WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SARAH DOWNS, *Applicant*

vs.

INTERIM HEALTHCARE OF CENTRAL CALIFORNIA;
ZURICH NORTH AMERICA, *Defendants*

Adjudication Number: ADJ19182614
Lodi District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the August 5, 2026 Findings of Fact issued by a workers' compensation administrative law judge (WCJ), which found that applicant, while employed on January 28, 2024, as a caretaker by defendant, sustained injury arising out of and in the course of employment (AOE/COE) to the low back and claims to have sustained injury AOE/COE to the hips, lower extremities, and the entire levels of the back and spine; the Utilization Review (UR) denials of March 17, 2026 & May 7, 2026 for lumbar fusion are untimely; and that "[t]here is not a demonstrated need for the applicant to move forward with the lumbar interior fusion surgery, pre- and post-operative clearance and home health care at this time."

Applicant contends that once the WCJ determined that the submitted medical evidence was insufficient to decide the issue of whether applicant needs a lumbar interior fusion with the accompanying pre and post-surgical care, the WCJ should have ordered further development of the record.

We did not receive an Answer from defendant. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ, which recommends that we deny reconsideration.

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

reconsideration, amend the Findings to defer the issue of whether applicant needs a lumbar interior fusion with the accompanying pre and post-surgical care, otherwise affirm the Findings, and return this matter to the trial level for further proceedings consistent with this decision.

FACTS

Applicant sustained an industrial injury on January 28, 2024 to her low back, and claims to have sustained injury to her hips and lower extremities while employed by defendant. (Minutes of Hearing and Summary of Evidence of July 22, 2026 (MOH), p. 2, lines 4-8.) Applicant had back surgery on February 3, 2025 performed by Morteza Farr, D.O. (Applicant's Exhibit 10, QME Report of Dr. Michael Krosin dated January 29, 2026, p. 9.)

On March 7, 2026, Dr. Farr submitted a Request for Authorization (RFA) for further surgical intervention in the form of an anterior lumbar interior fusion, with related home health and nursing care, as well as physical therapy. (Applicant's Exhibit 11, Request for Authorization signed by Dr. Morteza Farr, dated March 7, 2026, p. 1.) Dr. Farr submitted a second RFA dated April 15, 2026 reiterating this request. (Applicant's Exhibit 13, Request for Authorization signed by Dr. Morteza Farr, dated April 15, 2026, p. 1.)

On July 22, 2026, the case was submitted for decision at an expedited trial. The parties stipulated that the UR denials of May 7, 2026 and March 17, 2026 relating to the lumbar fusion are untimely. (MOH, p. 2, lines 10-11.) The sole issue was applicant's need for a lumbar interior fusion with pre-operative clearance, post-operative clearance, and home health care. (*Id*. at p. 2, lines 15-16.)

On August 5, 2026, the WCJ issued Findings of Fact, which found that applicant did not demonstrate the need for a lumbar interior fusion surgery, pre- and post-operative clearance, and home health care at this time.

Applicant filed a timely, verified Petition for Reconsideration of the Findings of Fact. Applicant acknowledges that although an untimely UR determination confers jurisdiction upon the WCAB to determine medical necessity as explained in *Dubon v. World Restoration, Inc., et al.* (2014) 79 Cal.Comp.Cases 1298 (Appeals Board en banc) (*Dubon II*), it does not automatically compel authorization of the requested treatment. However, applicant contends that the WCJ should have ordered further development of the medical evidence rather than finding that the requested medical treatment was not necessary.

DISCUSSION

I

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code[1] 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 26, 2026 and 60 days from the date of transmission is Sunday, October 25, 2026. The next business day that is 60 days from the date of transmission is Monday, October 26, 2026 .(See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, 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 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

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[1] Any further section references are to the California Labor Code unless otherwise noted.

[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.

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 26, 2026, and the case was transmitted to the Appeals Board on August 26, 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 26, 2026.

II

Section 4600(b) provides that "medical treatment that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27." (Lab. Code, § 4600(b).) Section 5307.27 specifies that these guidelines refer to the Medical Treatment Utilization Schedule (MTUS). (Lab. Code, § 5307.27(a).) The MTUS can be found in AD Rules 9792.20 through 9792.27.23 (Cal. Code Regs., tit. 8, §§ 9792.20-9792.27.23). The MTUS is presumptively correct on the extent and scope of treatment and is the primary source of guidance for physicians. (Lab. Code, § 4604.5(a); Cal. Code Regs., tit. 8, § 9792.21(c).) However, the MTUS may be rebutted, and treatment may be warranted based on recommendations outside the MTUS in limited situations. (Cal. Code Regs., tit. 8, § 9792.21(d); see also Lab. Code, § 4604.5(d).)

