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

**LINDA BURTON, *Applicant***

**vs.**

**LOS ANGELES COUNTY METROPOLITAN TRANSIT AUTHORITY, permissibly self-insured and self-administered, *Defendant***

**Adjudication Numbers: ADJ12874580 (MF); ADJ12874605**
**Van Nuys District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the October 13, 2025 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant's previously awarded injury resulted in compensable consequences to the urinary system and gastro-intestinal symptoms in the form of incontinence of urine and feces, and that some of the treatment requested by applicant's treating physicians on April 26, 2024 and June 21, 2024 is reasonable and necessary. As noted in the F&A, untimely utilization review (UR) determinations provided the WCJ with jurisdiction to address the treatment dispute and award office visits, an EKG, lab work, follow-up visits with Dr. Sangnil, an assessment for wheelchair access modifications, an evaluation for home modifications, wheelchair transportation for treatment and daily activities, home health care and seven days per week and eight hours per day, a rheumatology consult, urologic botox treatment, a psychiatric consult, and physical therapy.

Defendant contends that the evidence does not justify the F&A with respect to the wheelchair access assessment, evaluation for home modifications, and wheelchair transportation for treatment and daily activities. Specifically, defendant argues that applicant's condition has improved, that she no longer uses a wheelchair, and that her physician's requests for treatment and care have changed since June 21, 2024. Defendant asserts that in light of these developments, the F&A is based upon medical reports and facts that are no longer germane.

We have received an Answer and an amended Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be denied.

We have considered the Petition for Reconsideration and the Answer and the Amended 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 defendant's Petition and defer a final decision. Our order granting the Petition 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 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 section 5950 et seq.[1]

**FACTS**

On August 6, 2019, applicant sustained injury arising out of and in the course of employment to her neck, Gastroesophageal Reflux Disease (GERD), hypertension, bilateral wrists, psyche, thoracic spine, and low back. During the period of December 1, 2004 through August 6, 2019, applicant sustained injury arising out of and in the course of employment to her neck, GERD, hypertension, bilateral wrists, psyche, thoracic spine, and low back. As a result of these injuries, applicant requires further medical care to cure or relieve industrial injuries and compensable consequences to her neck, GERD, hypertension, bilateral wrists, psyche, thoracic spine, and low back, urological, lower GI, and fecal incontinence. Defendant has provided some medical treatment, and applicant's primary treating physician (PTP) is Marlene Sangnil, M.D.

On June 21, 2024, PTP Dr. Sangnil issued a Request for Authorization (RFA) requesting numerous items of treatment, including the three items of treatment that were awarded by the WCJ on October 13, 2025 and presently disputed by defendant: an assessment to make applicant's apartment wheelchair accessible, an evaluation for home modifications, and wheelchair transportation for both treatment and daily activities. The previous Findings and Order dated September 23, 2024 has already determined that there is no timely, compliant utilization review determination or deferral with respect to Dr. Sangnil's June 21, 2024 RFA. Accordingly, the

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

Appeals Board has jurisdiction to decide whether Dr. Sangnil's disputed request for wheelchair transportation and evaluations for possible home modifications and wheelchair access are reasonable and necessary under the Medical Treatment Utilization Schedule (MTUS) set forth in AD Rules §§ 9792.20 through 9792.27.23 (Cal. Code Regs., tit. 8, §§ 9792.20 – 9792.27.23), as explained in the Appeals Board's en banc decision in *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298 ("*Dubon II*").)

However, even though it was previously found that the Appeals Board has jurisdiction under *Dubon II* to address the reasonableness and necessity of these treatment requests, it was also found that it is not possible to do so without development of the record. Specifically, the parties were ordered to have Dr. Sangnil provide a detailed justification for each requested item of treatment in her June 21, 2024 RFA, using the MTUS. Although Dr. Sangnil issued a report dated October 14, 2024 in response to this order, applicant's circumstances changed when she moved from California to Alabama, further delaying a final determination of the medical dispute over items of treatment requested by Dr. Sangnil in the June 21, 2024 RFA. Based on this development, further development of the record was once again ordered in a Findings and Order dated February 5, 2025. Applicant then returned to California, as noted in Dr. Sangnil's report dated September 19, 2025.

