WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARIA DE LA TORRE, *Applicant*

vs.

WINDSOR GARDENS OF HAWTHORNE;
STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ236297; ADJ2485636
Santa Ana District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Lien claimant Greywell Pharmacy (lien claimant) seek reconsideration of the Findings and Order (F&O) issued on December 19, 2025. The workers' compensation administrative law judge (WCJ) found, in relevant part, that lien claimant failed to meet its burden of proof and therefore the lien is disallowed in its entirety.

Lien claimant contends that the WCJ acted in excess of her powers by acting as a utilization review physician and finding the medications were not reasonable and necessary. Applicant argues that in doing so she inappropriately relied on a Qualified Medical Evaluator (QME) report not in evidence but also in violation of the statutory scheme that enables only the primary treating physician to control medical treatment. Further, lien claimant alleges that the WCJ did not address all medications and did not consider the medical reports from the prescribing physician.

Defendant did not file an answer. The WCJ issued a Report and Recommendation of Workers' Compensation Judge on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, we will grant lien claimant's 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 section 5950 et seq.

FACTS

Applicant, while employed on August 23, 2003, as a certified nursing assistant, by defendant sustained injury arising out of and in the course of employment to head, neck, face, trunk, teeth, back, bilateral shoulders, right knee, gastroesophageal reflux, hypertension, fibromyalgia.

The matter was submitted for trial on October 1, 2014 on the issues of permanent disability, apportionment, attorney fees, and "whether applicant is 100% permanently and totally disabled per the case of *LeBoeuf*." (Minutes of Hearing/Summary of Evidence (MOH), 10/01/2014, 3:6-9.) At trial, all alleged body parts were stipulated to and none were denied. (*Id.*at 2:2-5.) At trial she testified, "Applicant sees Dr. Salick, who prescribes medication to control her fibromyalgia and joint pain somewhat." (*Id.* at 7:10-11.) At trial, two reports from Allen Salick, M.D., were admitted. One report, dated December 28, 2004, diagnosed applicant with fibromyalgia and found that she was permanent and stationary. (Applicant's Exhibit 25.) He prescribed Ultracet to treat back and neck pain. (*Id.*) The other, dated February 18, 2014, was a record review which disputed the opinions of the QME. (Applicant's Exhibit 24.) There was no discussion of prescriptions or their efficacy in this report.

The Findings and Award dated November 17, 2024 found that applicant was permanently and totally disabled and awarded future medical care for all body parts.

On February 7, 2023, a Compromise and Release was approved, settling applicant's claim including future medical treatment.

On May 11, 2018, lien claimant filed a lien to recover payment for medications it had dispensed based on prescriptions completed by Allen Salick, M.D. The total lien amount is $51,265.83 for 13 dates of services spanning from December 21, 2015 through November 11, 2016. (Lien claimant's Exhibit 28.) The itemized lists appear to consistently charge for Flurbiprofen powder, Lidocaine HCL powder, Menthol crystals, Camphor crystals, Albaderm base cream, Pyridoxine, and Gabapentin.

The matter was submitted for lien trial and spanned over three dates, March, 11, 2025, May13, 2025, and October 1, 2025. No testimony was taken.

Lien claimant submitted five reports from Dr. Salick in support of its lien. (Lien Claimant's Exhibit 30.) In the report dated December 21, 2025, Dr. Salick states, "doing well on the fms drugs approved by FDA like gabapentin, Cymbalta, said likes Voltaren, and Procardia for Raynauds." (Lien Claimant's Exhibit 30, at p. 1.) Applicant had no new joint swelling and a normal neurologic examination. There are no diagnoses listed nor a treatment plan outlined in the body of the report. (*Id.*) The accompanying Request for Authorization (RFA), dated December 28, 2025, requested Gabapentin 250 mg, Pyridoxine 100 mg, Flurbiprofen, Lidocaine, Menthol, and Camphor, all of which had been dispensed at the December 21, 2025 examination. (Lien Claimant's Exhibit 31.)

The second report is dated February 8, 2016. Here the diagnoses are Myalgia, Raynauds, and Lumbago based on the same objective findings. (*Id*. at p. 3.) The treatment plan notes "needs aquatic therapy for fms." (*Id.*) The corresponding RFA dated February 15, 2016 requests, retroactively, the same medications except that Gabapentin is increased to 550 mg. Again, the medications were dispensed at the examination on February 8, 2016. (Lien Claimant's Exhibit 34.)

The third report is dated June 6, 2016. The diagnoses and objective findings are the same. The treatment plan portion is completed, but appears incomplete, stating, "ut[*sic*] for chr[*sic*] pain needs pool therapy, cant procardai,[*sic*] ketoprofen, protonix, Cymbalta, and gabapentin. . ." (*Id*. at p. 5.) The corresponding RFA is dated June 14, 2016 for the same medications which had already been dispensed at the examination. (Lien Claimant's Exhibit 43.)

