**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**DARREL LINK, *Applicant***

**vs.**

**NORTHROP GRUMMAN SYSTEMS CORPORATION;**
**AIU INSURANCE COMPANY, administered by**
**SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Numbers: ADJ16034617; ADJ13224263; ADJ9403331**
**Van Nuys District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the May 28, 2025 Findings of Fact and Orders, wherein the workers' compensation administrative law judge (WCJ) found that defendant's Utilization Review (UR) process certified a November 8, 2023 Request for Authorization (RFA), and that the court lacked jurisdiction to alter or amend that determination. The WCJ denied defendant's motion to vacate the November 16, 2023 UR determination and ordered defendant to authorize the requested treatment.

Defendant contends that the WCJ's finding of a lack of jurisdiction regarding the medical necessity of the UR determination precludes the court's order enforcing the UR determination. Defendant further contends the F&O contains factual errors and abrogates principles of due process.

We have received an Answer from defendant. 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, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant reconsideration, order the trial exhibits admitted into evidence and amend the findings

of fact to reflect that the November 16, 2023 UR determination was valid and final, but otherwise affirm the WCJ' decision.

## FACTS

Applicant claimed injury to his head, neck, back, ribs, lungs, right shoulder and clavicle, left hand, and nervous system while employed as an aircraft mechanic by defendant Northrop Grumman on March 17, 2022. The claim was initially accepted by defendant who provided medical treatment.

On November 8, 2023, treating physician Elliott Block, M.D. submitted a report diagnosing a traumatic brain injury with post-traumatic headaches, a mood disorder, and "multi-trauma." (Ex. 10, Report and RFA of Elliott Block, M.D., dated November 8, 2023.) Dr. Block submitted a corresponding RFA for medications and for a "transitional living center residential program post acute rehabilitation to include PT, OT, ST, and neuropsychology up to 6 hours per day, 24-hour nursing oversight, [and] medical management." (*Id.* at p. 4.)

Defendant submitted the request to its UR provider, and on November 16, 2023, UR certified the request as "medically necessary." (Ex. 11, Utilization Review Certification, dated November 16, 2023, at p. 6.)

On January 9, 2024, defendant denied liability for applicant's claim and asserted the affirmative defense of intoxication pursuant to Labor Code[1] section 3600(a)(4). (Minutes of Hearing and Summary of Evidence, date October 16, 2024, at p. 2:16.)

On November 5, 2024, the WCJ issued Findings of Fact determining in relevant part that applicant had met his burden of establishing injury arising out of and in the course of employment, while defendant had not met its burden of establishing that intoxication was a proximate cause of the injury. (Findings of Fact and Orders, dated November 5, 2024, Findings of Fact Nos. 1 and 3.)

On November 12, 2024, defendant petitioned for reconsideration of the WCJ's decision.

On January 21, 2025, we denied defendant's petition. (Opinion and Order Denying Petition for Reconsideration, dated January 21, 2025.)

On April 28, 2025, the parties proceeded to trial and framed for decision the issue of "[j]urisdiction of WCJ to determine need for medical care as requested by Dr. Elliott Block as set

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

forth in his report of [December 4, 2023]." (Minutes of Hearing (Further), dated April2 8, 2025, at p. 2:8.)

On May 28, 2025, the WCJ issued his F&O, determining in relevant part that "[a] timely Utilization Review Determination on [November 16, 2023] certified medical care outlined in an RFA from Dr. Elliott Block dated [November 8, 2023]," and that "[t]he WCJ lacks jurisdiction to question or determine the medical care set forth therein." (Findings of Fact Nos. 1 and 2.) The WCJ further ordered that defendant comply with the UR determination dated November 16, 2023. (Order No. 2.)

Defendant's Petition contends that a lack of jurisdiction over the medical treatment dispute is incompatible with the WCJ's order that defendant authorize the requested treatment. (Petition, at p. 7:14.) Defendant further contends its due process rights were abrogated because the WCJ did not allow defendant to produce witnesses to testify. (*Id.* at p. 7:9.)