On September 25, 2025, the parties once again submitted the yet unresolved issue of whether the treatment requested in Dr. Sangnil's RFA of June 21, 2024 was reasonable and necessary.[2] At the September 25, 2025 hearing, the WCJ admitted exhibits into evidence, including Dr. Sangnil's September 19, 2025 report and her RFAs dated June 21, 2024 and September 22, 2025. The WCJ also heard applicant's testimony. Applicant testified that she has been wearing diapers for years, and her daughter has to change her because she cannot do it herself, ever since the date of injury. She cannot control either urination or defecation. She uses a walker. She may be able to take a few steps without it but primarily uses it constantly. She has walked her daughter's little dog and tries to do so in small amounts without the walker, if possible. (Minutes of Hearing and Summary of Evidence dated September 25, 2025, p. 3, lines 6-16.)

[2] The parties also submitted the issue of whether the treatment requested in treating urologist Dr. Justin Houman's RFA of April 26, 2024 is reasonable and necessary, but the WCJ's findings regarding the treatment requested by Dr. Houman are not specifically challenged by the Petition for Reconsideration.

The WCJ found that several of the items of treatment requested in Dr. Sangnil's June 21, 2024 RFA are reasonable and necessary, including the items of treatment contested in defendant's Petition for Reconsideration. In his Report, the WCJ notes the following:

> Transportation needs and home modifications are not subject to UR or IMR regulations. They are not subject to UR procedures. *University of California. Los Angeles v. WCAB (Onruang)* (2022) 87 CCC 675, *writ denied.* Therefore, it falls on the Appeals Board to make the determination if such services are reasonably needed.
>
> Mrs. Burton is seriously impaired. She can attempt to ambulate with a walker as she testified. But she suffers from weakness and pain. As stated above, both QME's have noted that she is wheelchair bound. A year ago, she was not able to leave the inpatient care due to her inability to ambulate. The physicians seem to be in agreement that she suffers from "functional quadriplegia."
>
> Defendant maintains that since returning from Alabama it seems that there is some improvement in her condition. However, this is not reflected anywhere in the medical reports that were in evidence.
>
> The undersigned would emphasize that the findings of fact ordered that her wheelchair accessibility to her home be "*assessed."* The findings of fact ordered that her home modifications, if any, be "*evaluated."* The findings of fact ordered that wheelchair transportation be provided, but that such a need as a purchase of a van be deferred until further evaluation be provided. Finally, the undersigned ordered that such a determination be made by collaboration with the physician and NCM on this file.
>
> The Applicant is incapable of ambulating without a walker except for only the shortest of distance. Activities of daily living may require differing transportation needs. It is only common sense that her needs should be *assessed* professionally. There was no evidence presented that established a significant improvement in her condition that would allay these needs.

(Report, November 14, 2025, pp. 4-5.)

## DISCUSSION

### 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 14, 2025, and 60 days from the date of transmission is January 13, 2026. This decision is issued by or on Tuesday, January 13, 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 WCJ, the Report was served on November 14, 2025, and the case was transmitted to the Appeals Board on November 14, 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 14, 2025.

**II.**

As noted in the Report, the WCJ relied upon the opinion in *Dubon II* to reach the conclusion that he had jurisdiction to consider the reasonableness and necessity of the medications

prescribed for applicant's pain and psyche. In that opinion, which is often referred to as *Dubon II* because it modified an earlier en banc opinion in the same case, the appeals board held that:

> 1. A utilization review (UR) decision is invalid and not subject to independent medical review (IMR) only if it is untimely.
>
> 2. Legal issues regarding the timeliness of a UR decision must be resolved by the Workers' Compensation Appeals Board (WCAB), not IMR.
>
> 3. All other disputes regarding a UR decision must be resolved by IMR.
>
> 4. If a UR decision is untimely, the determination of medical necessity may be made by the WCAB based on substantial medical evidence consistent with Labor Code section 4604.5.

