

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

PRECIOUS CASTELLANOS, *Applicant*

vs.

**BEST BUY CO., INC.; XL INSURANCE AMERICA, INC.,
administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ18538112
Los Angeles District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration, or in the alternative, removal, in response to the February 20, 2024 Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a customer service specialist on November 26, 2023, claims to have sustained industrial injury to her head, brain, neck and right arm. The WCJ found that defendant's Utilization Review Decision dated January 10, 2024 was timely, and that the court lacked jurisdiction to determine the medical necessity of the requested treatment.

Applicant contends that the Request for Authorization indicated the need for Expedited Review, and that defendant's utilization review decision was dilatory, conferring jurisdiction on the Workers' Compensation Appeals Board to adjudicate the medical necessity of the underlying treatment request.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

If a decision includes resolution of a “threshold” issue, then it is a “final” decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers’ Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ’s determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ’s decision includes a finding regarding a threshold issue of employment. Accordingly, the WCJ’s decision is a final order subject to reconsideration rather than removal.

The parties dispute the timeliness of a utilization review determination. Applicant claims injury to her head, brain, neck, and right arm while employed as a customer service specialist by defendant Best Buy Co., on November 16, 2023.

On Friday, January 5, 2024, treating physician David Patterson, M.D., submitted a Request for Authorization (RFA), requesting in pertinent part, “Outpatient Transitional Living Center Day Treatment Program with transportation, includes up to 6 hours of physical, occupational, speech therapy, and neuropsychology, transportation to and from therapies (12 visits).” (Ex. A, Request for Authorization, dated January 5, 2024.) The checkboxes at the top of the form which indicate the nature of the review being requested, indicated the need for expedited review, because the “employee faces an imminent and serious threat to his or her health.” (*Ibid.*)

On January 10, 2024, defendant issued its Utilization Review decision, denying authorization for the requested outpatient transitional living center program and associated treatment modalities. (Ex. B, Utilization Review Determination, dated January 10, 2024.)

On February 14, 2024, the parties proceeded to Expedited Hearing on the issue of whether defendant's January 10, 2024 Utilization Review determination was timely, and whether the applicant is entitled to the requested outpatient care program. (Minutes of Hearing (Reporter) (Expedited), dated February 14, 2024, at p. 2:13.) The parties identified trial exhibits and submitted the matter for decision on the documentary record.

On February 20, 2024, the WCJ issued the F&O, determining in relevant part that the January 10, 2024 Utilization Review determination was timely. The Opinion on Decision explained that notwithstanding the checked box on the RFA indicating the need for expedited review, the RFA and supporting documentation failed to establish that applicant faced an imminent or serious threat to her health or safety, or that a decision issued in the normal UR timeframe would be detrimental to the applicant's condition. (Opinion on Decision, at p. 2.) Accordingly, the WCJ determined that the need for expedited review timeframes was not substantiated in the record, and that the defendant had timely issued the utilization review decision within five business days of receipt of the RFA, as required by Labor Code section 4610(i)(3).

Applicant's Petition avers that it is not disputed that the January 5, 2024 RFA indicated the need for expedited review, and that the Utilization Review decision was not made within 72 hours as required by Administrative Director (AD) Rule 9792.9.1(c)(4). (Cal. Code Regs., tit. 8, § 9792.9.1(c)(4).) Applicant asserts that in concluding the RFA did not establish the need for expedited review due to an imminent threat to the health or safety of the applicant, the WCJ "erroneously shifted the burden of proof on Applicant to demonstrate that the request for expedited review was reasonably necessary." (Petition, at p. 6:18.)

Applicant cites the split panel decision in *Rodriguez v. Air Eagle* (January 9, 2015; ADJ3415116, ADJ581399) [2015 Cal. Wrk. Comp. P.D. LEXIS 3] for the proposition that "[t]he purpose of the box check is to alert the reviewer that a separate timeframe for the decision applies, and there is nothing in Rule 9792.9.1...which allows a defendant to override a requesting physician's designation of a request as imminent and serious. Thus, the...RFA should have been treated as an expedited request." (Petition, at p. 6:7.)

However, the text of the panel decision as quoted in applicant's petition is incomplete. The full text, in pertinent part, from the panel majority opinion in *Rodriguez* states:

The purpose of the box check is to alert the reviewer that a separate timeframe for the decision applies, and there is nothing in Rule 9792.9.1 *as it existed in*

2013 which allows a defendant to override a requesting physician's designation of a request as imminent and serious.

(Rodriguez, supra, 2015 Cal. Wrk. Comp. P.D. LEXIS 3, at p. 18, italics added.)

The omission of this text from applicant's Petition is notable because the currently effective version of Rule 9792.9.1, as applicable to dates of injury on or after January 1, 2013, provides:

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)(4), italics added.)

Thus, the current iteration of Rule 9792.9.1 requires the requesting physician to substantiate the request for expedited review. The WCJ's Report observes:

While Dr. Patterson's RFA is marked as requiring expedited review, even upon a liberal reading of Dr. Patterson's report there is nothing that documents that the applicant is facing an imminent or serious threat to her health or safety nor that the normal UR timelines would be detrimental to the applicant's condition ... In discussing the treatment recommendation for the outpatient program, Dr. Patterson indicates that he feels that the patient would "benefit" from the program. Although described by Dr. Patterson as beneficial, the doctor does not indicate how a delay in reviewing this request would be detrimental to the Applicant's health. In *Diaz v. Pacific Coast Framers Inc.* (2023 Cal. Wrk. Comp. P.D. LEXIS 211) which the Court finds to be persuasive, the Board found that an RFA was to be reviewed pursuant to the timelines under California Code of Regulations §9792.9.1(c)(3) where the doctor's reports did not constitute evidence that applicant's condition was an imminent and serious threat to his health that would warrant the 72-hour expedited review.

We agree with the WCJ's analysis. Pursuant to AD Rule 9792.9.1(c)(4), an RFA requesting expedited review must reasonably establish that the injured worker faces an imminent and serious threat to his or her health, or that the timeframe for utilization review for non-expedited requests would be detrimental to the injured worker's condition. In those instances where the RFA does not

establish the criteria for expedited review, the RFA “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)(4).) The timeframes set forth in AD Rule 9792.9.1(c)(3) are five business days from the date of receipt of the RFA if the appropriate information necessary to render a decision is received, or in any event, 14 calendar days from the date of receipt of the request. (Cal. Code Regs., tit. 8, § 9792.9.1(c)(3).)

We therefore conclude that the timeframes for non-expedited review set forth in AD Rule 9792.9.1(c)(3) apply because the January 5, 2024 RFA failed to meet the criteria for expedited review under AD Rule 9792.9.1(c)(4). Because defendant’s Utilization Review determination issued on January 10, 2024, within five business days of receipt of the January 5, 2024 RFA, defendant’s Utilization Review determination was timely.

We will affirm the F&O, accordingly.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 10, 2024

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

**PRECIOUS CASTELLANOS
SOLOV AND TEITELL
CHOU LAW GROUP**

SAR/abs

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