WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FAREED ROSHANDELL, *Applicant*

HOFFMAN ESTATES CALIFORNIA by TRANSFORM SR HOLDING MANAGEMENT, LLC/TRANSFORMCO (FORMERLY SEARS HOLDING CORPORATION); ACE AMERICAN INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ1631280 (SJO 0254770)
San Bernardino District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Applicant, who is unrepresented, seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on July 30, 2026, wherein the WCJ denied applicant's appeal of a January 7, 2026 Independent Medical Review (IMR) determination which upheld the October 29, 2025 Utilization Review (UR) determination denying the medical treatment requested by applicant's treating physician.

Defendant filed an Answer. The WCJ has prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny the Petition.[1]

We have considered the allegations of the Petition for Reconsideration, the Answer and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will deny reconsideration.

FACTS

We will briefly review the relevant facts.

Applicant, while employed on June 10, 2005, as an appliance department manager sustained injury arising out of and in the course of employment to his neck, cervical spine, lumbar spine, and headaches pursuant to the Stipulated Award, dated April 6, 2011.

[1] The recommendation by the WCJ that the Petition be dismissed as untimely appears to be a clerical error.

Applicant's primary treating physician is Dr. Andrew Hesseltine, and his secondary treating physician is Dr. Abitbol.

On August 11, 2025, UR denied authorization of Dr. Hesseltine's request for a steroid injection. (Applicant's Exhibit 47.) Also on August 11, 2025, UR denied Dr. Hesseltine's request for physical therapy. (Applicant's Exhibit 48.)

On October 10, 2025, Dr. Abitbol requested surgery. (Applicant's Exhibit 42.) On October 29, 2025, UR denied Dr. Abitbol's request for surgery. (Applicant's Exhibit 43; Defendant's Exhibit AA.)

On January 7, 2026, IMR upheld the UR decision. (Applicant's Exhibit 46; Defendant's Exhibit BB.) Specifically, the IMR determination upheld the UR denial, or non-certification, of Dr. Abitbol's request for (1) anterior cervical discectomy and fusion as C5-C7, (2) preoperative clearance, (3) neuro monitoring, and (4) postoperative physical therapy for 12 visits. (*Id.*) The IMR stated in relevant part that:

> Per the CA MTUS/ACOEM guidelines, cervical and thoracic disorders, states that surgical consultation is indicated for persistent, severe and disabling shoulder or arm symptoms who have failed activity limitation for more than one month and have unresolved radicular symptoms after receiving conservative treatment.
>
> The worker has ongoing radiating neck pain. The exam notes diffuse weakness. In this case the exam notes do no [*sic*] demonstrate any recent conservative treatment has been performed for the claimants [*sic*] cervical radiculopathy. Therefore the determination is for [*sic*] not medically necessary.

(*Ibid.*)

Between February 23, 2026 and February 25, 2026, applicant and defendant exchanged various email messages regarding the IMR decision. (Applicant's Exhibits 44 and 45; Defendant's Exhibit CC; Defendant's Exhibit DD.)

On April 23, 2026, applicant filed an Appeal of IMR determination. (Applicant's Exhibit 49.)

On July 16, 2026, this matter proceeded to trial. (Minutes of Hearing and Summary of Evidence, July 16, 2026 (MOH), p. 2, lines 4-14.) The issues were identified as follows:

> 1. Applicant requests the treatment ordered by the doctor or wants the matter referred for IMR re-review by a different reviewer.
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> 2. Whether the Court has jurisdiction to adjudicate applicant's challenge to the validity of the IMR Decision, dated January 7, 2026.

> 3. Applicant contends that defendants did not authorize necessary medical treatment and did not serve the IMR Determination in a timely matter. Therefore, the applicant asserts that he lost the chance to appeal the decision in a timely manner.

(*Id.* at p. 2, lines 16-22.)

In addition to admitting the exhibits into evidence, the WCJ took "judicial notice" of an email she sent to the parties and various documents.[2]

Applicant testified in relevant part as follows:

> The Applicant inquired of the Court if it has jurisdiction to order defendant to provide surgery instead of re-reviewing another IMR. The Court explained that since it is listed as one of the issues, it will be addressed in the Judge's Determination and will not be determined on the record today because the Court is not testifying.
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> Regarding the final decision and determination of IMR, applicant asserted he didn't receive it even though "they" provided documentation to the court that it was sent to him. He did not receive it. Applicant stated that he has an objection to the paper that "they" provided to the court stating that "they" provided it to him. Applicant did not name the person(s) or entity he identified as "they."

