earlier was amended to ask for the same services, but limited to six months. As to this amended RFA, UR would have had until November 22, 2024 to issue a timely decision, assuming that this RFA was faxed on November 15, 2025, an assumption made because there is no fax cover sheet on this RFA and because the parties did not raise any such issue. [Exh. 1.]

On November 18, 2024 a UR determination by Linh Yang R.N. approved "…1 home care assessment." [Exh. 5.]

(Report, p. 2-3.)

The WCJ admitted as joint exhibits the UR denial of November 20, 2024, and the IMR dated January 23, 2025, which upheld the UR denial. There is no dispute that the UR and IMR determinations are timely.

The UR denial of November 20, 2024 by board certified orthopedic surgeon Jason Weisstein, M.D., states that "the submitted documentation does not appear to support this request for 1 home health aide assistance (4 hours per day x 7 days per week x 6 months)," based on the Medical Treatment Utilization Schedule (MTUS), the American College of Occupational and

[3] The RFA of November 8, 2024 "and attached report by Babak Samimi, M.D, dated October 28, 2004 [sic] and an attached fax cover sheet dated November 13, 2024" are identified as defendant's Exhibit B in the Minutes of Hearing and the same RFA and attached report by Dr. Samimi is also identified as applicant's Exhibit 4. We note that Dr. Samini's brief report of October 28, 2024 incorporates applicant's Exhibit 2 by reference:

> "I have had the opportunity to review the Homecare assessment for the patient and feel the recommendations are reasonable and necessary and appropriate. I am therefore requesting home health aide assistance 4 hours per day, 7 days per week to assist with a wide variety of concurrent home health and welfare tasks, as recommended by Karen Brand RN."

Environmental Medicine (ACOEM) Practice Guidelines, the Medicare Benefits Manual (Rev. 198, 11-06-14) Chapter 16 - 110, and the Medicare Benefits Manual (Rev. 11447, 06-06-22), Chapters 7 - 30, 7 - 50.2, and 7 - 50.7. (Joint Exh. 1, p. 3-5.) In reaching this decision, two records were reviewed: October 28, 2024 letter by Babak Samimi, M.D., and October 26, 2022 [sic] Progress Report of Babak Samimi, M.D. (*Id.,* p. 8.) Our preliminary review notes that there is insufficient evidence to show whether the UR reviewer considered the IW Care Connection Home Assessment and Report, Exhibit 2, which was specifically referenced in Dr. Samimi's October 28, 2024 report.

Subsequently, on January 23, 2025, IMR upheld the UR denial dated November 20, 2024. (Joint Exh. 2.) With regard to records, it is unclear whether IMR reviewed the same two records listed in the UR denial. Records reviewed were from Samimi Orthopedic Group for the periods from October 28, 2024 through December 11, 2024, and from September 27, 2023 through November 15, 2024, which were provided to IMR by applicant and the claims administrator, respectively. (*Id*., p. 2.) In addition, IMR reviewed Exhibit 2, applicant's self-procured Nurse Case Management Report by IW Care Connection, Inc. by Karen Brand, RN, which was provided to IMR by the claims administrator. (*Ibid*.) IMR also reviewed reports provided by the claims administrator but not in evidence at trial including a record for service dated July 9, 2024 by provider Henry May PAC, a record for service date of June 13, 2024 by Privilege Home Services Inc. dated, and a record for service date of August 21, 2024 by United Medical. (*Ibid*.)

IMR concludes that "1. Home health aide assistance 4 hours per day/7 days per week is not medically necessary and appropriate." (*Id.,* p. 3.) But as rationale, the reviewer states:

> In this case, the injured worker is undergoing treatment for chronic pain. Home health assistance is requested. It is noted that the injured worker needs assistance with activities of daily living and household tasks. *Although some home health is reasonable,* the request for six months without reassessment for ongoing need is excessive. Medical necessity has not been established. The request for home health aide assistance 4 hours per day/7 days per week for 6 months is not medically necessary.

(*Ibid*, emphasis added.)

III.

We highlight the following legal principles that may be relevant to our review of this matter:

Employers are required to provide reasonable medical treatment to cure or relieve from the effects of an industrial injury. (Lab. Code, § 4600.) For home health care services, the Labor Code provides:

> Home health care services shall be provided as medical treatment only if reasonably required to cure or relieve the injured employee from the effects of the employee's injury and prescribed by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, and subject to Section 5307.1 or 5307.8. The employer is not liable for home health care services that are provided more than 14 days prior to the date of the employer's receipt of the physician's prescription.

(§ 4600(h).)

Employers are required to conduct UR of treatment requests received from physicians. (Lab. Code, § 4610; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230, 236.) Section 4610.5 makes IMR applicable to "any dispute over a utilization review decision," and requires that any such dispute, "shall be resolved only" by IMR. The Medical Unit reviews UR plans and the IMR programs used to resolve disputes about medical treatment and medical legal billing. The AD, although not a party to this action, is charged with oversight of Medical Unit programs that provide care to injured workers.

Section 4610.6(h) authorizes the Appeals Board to review an IMR determination of the AD. The section explicitly provides that the AD's determination is presumed to be correct and can only be set aside by clear and convincing evidence of one or more of the following: (1) The AD acted without or in excess of the AD's powers; (2) The determination of the AD was procured by fraud; (3) The IMR reviewer was subject to a material conflict of interest that is in violation of section 139.5; (4) the determination was the result of bias on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability; or (5) the determination was the result of a plainly erroneous express or implied finding of fact, provided that the mistake of fact is a matter of ordinary knowledge based on the information submitted for review pursuant to section 4610.5 and not a matter that is subject to expert opinion. Section 4610.6, subdivision (i) provides: "In no event shall a workers' compensation administrative law judge, the appeals board, or any higher court make a determination of medical necessity contrary to the determination of the independent medical review organization."

All decisions by a WCJ must be supported by substantial evidence. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's*

Comp. Appeals Bd. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246 [54 Cal.Comp.Cases 349].) Substantial evidence has been described as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and must be more than a mere scintilla. *(Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159 [48 Cal.Comp.Cases 566].)

Here, it is unclear from our preliminary review whether the existing record is sufficient to support the decision, order, award, and legal conclusions of the WCJ or whether the IMR determination is based on a plainly erroneous express or implied finding of fact that is not subject to expert opinion, as well as whether further development of the record may be necessary with respect to the issues noted above. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

IV.

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 also *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 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 therefor.].)

"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 [32 Cal.Comp.Cases 431]; *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 Labor Code sections 5950 et seq.

V.

Accordingly, we grant applicant'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 applicant's Petition for Reconsideration 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/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 9, 2026

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

AUDREY BELL
BOBER PETERSON
DISNEY ANAHEIM
GLAUBER BERENSON

TD/bp

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