On July 18, 2016, the treatment plan states, "u tox eval for mngmnt[*sic*], cot[*sic*] ketoprofen and proton, is procardial xl, top for fms labs today." (*Id.* at p. 7.) The corresponding RFA is dated July 27, 2016 for the same medications which had already been dispensed at the examination. (Lien Claimant's Exhibit 48.)

On September 14, 2016, applicant complained of persistent hand pain. She had negative labs and her status remained the same as five years prior. The report also notes, "meds impr funct capacity." (*Id*. at p. 9.) The treatment plan states, "continue Procardia for Raynaud's, Celebrex for tinge pain savella for fms[sic] and Pepcid for NSAID gastropathy u tox eval for chr[sic] pain." (*Id.* at p. 9.)[1] Here the RFA is dated September 26, 2016 and only requests Gabapentin 550 mg and Pyridoxine 100 mg. The RFA included a page attached that clarifies that only 3 days of a

[1] It appears that comprehensive medical reports for the following dates of service were missing: 01/19/2016, 03/14/2016, 04/15/2016, 05/09/2016, 06/30/2016, 08/19/2016, 10/17/2016, 11/11/2016. There are no Requests for authorization for dates of service for 01/19/2025, 04/15/2016, 06/30/2016, 08/19/2016, 10/17/2016, 11/11/2016.

prescription was filled at the examination with the other 27 days to be filled via pharmacy. (Lien Claimant's Exhibit 52.)

At trial on May 13, 2025, judicial notice was taken of the rheumatology QME report of Rodney Bluestone, M.D., dated October 9, 2013. (Applicant's Exhibit 1.) At that time, her current medications included gabapentin, alprazolam, zolpidem, fentanyl, bupropion, famotidine, Therabenzaprine, Cymbalta, Metizol, nifedipine, alendronate, butalbital, APAP, caffeine, pantoprazole, and atenolol. (*Id.* at p. 5.) He notes:

> Her medication helps her pain by 50%. Her medications help her sleep, but she still awakens during the night. Her medications give her no help for loss of energy. The medications help her mood.

(*Ibid.*)

He also noted some concern about the effect of the medication she was taking, including those that contain acetaminophen. (*Id.* at p. 12.) After reviewing treatment reports from various physicians, he noted that he commended the treating physician for attempting to reduce the scope and doses of applicant's medications noting, "Currently, she has no direct toxicity from her medications other than, perhaps ongoing gastrointestinal blood loss; however she does have abnormal liver function tests, which might reflect an excess acetaminophen burden but, probably is due mainly to her hyperlipidemia." (*Id.* at pp. 13-14.) He goes on to note that another physician had raised concern about the number of prescribers for applicant's medication (*Id.* at p. 15.) In the conclusion of his report, he recommends that ongoing care should, "downplay the use of multiple medications." (*Id.* at p. 21.) There were no specific recommendations for weaning.

Defendant only admitted Explanations of Review (EOR) for each date of service. In each EOR, defendant denied payment for each medication because the medications were provided outside of "Express Scripts Inc." pharmacy network.

The F&O issued on December 19, 2025. The WCJ opined that lien claimant had failed to meet its burden as they did not offer any evidence that the medication prescribed was reasonable and necessary pursuant to Labor Code section 4600[2] as no evidence was offered to show that the medication was consistent with medical treatment utilization schedule (MTUS) outlined in section 5307.27. The WCJ relied, in part, on QME's concern with applicant's possible excessive medication use, his opinion that her treatment at that time had failed her as evidenced by the extensive medication list, and his thought that the medications were not helpful despite her

[2] Unless otherwise stated, all further statutory references are to the Labor Code.

indicating that they were at least 50% helpful. She also noted that the medical reports from Dr. Salick did not adequately address the need for each medication or their efficacy.

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 December 31, 2025 and 60 days from the date of transmission is Sunday, March 1, 2026. The next business day, that is 60 days from the date of transmission, is Monday, March 2, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision is issued by or on Monday, March 2, 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

[3] 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.

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 December 31, 2025, and the case was transmitted to the Appeals Board on December 31, 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 December 31, 2025.

II

We highlight several 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 the effects of the industrial injury. (Lab. Code, § 4600(a).) An employers' review of an employees' medical treatment request is governed solely by UR. (Lab. Code, § 4610(g); *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. (Lab. Code, § 4610.) These time limits are mandatory.