(MOH, p. 4, lines 15-22.)

The WCJ summarized applicant's responses to cross examination as follows:

> Witness confirms he did not receive the IMR Final Determination in January of 2026, but he did receive it when Mr. Langevin forwarded it to him on February 26, 2026. Applicant did not file an appeal of the IMR Final Determination because after he got it from Mr. Langevin, it was over 50 days at that time, and you only have 30 days to appeal an IMR Final Determination.

(*Id.* at p. 5, lines 2-6.)

On July 30, 2026, the WCJ issued the F&O.

In her Opinion on Decision, the WCJ explained:

> Treatment was recommended by applicant's secondary treating physician, Jean Jacques Abitbol, M.D., who set his recommendations forth in a Request for Authorization, received by defendant on 10/22/2025. These recommendations were denied by defendant's Utilization Review, served on 10/29/2025. Applicant made a timely request for Independent Medical Review, received by Maximus on 11/25/2025. The Administrative Director's Decision, via Maximus Federal Services, in the form of Independent Medical Review Final Determination Letter, issued 1/7/2026.

[2] Those documents should have only been considered if admitted into evidence. Taking judicial notice of documents simply because a WCJ provided copies or because they are on official documents is improper. We disregard the email and the documents, and we do not consider them.

Applicant filed the instant Appeal of Determination of the Administrative Director – IMR on 4/23/2026. This appeal was untimely filed because applicant contends he never received the AD-IMR determination from Maximus in January of 2026, and by the time he received a copy from defendant, via email from defense counsel on 2/26/2026, the 30 days to appeal the determination had already lapsed. The treatment in issue is pre-operative clearance, neuro monitoring, anterior cervical discectomy and fusion at C5-C7, and postoperative physical therapy for 12 visits.

Labor Code Section 4610.6(h) states that the determination of the administrative director pursuant to Independent Medical Review shall be presumed to be correct and shall be set aside only upon proof by clear and convincing evidence of one or more of the following grounds for appeal:

(1) The AD acted without or in excess of his powers.

(2) The determination was procured by fraud.

(3) A material conflict of interest in violation of LC139.5 existed with the reviewer.

(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.

(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 per LC 4610.5 and not a matter that is subject to expert opinion."

No evidence was presented that one or more of the above grounds for appeal exists in the instant matter. Applicant contends that because he claims not to have received the AD-IMR final determination letter in January of 2026, he should not be held to the 30-day deadline to appeal, and that the matter should be sent back to Maximus for review by a different reviewer.

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Applicant contacted defendant by email on 2/23/2026, when he did not receive a copy of the IMR Determination from Maximus and IMR told him to ask the claims adjuster to send him a copy of the determination (Exhibit CC). Defense forwarded a copy of the IMR Determination via email dated 2/26/2026 (Exhibit DD). Applicant confirmed at trial that he did receive it when Mr. Langevin (defense counsel) forwarded it to him on February 26, 2026. The IMR appeal was not filed until 4/23/2026, which is more than 30 days after he received the copy of the IMR Determination letter from defense. The appeal was untimely filed. Thus, even giving applicant the benefit of the doubt that he did not receive the 1/7/2026 IMR Determination letter from Maximus, he did confirm that he received it from defense counsel on 2/26/2026, yet did not file an appeal until 4/23/2026, 56 days after receipt of the IMR Determination from defense.

Even if it could be construed that the appeal was timely filed . . ., the appeal does not provide evidence of one of the enumerated grounds for appeal under Labor Code Section 4610.6(h).

In addressing the specific issues raised:

1. Applicant's request for the treatment ordered by his doctor must go through UR/IMR channels and cannot be independently ordered by a WCALJ unless there is an untimely UR determination, which doesn't exist in the instant dispute. There is no basis to order IMR re-review by a different reviewer insofar as no evidence supported one of the listed grounds for appeal under Labor Code Section 4610.6(h).
2. The court has jurisdiction to adjudicate applicant's challenge to the validity of the IMR determination of 1/7/2026, but appeal is limited to one or more of the listed grounds for appeal under Labor Code Section 4610.6(h). Additionally, applicant's appeal was untimely filed.
3. Defendant properly denied the authorization of the treatment that was non-certified by UR, which decision was upheld by IMR. It was not defendant's responsibility to serve the IMR Determination on applicant . . . [o]nce defendant found out from applicant that he did not receive the IMR Determination, they promptly served it on applicant on 2/26/2026 via email and applicant confirmed he received it. Yet, applicant did not file his appeal until 4/23/2026, which was more than 30 days after receipt of the copy of the IMR Determination sent by defendant on 2/26/2026.

