

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

HECTOR BARRAGAN PALOS, *Applicant*

vs.

**JPA LANDSCAPE CONSTRUCTION, INC;
WCF NATIONAL INSURANCE *Defendants***

**Adjudication Number: ADJ19186265
Los Angeles District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Order (F&O) dated February 6, 2026. The workers' compensation administrative law judge (WCJ) found in relevant part that a Request for Authorization (RFA) dated July 31, 2025 did not qualify for an expedited review and was thus timely, and therefore there is not jurisdiction to determine whether the services were reasonably required to cure or relieve applicant from the effects of his injury.

Applicant contends that defendant did not meet their burden of proof that they complied with the timeframes required for expedited review of an RFA pursuant to Labor Code section 4610.5.¹ Applicant also contends that there was not a change of circumstance warranting the RFA for recertification and that not providing a safe discharge plan is contrary to the Labor Code.

Defendant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), which recommends that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will grant reconsideration, rescind the F&O, and return this matter to the WCJ for further proceedings consistent with this decision.

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

FACTS

As set forth in the WCJ's Report:

On April 15, 2024, Applicant sustained injury arising out of and in the course of employment to his head when struck by a shovel while employed by Defendant JPA Landscape Construction Inc. This is an admitted head injury.

On July 31, 2025, multiple medical professionals from Casa Colina, including Dr. David Patterson issued 16 pages of medical reports and notes relating to services provided and evaluations/progress notes between July 18, 2025 and July 31, 2025 which included various treatment and service recommendations. The report was accompanied by a corresponding Request for Authorization ("RFA") which was faxed to Defendant on July 31, 2025. (Joint Exhibit Z.) The requested treatment at issue is Dr. Patterson's request to "Continue Casa Colina Transitional Living Center Interdisciplinary Post Acute Residential Rehab program with 4-6hrs of therapy/day for the period of [August 12, 2025 through September 12, 2025] w/ interpreter and transportation to/from MD appts." (Id., at 3.) The boxes for "New Request", "Resubmission – Change in Material Facts", and "Expedited Review" were all checked. (Id.)

The RFA dated July 31, 2025 was sent and received via facsimile by Defendant on July 31, 2025 at approximately 3:39 p.m. (Minutes of Hearing ("MOH"), Stipulation 6 at 2:14-15.)

The resulting Utilization Review Determination ("UR") was issued on August 6, 2025 not certifying any of the treatment sought. (Joint Exhibit Y.) The UR dated August 6, 2025 was mailed to Applicant's Attorney on August 6, 2025 and there is evidence that it was also mailed and faxed to Dr. Patterson/Casa Colina on August 6, 2025. (MOH, Stipulation 7 at 2:16-17.)

A Declaration of Readiness to Proceed to Expedited Hearing was filed on August 13, 2025 and ultimately proceeded to Trial on December 3, 2025. The issues at Trial were limited to: (1) does the 7-31-2025 RFA qualify for an expedited review pursuant to 8 CCR 9792.9.1(c)(4); and (2) does the 7-31-2025 RFA qualify as a concurrent review with a 72-hour deadline. (MOH at 2:21-24.)

The Findings and Order was served on the parties by the WCAB on February 9, 2025 in which it was found that the RFA dated July 31, 2025 does not qualify for an expedited review and thus the August 6, 2025 UR was timely. As the August 6, 2025 UR Decision was timely, the Court does not have jurisdiction to determine whether the Transitional Living Center Interdisciplinary Post Acute Residential Rehab program requested by Dr. Patterson is reasonably required to cure or relieve the applicant from the effects of his industrial injury. (Findings & Order/Opinion On Decision at 1.)

DISCUSSION

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.

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 March 24, 2026 and 60 days from the date of transmission is Saturday, May 23, 2026. The next business day that is 60 days from the date of transmission is Tuesday, May 26, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Tuesday, May 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 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 March 24, 2026, and the case was transmitted to the Appeals Board on March 24, 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

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.

compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on March 24, 2026.

II.

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 decision making 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).)

Former Administrative Director (AD) AD Rule 9792.9.1 (c), (Cal. Code Reg., tit. 8, § 9292.9.1 (c)-(c)(5) [amended and redesignated to Cal. Code Reg. tit. 8 §9792.9.3, effective 4/01/26]) 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).