If a UR decision is untimely, the determination of medical necessity must be made by the WCAB based on substantial medical evidence consistent with the MTUS. (*Dubon II*, *supra*, 79 Cal.Comp.Cases at p. 1300.) In this case, the parties have stipulated that the UR denials were untimely, so the WCAB's jurisdiction to determine medical necessity under *Dubon II* appears to be uncontested.

When a defendant does not timely conduct UR, the dispute is subject to an expedited hearing and determination by the WCAB as to the reasonable and medical necessity of the medical treatment. (*Id.*; see *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Sandhagen*) (2008) 44 Cal.4th 230; Lab. Code, § 5502.)

With respect to this determination, decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Additionally, decisions of 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].) The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].)

Here, the sole issue raised by the petitioner is whether the WCJ should have developed the existing record in order to obtain substantial medical evidence that applies the criteria set forth in the current MTUS to the surgery and related treatment requested in Dr. Farr's March 7, 2026 RFA and April 15, 2026 RFA.

Based upon the existing medical evidence, we conclude that the record requires development in order to justly determine whether applicant requires a lumbar fusion surgery and related care using criteria set forth in the MTUS.

The WCJ and the Appeals Board have a clear constitutional mandate to ensure substantial justice in all cases. (Cal. State Const., Art. XIV, § 4.) We are not permitted to leave matters undeveloped where it is clear that additional discovery is needed in order to render a substantially just decision. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) The power of the Appeals Board to further develop the record under such circumstances is well established. (See Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].)

We do not agree with the suggestion in the Report that the panel decision *Herring v. Paradise Valley Hosp*., 2015 Cal. Wrk. Comp. P.D. LEXIS 526, casts any doubt upon the relevance of Dr. Farr's July 10, 2026 report, which was admitted into evidence without objection as Applicant's Exhibit 14. As a preliminary matter, a WCAB panel decision is not binding precedent on other Appeals Board panel or a WCJ. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal. App. 4th 1418, 1425 fn. 6 [67 Cal. Comp. Cases 236]. Secondly, even accepting the holding in *Herring* that medical evidence must address the condition of an injured worker at the time that a request for authorization is made, it does not follow that reports must be *in existence* at the time of an RFA in order to provide such evidence. Medical reports in workers' compensation cases can,

and typically do, analyze present evidence to address past events and conditions. While Dr. Farr's July 10, 2026 report does refer to a "new MRI" it does not indicate that the MRI shows any new condition that has developed or changed since the date of the March 7, 2026 or April 15, 2026 RFA.

To the extent that Dr. Farr's reporting was unclear, the WCJ should have ordered a supplemental report before deciding in the negative the critical issue of whether the physician's requested treatment was reasonable and necessary. We are unpersuaded by the WCJ's argument that the discovery cutoff set forth in section 5502(d)(3) precludes development of the record where, as here, any decision on a deficient record would result in a denial of substantial justice. The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) Thus, the additional evidence should come from Dr. Farr, who has already reported on the disputed issue. (See *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) A supplemental QME report should not be solicited for this purpose because generally, unless stipulated by the parties, the opinions of a QME are not pertinent when the issue is a dispute over a request for medical treatment. (See Cal. Code Regs., tit. 8, § 35.5(g)(2); see also Lab. Code, § 4610.)

Accordingly, we grant the Petition for Reconsideration, and as our decision after reconsideration, amend the Findings to defer the issue of whether applicant needs a lumbar interior fusion with the accompanying pre and post-surgical care, otherwise affirm the Findings, and return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact of August 5, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact issued by the WCJ on August 5, 2026 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Sarah Downs, while employed on January 28, 2024, as a caretaker, Occ. Group Number 340, at Modesto, California, by Interim Health Care of Central California, sustained injury arising out of and in the course of employment to the

low back. The applicant also claims to have sustained injury arising out of and in the course of employment to the hips, lower extremities, as well as the entire levels of the back and spine.

2. At the time of the injury, the employer's workers' compensation carrier was Zurich North America.

3. The UR denials of March 17, 2026 & May 7, 2026 for lumbar fusion are untimely and the WCAB has jurisdiction to determine whether the requested medical treatment is reasonable and necessary.

4. The issue of whether the requested lumbar interior fusion surgery, pre- and post-operative clearance and home health care is reasonable and necessary is deferred.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,



/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

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.

SARAH DOWNS
CENTRAL VALLEY INJURED WORKER LEGAL CLINIC, INC.
WOOLVERTON, WOOLVERTON & WOLSEY
STOCKWELL, HARRIS, WOOLVERTON & FOX

CWF/*cs*

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