WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JOHNATHAN GOODWIN, *Applicant*

vs.

ATASCADERO STATE HOSPITAL, *Defendants*

Adjudication Number: ADJ10298755
Anaheim District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings and Order issued by the workers' compensation administrative law judge (WCJ) on March 3, 2026. Therein, the WCJ found that "[t]he Utilization Review[(UR)] denying medical treatment was performed in a timely manner denying the court of jurisdiction to act." Based on this finding, the WCJ issued an Order that they lacked jurisdiction to address the December 1, 2025 Request for Authorization (RFA).

Applicant contends that the WCJ failed to address the issue of whether or not there is or was an agreed upon safe discharge plan in place at the time that the UR non-certification was issued. Applicant further contends the WCJ erred in finding that the holding in *Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910 [Appeals Board Significant Panel Decision] was not applicable where there was no material change in applicant's condition to warrant termination of inpatient care, which had been provided for five and a half years prior to the UR denial

Defendant filed an Answer. The WCJ issued a Joint Report and Recommendation by Workers' Compensation Judge on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we 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 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 April 1, 2026 and 60 days from the date of transmission is Sunday, May 31, 2026. The next business day that is 60 days from the date of transmission is Monday, June 1, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] . This decision is issued by or on Monday, June 1, 2026, so that we have timely acted on the petition as required by section 5909(a).

[1] 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 April 1, 2026, and the case was transmitted to the Appeals Board on April 1, 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 April 1, 2026.

II.

The WCJ provided the following discussion in the Report:

> INTRODUCTION
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> Applicant filed a timely and verified Petition for Reconsideration under Labor Code §5903 following the court's Finding and Order dated 3/3/26 finding the court lacked jurisdiction to address the Request for Authorization of 12/1/2025.
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> Applicant asserts defendant's UR denial is defective and defendant is barred from discontinuing residential care, and Patterson applies to UR denials when there is no material change in Applicant's condition. At the time of this report, defendant had filed an answer to the Petition for Reconsideration.
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> STATEMENT OF FACT
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> Applicant sustained injury on 2/2/16 arising out of and occurring in the course of employment to the left shoulder, head, brain, upper back, neck, eyes, psyche, sexual dysfunction, concussion, headaches and sleep and was found to be 100% permanently totally disabled. **Findings, Award and Order dated 10/20/20, EAMS Doc ID 73404382.**

> Applicant has been in a residential/inpatient care facility since February 2020. Applicant's primary treating physician had been submitting Request for Authorizations (RFAs) since February 2020 and defendant was issuing UR certifications for the inpatient care. As reflected in Applicant's Petition for Reconsideration, there were 34 UR certifications. In December of 2025, defendant received an RFA which was timely submitted to UR, and UR timely denied the request.
>
> On 2/3/26, the matter was set for an expedited hearing. Defendant asserted that the UR was performed timely (without objection by Applicant) and a timely denial was issued. Applicant maintains that given the long history of being in a long term living program, this case is analogous to Patterson, and the UR denial should not apply in this case. After reviewing the evidence, the court found the UR determination was performed timely, thus depriving the court jurisdiction to act. In response, Applicant filed the Petition for Reconsideration.
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> (Report, at pp. 1-2, emphasis in original.)

III.

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

Section 4600 requires the employer to provide reasonable medical treatment to cure or relieve from the effects of the industrial injury. (Lab. Code, § 4600(a).) An employers' review of an employees' medical treatment requests are governed solely by UR. (Lab. Code, §§ 4610, 4610.5; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230, 236 [73 Cal.Comp.Cases 981].) Section 4610 provides time limits within which a UR decision must be made by the employer. These time limits are mandatory. Every employer is required to participate in UR, for consideration of a treating physician's request for authorization of medical treatment. (*State Compensation Ins. Fund v. Workers' Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230 [73 Cal.Comp.Cases 981]. When there is a challenge to the validity of a UR decision, the only issue which the Appeals Board may address is the legal issue regarding the timeliness of the UR decision. All other disputes regarding a UR decision must be resolved through IMR. (*Dubon v. World Restoration, Inc*. (2014) 79 Cal.Comp.Cases 1298 (Appeals Board en banc).)

Section 4610(i) applies when the RFA involves the provision of "concurrent" medical treatment, such as applicant's inpatient treatment at Casa Colina. (Lab. Code § 4610; Cal.Code Regs., tit. 8, § 9792.6.1(c) ["'Concurrent review' means utilization review conducted during an

inpatient stay"].) Under section 4610(i)(3), "concurrent" UR decisions, "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." (See also Cal. Code Regs., tit. 8, § 9792.9.1(e)(3).)

Section 4610(i) states: "In determining whether to approve, modify, or deny requests by physicians prior to, retrospectively, or concurrent with the provisions of medical treatment services to employees, all of the following requirements shall be met:"

Section 4610(i)(1) provides that concurrent UR decisions "shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five normal business days from the receipt of a request for authorization for medical treatment ...."

However, section 4610(i)(3) shortens the five day period, requiring concurrent UR decisions be made within 72 hours if expedited review is necessary because of an imminent and serious threat to applicant's health:

> 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.

As relevant here, section 4610(i)(4)(C), provides:

> In the case of concurrent review, medical care shall not be discontinued until the employee's physician has been notified of the decision and a care plan has been agreed upon by the physician that is appropriate for the medical needs of the employee. Medical care provided during a concurrent review shall be care that is medically necessary to cure and relieve, and an insurer or self-insured employer shall only be liable for those services determined medically necessary to cure and relieve.

Administrative Director (AD) Rule 9792.9.1(e)(6), implementing section 4610(i)(4)(C), provides:

> The following requirements shall be met prior to a concurrent review decision to deny authorization for medical treatment:

> (A) Medical care shall not be discontinued until the requesting physician has been notified of the decision and a care plan has been agreed upon by the requesting physician that is appropriate for the medical needs of the employee.
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> (B) Medical care provided during a concurrent review shall be treatment that is medically necessary to cure or relieve from the effects of the industrial injury.

It is well established that decisions by the Appeals Board 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].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], citations omitted.)

Here, it appears from our preliminary review that the WCJ failed to address all the issues raised at trial specifically the applicability of section 4610(i)(4)(C) and AD Rule 9792.9.1(e)(6). Based on our review, we are not persuaded that the record is fully developed on these issues. Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. 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/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 1, 2026

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

JOHNATHAN GOODWIN
BENTLEY & MORE LLP
STATE COMPENSATION INSURANCE FUND

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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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