In *Dubon v. World Restoration, Inc.* (*Dubon II*) (2014) 79 Cal.Comp.Cases 1298 (Appeals Board en banc), the Appeals Board held that it has jurisdiction to determine whether a UR decision is timely. If a UR decision is untimely, the determination of medical necessity for the treatment requested may be made by the Appeals Board. (*Dubon II*, *supra*, at pp. 1299, 1300.) If the UR decision is timely, the Appeals Board has no jurisdiction to address disputes regarding the UR because "[a]ll other disputes regarding a UR decision must be resolved by IMR." (*Dubon II*, *supra*, at p. 1299.)

When the Appeals Board has jurisdiction to determine the issue of whether the treatment was reasonable and necessary, lien claimant has the burden of establishing the treatment was reasonable and necessary. (Lab. Code, § 5705; *Sandhagen*, *supra*, 44 Cal.4th 230.) Pursuant to section 5705, "The burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.) A lien claimant has the burden of proving all elements necessary to establish the validity of its lien. Section 3202.5 states that, "All parties and lien claimants shall

meet the evidentiary burden of proof on all issues by a preponderance of the evidence." (Lab. Code, § 3202.5; *Boehm & Associates v. Workers' Comp. Appeals Bd.* (*Brower*) (2003) 108 Cal.App.4th 137, 150 [68 Cal.Comp.Cases 548, 557].) A medical lien claimant's burden of proof includes the burden of showing that they provided medical treatment "reasonably required to cure or relieve" the injured worker from the effects of an industrial injury. (Lab. Code, § 4600(a); *Williams v. Industrial Acc. Com.* (1966) 64 Cal.2d 618 [31 Cal.Comp.Cases 186]; *Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd.* (1994) 26 Cal.App.4th 789 [59 Cal.Comp.Cases 461]; *Workmen's Comp. Appeals Bd. v. Small Claims Court* (*Shans*) (1973) 35 Cal.App.3d 643 [38 Cal.Comp.Cases 748].) Where a lien claimant, rather than the injured worker, litigates the issue of entitlement to payment for industrially related medical treatment, the lien claimant stands in the shoes of the injured worker, and the lien claimant must establish injury by preponderance of evidence. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Martin*) (1985) 39 Cal.3d 57, 67 [50 Cal.Comp.Cases 411])

Here, though the WCJ was within her discretion to rely on the QME report which was admitted into the record in this matter both in the initial trial and taken notice of in the lien trial, the QME opinion is not dispositive on the issue at hand. First, the QME report is dated October 9, 2013, which is more than two years prior to any of the dates of service. Thus, the report cannot have any valid opinion as to the need, efficacy, or risks of the medications being prescribed in late 2015 and 2016.

Second, at the time of the QME evaluation applicant was not prescribed any of the medications that are currently at issue apart from Gabapentin.[4] The WCJ seems to be focused on the risks outlined by Dr. Bluestone to applicant's internal condition from the medications she was on in 2013. It appears, though it is not clear, that some of the new prescriptions are creams or patches which could be the logical alternative to the medications Dr. Bluestone was concerned about.[5] Moreover, the QME report does not identify the quantity of Gabapentin that applicant was taking in 2013 to make any meaningful comparison to the quantity later prescribed in 2015 and 2016.

[4] Based on what medications were outlined in the 2013 QME report.

[5] It is worth comment that there were several other pharmacy liens that were settled without a trial, thus there is no record as to whether the applicant was also receiving other medications from other physicians.

Last, in the discussion of the medications, the QME lumped together sixteen medications in regard to the purported relief applicant experienced and the effects of the medications. None of the discussion considered MTUS recommendations for duration or dose at the time, nor did it discuss the same factors for continued use. The report is not substantial medical evidence for discussion of the medications dispensed and at issue in this lien.

There are five reports from the prescribing physician Dr. Salick in evidence. Some are incomplete. Most do not have any discussion regarding the ongoing use of the particular medications. Though he continued to issue RFAs and prescriptions for the various medications, he did not discuss them in his reporting. There is a brief mention in one report that applicant was getting relief from the medications. Additionally, she was prescribed varying dosages for Gabapentin from 250 mg initially to 550 mg without support for the fairly significant increase. However, the reports do note relief from the medications. As noted above, it appears that the physician was attempting use of alternative medications to avoid the internal complications that the QME was concerned about. Yet, the records are difficult to read and limited in information and may not be sufficient to support the lien in its entirety.

III.

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; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593.) 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 lien claimant'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 lien claimant's Petition for Reconsideration of the Findings and Award issued on December 19, 2025, by the workers' compensation administrative law judge 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/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 2, 2026

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

GREYWELL PHARMACY
SICM GROUP
STATE COMPENSATION INSURANCE FUND

TF/md

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