(Cal. Code Regs., tit. 8, § 9792.9.1(c).)

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, the determination should be made by a medical professional, rather than a claims professional. In short, 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).

In *RJ Hall v. Western Medical* (December 13, 2017, ADJ9619437) [2017 Cal. Wrk. Comp. P.D. LEXIS 581]³, we held 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.) Conversely, 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 therein 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. In *Correa v. Display Products* (2024) 89 Cal.Comp.Cases 1075 [2024 Cal. Wrk. Comp. P.D. LEXIS 198] we reviewed the aforementioned cases and concluded that because the issue of whether an injured worker faces an imminent and serious threat to his health is in itself medical question that a claims examiner may not evaluate for expedited review before seeking consult with a medical professional.

In *Lopez Franco v. JDMC Medina Construction*, 90 Cal. Comp. Cases 956 [2025 Cal. Wrk. Comp. P.D. LEXIS 208], we concluded that a UR determination was not timely where there was no

³ 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.

review by a medical professional within the requisite timeframe. The facts in that case are similar to the claim at issue here. In that case, a treating physician submitted an RFA requesting expedited review for a supported living program and medication management for an applicant who had suffered a head injury. The record did not reflect any sort of response from defendant's UR provider, coincidentally also Genex, within 72 hours. The determination noted that the vendor began review six days after the RFA was received. When the determination did issue the provider only stated that expedited review was not supported by the record, did not cite to the record, and was generally non-specific. We concluded,

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 WCAB 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).

(*Id.* at pp. 965-966.)

Here, here the RFA was received by WCF Insurance Thursday July 31, 2025. (Exhibit Y.) The fax of the RFA indicated it was sent at 3:39 p.m. (Exhibit X.) Thus, it is deemed received on July 31, 2025. (Cal. Code Regs., tit. 8 §9792.9.1(a)(1), amended effective 04/01/2026.) The determination indicates that the vendor did receive the RFA within the 72 hour timeframe, but there is no indication of when it was reviewed, but the decision date is August 6, 2025, well beyond 72 hours. Moreover, there is no notation in the determination as to the reasons the request did not qualify for expedited review, by the medical professional. While the request is for a program beginning after the typical five day timeframe for decisions pursuant to former AD Rule 9792.9.1 (c)(3), the request still had to be reviewed by a medical professional to determine whether the typical timeframe is not warranted. Moreover, the language in former AD Rule 9792.9.1(c) is disjunctive. Even if the analysis does not satisfy one condition, here the standard timeline component, the rule still requires determining whether there is an imminent threat to the health of the patient. The evidence in the record is not clear that the RFA was reviewed by a medical professional within 72 hours for either reason. If it is untimely, 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].)

III.

Applicant also argues in the Petition that the utilization review process here was not appropriate as there is no change in circumstance to warrant discontinuing ongoing care at all, much less without a discharge plan in place. While this was not raised as a stated issue for trial, both defendant and applicant addressed this issue, to some extent, in their trial briefs. Further, the issues applicant presents are relevant to determining the validity of the RFA itself and the resulting UR determination. Had applicant not raised these issues in his Petition they would be considered waived. (Lab. Code, § 5904 [petitioner is deemed to have waived an issue that is not raised in the petition for reconsideration].)

Further, 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. I.A.C. (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. I.A.C. (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. I.A.C.* (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 appeals board has continuing jurisdiction over all 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.”].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

Here, applicant has raised a significant issue as to whether there is a change of circumstance warranting discontinuation of ongoing care that warrants consideration by the WCJ in the first instance. In this matter, the evidence was limited to one RFA, the UR determination, and the deposition of Dr. Patterson. There are allusions in each of these documents as to the length of stay the applicant has endured, the route by which he was approved for inpatient care, and the care he is receiving.

However, there is not enough of a record to make a determination as to whether there was a change of circumstances that warranted the RFA in the first instance.

Accordingly, we will grant reconsideration, rescind the F&O, and return this matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of February 6, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order dated February 6, 2026 is **RESCINDED**, and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 26, 2026

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

**HECTOR BARRAGAN PALOS
SOLOV TEITELL LOS ANGELES
CALIFORNIA SELF INSURANCE LAW**

TF/md

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