WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARK EVANS, *Applicant*

vs.

CORCORAN STATE PRISON, legally uninsured;
STATE COMPENSATION INSURANCE FUND/STATE EMPLOYEES, *Defendants*

Adjudication Number: ADJ13254756
Fresno District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant seeks removal in response to the Findings of Fact and Orders (F&O) issued on May 8, 2025, wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that while employed during the period July 21, 1995 through March 23, 2020, as a Correctional Officer by defendant Corcoran State Prison, applicant sustained injury arising out of and in the course of employment to the neck, the back, and the ears (hearing loss). The WCJ further found that the Request for Authorization (UR) was received by carrier on April 1, 2025; that defendant and EK Health were served with the medical information requested on two occasions prior to the denial letter of April 15, 2025; and that the denial dated April 15, 2025 was untimely (Cal. Code Regs., tit. 8, § 9792.1.9 (e) (5) (F)). He ordered defendant to provide medical treatment in accordance with the RFA issued by Dr. Rasouli dated April 15, 2025.

Defendant contends that the WCAB lacks jurisdiction to review a timely issued UR decision as set forth in our en banc decision in *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298 [2014 Cal. Wrk. Comp. LEXIS 131] (Appeals Board en banc) (*Dubon II*); that the RFA received on April 1, 2025 was a new RFA and was different from the RFAs received on May 12, 2024 and July 12, 2024; that under Labor Code section 4610, a requesting physician

must submit the RFA and supporting documentation to the claims administrator; that the time frame to issue a decision can be extended when the administrator is not in receipt of the information necessary to review the RFA. Defendant alleges that it timely requested information on April 8, 2025, and a timely denial for lack of information on April 15, 2025, and that therefore, based on these facts, there is no untimely RFA and the WCJ does not have jurisdiction over this matter

We did not receive an Answer from applicant.

The WCJ issued a Report and Recommendation (Report) recommending that we deny reconsideration.

We have considered the Petition for Removal and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant defendant's Petition as one 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.

I.

Preliminarily, we note that 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).) 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. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) 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.

Here, the WCJ ordered defendant to provide medical treatment, and defendant challenges that order. An order to provide medical treatment is a final threshold order. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Former Labor Code[1] 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 June 6, 2025, and 60 days from the date of transmission is Tuesday, August 5, 2025. This decision is issued by or on Tuesday, August 6, 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

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

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 WCJ, the Report was served on June 6, 2025, and the case was transmitted to the Appeals Board on June 6, 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 6, 2025.

II.

As relevant here, the WCJ stated in the Report that:

> State Compensation Insurance Fund (hereafter Petitioner) received an RFA from Dr. Rasouli dated 4/1/2025. On 4/8/2025, EK Health issued a Request for Further information requesting additional information listing information necessary to review the RFA.
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> ***
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> The court found that the denial of Dr. Rasouli's RFA dated 4/15/2025 was late, because the information sought by EK Health was previously provided to the EK Health on two occasions.
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> ***
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> ***
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> The applicant argued that the UR denial dated April 15, 2025 was untimely per CCR 9792.9.1(F) because the defendant already had the information requested from the RFA, dated July 18, 2024. This was the exact same information, therefore allowing WCAB jurisdiction to determine medical necessity per Dubon II. (ibid) This action unreasonably delayed the applicant's medical treatment.
>
> The RFA authored by Dr. Rasouli dated 4/1/2025 is for "L4-5, L5-S1 Anterior Lumbar Interbody Fusion. (Exhibit 1) EK Health reviewed the RFA and issued a "Request for additional information" decision dated 4/8/2025, indicating that they did not have all the information necessary for utilization review. (Exhibit 2) . . .
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> ***

In reviewing the history of this case, as provided in the exhibits, there appears to be a pattern that EK Health denied all of the RFA from Dr. Rasouli for back surgery based on the same reason i.e. lack of information. The evidence submitted indicates that the information requested was provided by the doctor to EK Health as requested on 2 occasions before the denial dated 4/15/2025.

The Petitioner argues that the April 1, 2025, RFA is different from the RFA's received on 5/24/2024 and 7/12/2024, because it is marked "New Request". The Petitioner notes that Dr. Rasouli requested a DEXA scan and authorization for Tegaderm Transparent dressing-25 units; Oxycodone 5 mg-80 tablets; Senna 8.6 mg-56 tablets.

However, the EK Health letter dated 4/8/2025, requesting additional information, does not mention needing further information about the DEXA scan or medications. The UR EK Health issued sought 4 items that had already been provided. (Exhibit 2)

The exhibits submitted by the applicant demonstrate that Dr. Rasouli prepared an RFA dated 5/24/2024, recommending "L4-5, L5-S1, anterior Lumbar Interbody fusion" surgery. EK Health later issued a letter dated 5/31/2024, (Exhibit 7) requesting further information . . .