Applicant's Answer responds that the if an employer's UR review certifies a requested treatment as medically necessary, "the determination is final, and the employer may not challenge it." (Answer, at p. 4:16.) Applicant also observes that the issue of enforcement of an award is a separate issue from that of medical necessity, and that the WCAB is vested with enforcement of medical treatment issues not otherwise subject to Independent Medical Review (IMR).

## 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, Labor Code 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 June 13, 2025, and 60 days from the date of transmission is August 12, 205. This decision is issued by or on August 12, 2025, 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 workers' compensation administrative law judge, the Report was served on June 13, 2025, and the case was transmitted to the Appeals Board on June 13, 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 June 13, 2025.

**II.**

We first address the admissibility of the trial exhibits. Both applicant and defendant objected to each and every trial exhibit offered into evidence at the April 28, 2025 trial by the opposing party. (Minutes of Hearing, dated April 28, 2025, at pp. 2-4.) The WCJ marked applicant's exhibits 10 through 12 and defendant's exhibits Q through X for identification only. (*Id.* at pp. 2-3.)

The WCJ's May 28, 2025 F&O refers to and discusses the evidence in detail but appears to inadvertently omit a ruling on the admissibility of the evidence. Similarly, both defendant's

Petition and applicant's Answer refer to and discuss the merits of the evidence marked for identification but not formally admitted into the evidentiary record.

We observe that section 5904 provides that "[t]he petitioner for reconsideration shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the petition for reconsideration." (Lab. Code, § 5904.) Here, neither party has raised the issue of the admissibility of Exhibits 10 through 12 and Q through X in a reconsideration petition. Thus, to the extent that the parties originally objected to the admissibility of various exhibits, the issue was not preserved in a subsequent petition for reconsideration and is now waived.

Accordingly, we will grant reconsideration and amend the F&O to admit applicant's Exhibits 10 through 12 and defendant's Exhibit Q through X into evidence.

**III.**

Section 4610 provides for the resolution of medical treatment disputes through Utilization Review. Section 4610 requires that "[e]ach employer shall establish a utilization review process in compliance with this section, either directly or through its insurer or an entity with which an employer or insurer contracts for these services," (*Id.* at subd. (g)), defining utilization review as "functions that prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians..." (*Id.*, subd. (a)). (*State Compensation Insurance Fund v., Workers' Comp. Appeals Bd.* (*Sandhagen*) (2008) 44 Cal.4th 230 [73 Cal.Comp.Cases 981].)

The manifest purpose of UR "is to ensure quality, standardized medical care for workers in a prompt and expeditious manner," since UR "balances the dual interests of speed and accuracy, emphasizing the quick resolution of treatment requests, while allowing employers to seek more time if more information is needed to make a decision." (*Sandhagen, supra,* 44 Cal.4th at 241.)

Here, defendant seeks an order vacating its own Utilization Review determination dated November 16, 2023, wherein the treatment described in a November 8, 2023 RFA was determined to be medically necessary. (Ex. 11, Utilization Review Certification, dated November 16, 2023, at p. 6.) Defendant contends that because the requesting physician "is no longer available to provide treatment, the original UR approval becomes invalid." (Petition, at p. 8:20.)

We note in the first instance, however, that the requested treatment has been certified as medically necessary to cure or relieve from the effects of *applicant's* injury. (Lab. Code, §§ 4600(a); 4610.5; *Sandhagen, supra,* 44 Cal.4th 230.) Defendant cites to no controlling authority, nor do we identify any such authority in our research, for the proposition that the later unavailability of a prescribing physician invalidates the medical necessity of the requested treatment as it relates to the injured employee. (*Ramirez v. Workers' Comp. Appeals Bd.* (2017) 10 Cal.App.5th 205 [82 Cal.Comp.Cases 327] (*Ramirez*); cf. Lab. Code, § 4610.3.) Rather, the question of medical necessity is necessarily concerned with the timely provision of treatment necessary to cure or relieve from the effects of the *employee's* industrial injury. (Lab. Code, § 4600(a).)