(*Id.* 79 Cal.Comp.Cases at pp. 1299-1300.)

Because previous findings have already established that defendants did not perform timely UR of Dr. Sangnil's June 21, 2024 RFA, there can be no dispute at this juncture that the WCJ had jurisdiction to determine the medical dispute over the items of treatment that are contested in defendant's Petition for Reconsideration. The Petition does not seem to raise such an issue but rather focuses upon whether the WCJ's findings are based upon substantial medical evidence, based on the assertion that applicant's condition has improved to the point that she is no longer wheelchair dependent.

Defendant is correct in its assertion that substantial medical evidence is required, and that it must be based upon current facts. Any decision by the Appeals Board or a WCJ must be supported by substantial evidence. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 280- 281 [39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627,637 [35 Cal.Comp.Cases 16]; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 419 [33 Cal.Comp.Cases 659].) The opinion of a single physician may constitute substantial evidence, unless it is erroneous, beyond the physician's expertise, no longer germane, or based on an inadequate history, surmise, speculation, conjecture, or guess. (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) 34 Cal.3d 159, 169 [48 Cal.Comp.Cases 566]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525]; see also *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Board en banc).)

We disagree with the WCJ's reliance upon *Onruang*, *supra*, as holding that transportation needs and home modifications are not subject to UR or IMR regulations. We observe that as a writ denied case, *Onurang* is non-binding authority, and it held that the WCJ in that case had

jurisdiction to decide whether transportation was reasonable and necessary not because transportation is outside the scope of UR, but rather because defendant's UR in that case erroneously took such a position and had accordingly declined to review the request for transportation. As the opinion in *Omurang* explained: "since Defendant's UR expressly declined to address medical necessity of the request for transportation services for Applicant by concluding that the requested service was not within the scope of UR, Defendant effectively declined to conduct UR of the request and, accordingly, there was no UR decision regarding the request." (*Onruang*, *supra*, 87 Cal.Comp.Cases 675, 677.) Accordingly, the WCJ in that case had jurisdiction to decide a request for transportation pursuant to *Dubon II*, *supra*.

In this case, the WCJ, like the WCJ in *Omurang*, has jurisdiction over the disputed issue of wheelchair transportation, as well as evaluations for possible home modifications including wheelchair access, because of defendant's failure to provide a timely UR in response to Dr. Sangnil's June 21, 2024 RFA. We note that this exercise of jurisdiction under *Dubon II* does not absolve the WCJ of the duty to apply the provisions of the MTUS, set forth in AD Rules §§ 9792.20 through 9792.27.23, to each disputed item of treatment.

**III.**

Although we have preliminarily considered the Petition for Reconsideration, the Answers thereto, and the WCJ's Report, and the record in this matter, we are not persuaded that the record is properly developed on the disputed issues raised in the petition. As contended in defendant's Petition, applicant's location, condition, and even the evidence in this case have been subject to change over the more than one and a half years since Dr. Sangnil recommended the currently disputed items of treatment.

Accordingly, 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 how the facts of this case apply to unaddressed and developing legal issues, and to ensure that the parties are afforded due process. Thereafter, a final decision after reconsideration will be issued by the Appeals Board, from which any aggrieved person may timely seek a writ of review pursuant to section 5950 et seq.

## 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 14 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 sections 5950 et seq.

**V.**

Accordingly, we grant defendant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition 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 defendant's Petition for Reconsideration of the October 13, 2025 Findings and Award 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 A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**JANUARY 13, 2026**

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

**LINDA BURTON**
**SPARAGNA & SPARAGNA**
**HOMAN, STONE & ROSSI**

**CWF/*cs***

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