WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARIA ORTEGA, *Applicant*

vs.

MARIANI STONEBARGER, LLC; ZENITH INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ16902678
Salinas District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Lien claimant Electronic Waveform Lab, Inc. ("EWL") seeks reconsideration of the February 19, 2025 Findings and Award ("F&A") issued by the workers' compensation administrative law judge ("WCJ"), wherein the WCJ found that EWL take nothing on its lien claim because no appeal was filed regarding the Independent Medical Review ("IMR") determination that found EWL's services not medically necessary. EWL asserts that the WCJ erred and that no appeal of the IMR determination was required in order to preserve EWL's ability to seek payment of its lien.

We received an Answer. 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 deny the Petition for Reconsideration.

PROCEDURAL BACKGROUND

Applicant filed an Application for Adjudication, alleging a specific injury to her left knee, right arm, neck, right shoulder, and head. The claim was resolved via an Order Approving Compromise and Release on January 11, 2024.

EWL provided applicant with an H-Wave unit in connection with her claim. A Request for Authorization ("RFA") was submitted to defendant for the H-Wave unit, which was referred to Utilization Review ("UR"). The UR physician, while finding that treatment with an H-Wave

unit was appropriate for someone with applicant's condition, denied the RFA as not medically necessary on the basis that applicant already owned an H-Wave device, and that no explanation was provided as to why a replacement unit was necessary. (See L. Ex. 6, at p. 4.)

Applicant sought IMR of the UR decision, which resulted in a finding upholding the UR determination, dated April 10, 2023. (See D. Ex. J, at p. 1.) No appeal was taken of the IMR decision.

Instead, EWL filed its lien, and requested a hearing to determine its entitlement to payment for the H-Wave device, asserting a lien in the amount of $4,506.40. The matter ultimately proceeded to trial on February 4, 2025. (See Minutes of Hearing / Summary of Evidence ("MOH/SOE") 2/4/25.) Exhibits were submitted, including the UR and IMR determinations referenced above, and the matter was taken under submission. (*Id.* at pp. 2–5.)

On February 19, 2025, the WCJ issued the F&A, finding that EWL take nothing on its lien. The appended Opinion on Decision makes clear that the WCJ's determination was based upon the fact that no party appealed the IMR determination upholding the UR denial and that the time to file such an appeal had long since passed; the WCJ accordingly found that he lacked jurisdiction to consider the issue. (See Opinion on Decision, at p. 1–2.)

This Petition for Reconsideration followed.

DISCUSSION

I.

Former Labor Code 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 Labor Code 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 March 18, 2025 and 60 days from the date of transmission is Saturday, May 17, 2025, a weekend. The next business day that is 60 days from the date of transmission is Monday, May 19, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).[1] This decision is issued by or on Monday, May 19, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 March 18, 2025, and the case was transmitted to the Appeals Board on March 18, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on March 18, 2025.

[1] 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.

II.

With regard to IMR determinations, Labor Code section 4610.6, subdivision (h) states: "A determination of the administrative director pursuant to this section may be reviewed *only* by a verified appeal from the medical review determination of the administrative director, filed with the appeals board . . . within 30 days of the date of mailing of the determination[.]" (Emphasis added.)

In *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298 (Appeals Board en banc) (*Dubon II*), the Appeals Board held that if a utilization review (UR) decision is untimely, the UR decision is invalid and not subject to IMR. The *Dubon II* decision further held that the Appeals Board has jurisdiction to determine whether a UR decision is timely. (*Id.*) If a UR decision is untimely, the determination of medical necessity for the treatment requested may be made by the Appeals Board. (*Id.* at p. 1300.) However, all other disputes regarding a UR determination must be resolved solely through the IMR process, including the process for appealing an IMR decision. (*Id.* at pp. 1309–12.)

Here, lien claimant does not contest the timeliness of the UR determination, and no appeal was ever taken of the IMR decision upholding the UR. Accordingly, the WCJ correctly determined that, in the absence of an appeal of the IMR determination pursuant to Labor Code section 4610.6, subdivision (h), the WCAB lacked jurisdiction to consider the propriety of the UR and/or IMR decisions finding EWL's treatment not medically necessary.

EWL argues that the IMR decision was invalid because the UR denial was based not upon medical necessity but instead upon an allegedly faulty assumption that applicant already possessed an H-Wave device, and that IMR is solely for resolving disputes over the medical necessity of treatment.

However, whatever the merits of EWL's objection to the substance of the IMR decision, the language of Labor Code section 4610.6, subdivision (h) makes clear that an appeal of the IMR decision is the sole means of review for IMR decisions. Because no such appeal was filed in this case, and because timeliness of the UR decision is not at issue, we are without jurisdiction to review the IMR decision or the UR decision.

Accordingly, we will deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the February 19, 2025 Findings and Award is **DENIED**.

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

May 15, 2025

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

ELECTRONIC WAVEFORM LAB
CARMENITA ASSOCIATES
CHERNOW PINE
RUCKA OBOYLE

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