Additionally, and in our view, the question of whether the defendant may seek to "vacate" its own November 16, 2023 UR determination is answered by the determination of whether the UR process was validly completed. As the Court of Appeal has observed in *Ramirez*:

> Every employer is required to establish a utilization review process for screening, reviewing, and deciding on treatment recommendations that are made by an employee's physician. (§ 4610, subds. (a) & (b).) Any decision to modify, delay, or deny a request for medical treatment for a work-related injury must be made by a licensed physician pursuant to a utilization review process. (§ 4610, subd. (e).) The utilization review process must be governed by written policies and procedures that are based on medical necessity and consistent with the "schedule for medical treatment utilization" adopted pursuant to section 5307.27.2 (§ 4610, subd. (c).) The employer must make its decision on treatment in a timely fashion, but not to exceed five working days from receipt of the information necessary to make the determination, and not more than 14 days from the date of the request by the employee's physician. (§ 4610, subd. (g)(1).) **If the utilization review approves the requested treatment, the determination is final and the employer may not challenge it.** (§ 4610.5, subd. (f)(1).)

(*Ramirez, supra*, 10 Cal. App. 5th 205, 213, emphasis added; see also *Sandhagen*, *supra*, 44 Cal. 4th 230, 244 ["the Legislature intended for the utilization review process to be employers' only avenue for resolving an employee's request for treatment."].)

Here, there is no challenge to the timeliness of the November 16, 2023 UR determination. (*Dubon v. World Restoration* (2014) (79 Cal. Comp. Cases 1298 [2014 Cal. Wrk. Comp. LEXIS 131] (Appeals Bd. en banc).) Nor is there a substantive challenge to the underlying validity of the UR determination. Applicant's request for medical treatment was regularly submitted to UR on

November 8, 2023, which certified the request as being medically necessary on November 16, 2023. Pursuant to *Sandhagen* defendant's submission of the RFA to UR was its only avenue for resolving an employee's request for treatment, and the employer may not challenge it. Accordingly, we will amend Finding of Fact No. 2 to reflect that the Utilization Review determination of November 16, 2023 was valid and final. (*Ramirez, supra*, 10 Cal.App.5th 205, 213.)

Insofar as defendant contends that the prescribing physician is no longer available following resolution of defendant's affirmative defense of intoxication, we observe that the defendant has an affirmative obligation to promptly investigate the facts in order to determine its liability for workers' compensation and take the initiative in providing those benefits. In *Ramirez v. Workers' Comp. Appeals Bd.* (1970) 10 Cal.App.3d 227 [35 Cal.Comp.Cases 383], the court of appeal observed that:

> Upon notice or knowledge of a claimed industrial injury an employer has both the right and *duty to investigate the facts* in order to determine his liability for workmen's compensation, but he must act with expedition in order to comply with the statutory provisions for the payment of compensation which require that he *take the initiative in providing benefits*. He must seasonably offer to an industrially injured employee that medical, surgical or hospital care which is reasonably required to cure or relieve from the effects of the industrial injury.

(*Id.* at p. 234, italics added.)

In *United States Cas. Co. v. Industrial Acc. Com*. (*Moynahan*) (1954) 122 Cal.App.2d 427, [19 Cal.Comp.Cases 8], the court similarly states:

> Section 4600 of the Labor Code places the responsibility for medical expenses upon the employer when he has knowledge of the injury….The duty imposed upon an employer who has notice of an injury to an employee is not … the passive one of reimbursement but the active one of offering aid in advance and of making whatever investigation is necessary to determine the extent of his obligation and the needs of the employee.

(*Moynahan, supra*, at p. 435.)