In conclusion, the IMR Final Determination Letter CM25-0182189, is sustained and applicant's appeal is DENIED.

(Opinion on Decision, dated July 30, 2026, pp. 2-5.)

In response to the F&O, applicant filed a Petition for Reconsideration[3], which alleges in pertinent part that:

> 1- The judge on the case did not review all submitted trial documents, if she would have done that, she wouldn't say no evidence was presented to proof that the AD acted solely without the knowledge of the case.
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> If the judge would [have] reviewed all submitted documents she would see on exhibits 47 and 48 request from applicant primary doctor Andrew Hesseltine for steroid injection and physical therapy which both have been denied by UR, exhibits 47 and 48 are already in EAMS and previously served to defendant.
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> Furthermore, the judge would have seen that the UR denied of surgery was based on lack of result of steroid injection and physical therapy exhibit 43 that is already in EAMS and previously served to defendant.
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> Unfortunately the UR denied steroid injection and physical therapy then for the surgery stated we can not approve the surgery because we don't have the result of the steroid injection and physical therapy, this is ridicul[ou]s and unfortunately [the] judge didn't see that or she didn't want to see that.

[3] Applicant identified the July 30, 2026 F&O as Applicant's Exhibit 50 and attached it to the Petition. The F&O is not evidence but rather a decision in this case, and documents should not be attached to the Petition. (Cal. Code Regs., tit. 8, § 10945.)

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[Wh]erefore;

1- The petitioner is respectfully requesting that the judgement and order to be removed and defendant to be order[ed] to provide necessary medical treatment which is cervical spine surgery.

(*Id*., p. 3.)

The Answer contends that applicant's IMR appeal was not timely filed, and even if it were timely, no evidence was presented to demonstrate any of the statutory grounds for an IMR appeal under Labor Code[4] section 4610(h).

DISCUSSION

I

Petitions for reconsideration filed on or after July 14, 2026 are subject to section 5909, which states 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 August 27 2026, and 60 days from the date of transmission is October 26, 2026. This decision is issued by or on October 26, 2026, 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

[4] Any further section references are to the Labor Code unless otherwise indicated.

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.

Here, according to the proof of service for the Report, the Report was served on August 27, 2026, and the case was transmitted to the Appeals Board on August 27, 2026. 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 August 27, 2026.

II

As relevant here, the WCJ's Report provides the following analysis:

> The undersigned WCALJ. . . reviewed all the evidence and trial documents. The bases for appeal of AD-IMR determinations are very limited by [Labor Code section] 4610.6(h), and applicant did not meet his burden of proof that any of the 5 bases for appeal existed. As stated in that section, the determination of the administrative director shall be presumed to be correct and shall be set aside only upon proof by clear and convincing evidence of one or more of the 5 bases for appeal.
>
> There was no evidence the administrative director acted without or in excess of the administrative director's powers; there was no evidence that the determination of the administrative director was procured by fraud; there was no evidence that the independent medical reviewer was subject to a material conflict of interest that is in violation of Section 139.5; there was no evidence the determination was the result of bias; there was no evidence the determination was the result of a plainly erroneous express or implied finding of fact as a matter of ordinary knowledge and is not a matter that is subject to expert opinion.
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> ***
>
> There is no valid basis to overturn the IMR Final Determination. Applicant's appeal was untimely filed as set forth in the Opinion on Decision and even if it had been timely filed, no evidence to support the overturning of the AD-IMR determination was provided.

(Report, pp. 4-6.)

We agree with the reasoning of the WCJ that the IMR appeal did not clearly articulate one of the five grounds in 4610.6(h).

We note that while there are no grounds for a new IMR determination at this time, section 4610(k) provides that a UR decision to modify or deny a treatment recommendation remains effective for only 12 months from the date of the decision. (Lab. Code, § 4610(k).) The UR decisions to deny Dr. Hesseltine's requests for physical therapy and a steroid injection were issued on August 11, 2025 and the UR decision to deny Dr. Abitbol's request for authorization of surgery and related treatment was issued on October 29, 2025. Once one year has elapsed, applicant's physicians may submit new requests for authorization, which should result in a new UR determination that may then be timely appealed to IMR if it is unfavorable to applicant.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings and Award issued by the WCJ on July 22, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 26, 2026

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

FAREED ROSHANDELL
FLOYD SKEREN MANUKIAN LANGEVIN, LLP

CWF/*cs*

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