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A denial was issued by EK Health dated 6/7/24 for the surgery and other related items in the RFA dated 5/24/2024 due to lack of Information. (Exhibit 12) Dr. Rasouli submitted requested information addressing the items listed as requested by EK Health on 7/12/2024. (Exhibit 9) This information was sent to EK Health addressing the 4 items listed and providing the information sought.

Subsequently EK Health issued a UR dated 7/18/2024, which again requested additional information. (Exhibit 8) The same information was being sought as in the previous UR dated 5/31/2024. However, it appears that EK had the information requested in their possession as of 7/12/2024. (Exhibit 9)

Furthermore, the information requested was also provided to the adjuster and EK Health a second time on October 15, 2024. Dr. Rasouli's office faxed the information to the UR department. The message was sent to the adjuster Lisa Scott at SCIF, the applicant attorney and to the applicant via email. (Exhibit 5) These facts were not disputed by the defendant.

The UR decision dated 4/15/2025 was untimely and invalid. Dr. Rasouli provided the information sought by EK Health on two prior occasions, the Petitioner had complete and sufficient information to make a decision for the requested medical treatment. The information requested by EK Health was already in their possession. The information was provided to defendant on 7/12/2024 and again on 10/15/2024.

(Report, June 6, 2025, pp. 1-5.)

III.

We highlight several legal principles that may be relevant to our review of this matter. Section 4610, subsection (i)(1) governs the timeline for UR of a physician's RFA of current or future treatment. That subsection provides, in relevant part:

> (i) In determining whether to approve, modify, or deny requests by physicians prior to, retrospectively, or concurrent with the provisions of medical treatment services to employees, all of the following requirements shall be met:
>
> (1) Except for treatment requests made pursuant to the formulary, prospective or concurrent decisions shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five normal business days from the receipt of a request for authorization for medical treatment and supporting information reasonably necessary to make the determination, but in no event more than 14 days from the date of the medical treatment recommendation by the physician. …

(Lab. Code, § 4610(i)(1).)

Under subsection (k) of section 4610, a UR decision to modify or deny a treatment recommendation "remains effective for 12 months from the date of the decision without further action by the employer with regard to a further recommendation by the same physician, or another physician within the requesting physician's practice group, for the same treatment unless the further recommendation is supported by a documented change in the facts material to the basis of the utilization review decision." (Lab. Code, § 4610 (k).)

In *Dubon*, *supra*, we held that:

> 1. A utilization review (UR) decision is invalid and not subject to independent medical review (IMR) only if it is untimely.
>
> 2. Legal issues regarding the timeliness of a UR decision must be resolved by the Workers' Compensation Appeals Board (WCAB), not IMR.
>
> 3. All other disputes regarding a UR decision must be resolved by IMR.
>
> 4. If a UR decision is untimely, the determination of medical necessity may be made by the WCAB based on substantial medical evidence consistent with Labor Code section 4604.5.

(*Id.* at pp. 1299-1300.)

In so holding, the majority opinion in *Dubon II* noted that "[t]he legislature has made it abundantly clear that medical decisions are to be made by medical professionals." (*Id.* at p. 1309.) In contrast, *Dubon II* recognizes that *legal* disputes are within the WCAB's jurisdiction:

> Sections 4610.5 and 4610.6 limit IMR to disputes over "medical necessity." Legal disputes over UR timeliness must be resolved by the WCAB. (§ 4604 ("[c]ontroversies between employer and employee arising under this chapter shall be determined by the appeals board, … *except as otherwise provided by Section 4610.5*" (italics added)); § 5300 (providing that "except as otherwise provided in Division 4," the WCAB has exclusive initial jurisdiction over claims "for the recovery of compensation, or concerning any right or liability arising out of or incidental thereto"); see also Cal. Code Regs., tit. 8, § 10451.2(c)(1)(C).)

(*Ibid.*)

Here, defendant argues that the RFA of April 15, 2025 was different than the previous RFAs, essentially arguing that circumstances had changed. The WCJ concluded that the RFA was the same as the previous RFAs but did not consider the issue of change of circumstances. At this juncture, the matter requires further study so that we may consider this issue.

IV.

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 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) 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 defendant'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 defendant's Petition for Reconsideration of the May 8, 2025 Findings of Fact and Orders 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/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 5, 2025

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

MARK EVANS
GINA G. BARSOTTI
STATE COMPENSATION INSURANCE FUND

AS/mc

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