We also observe that defendant has a regulatory duty to conduct a reasonable and good faith investigation to determine whether benefits are due. Specifically, AD Rule 10109 provides, in relevant part:

> (a) [A] claims administrator must conduct a reasonable and timely investigation upon receiving notice or knowledge of an injury or claim for a workers' compensation benefit.
>
> (b) A reasonable investigation must attempt to obtain the information needed to determine and timely provide each benefit, if any, which may be due the employee.
>
> > (1) The administrator may not restrict its investigation to preparing objections or defenses to a claim, but must fully and fairly gather the pertinent information ... The investigation must supply the information needed to provide timely benefits and to document for audit the administrator's basis for its claims decisions. The claimant's burden of proof before the Appeal Board does not excuse the administrator's duty to investigate the claim.
> >
> > (2) The claims administrator may not restrict its investigation to the specific benefit claimed if the nature of the claim suggests that other benefits might also be due.
>
> (c) The duty to investigate requires further investigation if the claims administrator receives later information, not covered in an earlier investigation, which might affect benefits due.
>
> …
>
> (e) Insurers, self-insured employers and third-party administrations shall deal fairly and in good faith with all claimants, including lien claimants.

(Cal. Code Regs., tit. 8, § 10109.)

Thus, and upon reasonable notice of the need to treatment necessary to cure or relieve from the effects of industrial injury, the employer has an affirmative obligation to promptly investigate the facts in order to determine its liability for workers' compensation and take the initiative in providing benefits. (*Ramirez v. Workers' Comp. Appeals Bd.* (1970) 10 Cal.App.3d 227, 234.)

Here, a prescribing physician has submitted a request for authorization which has been certified as medically necessary by a valid UR process. The UR decision process is complete, and to the extent that the defendant raises potential difficulties in providing the treatment, it is incumbent on the defendant to affirmatively take the initiative to determine how best to provide the necessary medical treatment.

Finally, we note that the Labor Code expressly vests the Appeals Board with the authority for "the enforcement against the employer or an insurer of any liability for compensation imposed

upon the employer by this division in favor of the injured employee." (Lab. Code, § 5300(b); see also Lab. Code, §§ 5301, 3207 [section 3207 defines "compensation" as "every benefit or payment conferred by this division upon an injured employee"].) The Appeals Board retains the authority to determine medical treatment controversies not subject to IMR. (See Lab. Code, § 5304 [the "appeals board has jurisdiction over any controversy relating or arising out of Sections 4600 to 4605 inclusive"].) Pursuant to section 4604, the WCAB is expressly vested with the authority to resolve non-medical disputes arising out of the utilization review process. Section 4604 provides that: "[c]ontroversies between employer and employee arising under this chapter shall be determined by the appeals board, upon the request of either party, except as otherwise provided by Section 4610.5." (*Dubon, supra,* 79 Cal. Comp. Cases 1298.) Accordingly, we conclude the WCJ appropriately exercised his authority as vested under section 4604 to order the defendant to comply with the UR decision of November 16, 2023.

In summary, we conclude the November 16, 2023 UR decision was timely and valid. We further conclude that the WCJ appropriately exercised his authority to order defendant to comply with a valid UR determination. We grant reconsideration for the sole purpose of correcting the inadvertent omission of an order admitting the trial exhibits into evidence and to amend the findings of fact to reflect a valid and binding UR determination.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the decision of May 28, 2025 Findings of act and Orders is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of May 28, 2025 is **AFFIRMED** except that it is **AMENDED** as follows:

**FINDINGS OF FACT**

* * * * *

2. The November 16, 2023 Utilization Review determination was timely and valid.

**ORDERS**

* * * * *

4. Applicant's Exhibits 10 through 12 and defendant's Exhibits Q through X are admitted into evidence.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

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

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

**August 12, 2025**

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

**DARREL LINK**
**LAW OFFICE OF ARASH KHORSANDI**
**LAW OFFICES OF BLACK AND ROSE**

**SAR/abs**

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