WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MICHAEL FISHEL, *Applicant*

vs.

RICK'S LUBE AND COMPLETE AUTO;
OAK RIVER INSURANCE COMPANY,
administered by BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants*

Adjudication Numbers: ADJ11053430; ADJ14397522
Santa Ana District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the April 1, 2025 Findings and Award (F&A) wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that parties were in compliance with a February 3, 2020 Stipulation when Dr. Laura Hatch was designated as a "regular physician" pursuant to Labor Code[1] section 5701 for the purpose of addressing "all of the applicant's orthopedic issues stemming from the specific injury on August 18, 2017, including the applicant's potential low back surgery." (Lab. Code, § 5701; F&A, p. 1) Dr. Hatch recommended that applicant "proceed with Lumbar Spine decompression or fusion at L5-S1" (F&A, p. 2.) Accordingly, in the April 1, 2025 F&A, the WCJ awarded applicant "further medical care in the form of lumbar spine surgery[.]" (*Ibid*.)

Defendant contends that the WCJ improperly expanded the scope of the February 3, 2020 Stipulation "through the appointment of Dr. Hatch." (Petition, p. 5.) The February 3, 2020 Stipulation indicated that parties were to "authorize an MRI, submit it to Dr. Gumbs, and await his opinion regarding the necessity of spinal surgery." (*Ibid*.) Dr. Gumbs, however, failed to provide a clear opinion on the issue. (F&A, February 18, 2022.) As such, at an April 24, 2023 hearing, the

[1] All further statutory references will be to the Labor Code unless otherwise indicated.

WCJ appointed Dr. Hatch to bypass the utilization review/independent medical review (UR/IMR) process and address all orthopedic issues, including the need for lumbar spine surgery. (Minutes of Hearing, April 24, 2023.) Defendant argues that there was never a waiver of the UR/IMR process and that the opinion of Dr. Hatch, aside from lacking substantial medical evidence, should simply be treated as a request for authorization (RFA) and submitted to UR. (Petition, pp. 3, 10.)

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition for Reconsideration (Petition) be denied.

We have considered the Petition, 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 the Petition and rescind and substitute the April 1, 2025 F&A with a new F&A for the purpose of correcting the appointment date of Dr. Hatch from April 23, 2023 to April 24, 2023 and to reflect that, pursuant to the April 24, 2023 Order, Dr. Hatch is to address *all* orthopedic issues stemming from the August 18, 2017 specific injury not simply the need for lumbar surgery.[2]

FACTS

Applicant claimed that, while employed by defendant as an auto mechanic on August 18, 2017, he sustained an injury arising out of and in the course of employment (AOE/COE) to the back, hips, leg, body system, and excretory system. The nervous system was later added as an injured body part.

The parties proceeded with discovery and retained Dr. Vincent Gumbs as the orthopedic panel Qualified Medical Evaluator (PQME).

On or about February 25, 2019, applicant's primary treating physician, Dr. William Mealer, submitted an RFA for lumbar decompression and fusion surgery at the L5-S1 region. (See Exhibits B-C.)

On December 13, 2019, applicant filed a Declaration of Readiness to Proceed to an Expedited Hearing alleging that defendant refused to conduct UR and had therefore conferred jurisdiction over the issue to the WCAB.

[2] Commissioner Lowe, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist was appointed in her place.

At the February 3, 2020 expedited hearing, the parties entered into a Stipulation wherein they agreed to "submit need for spinal surgery to Dr. Vincent L. Gumb [sic], M.D. for his medical opinion regarding reasonableness and necessity[.]"

On April 2, 2020, applicant filed an additional Declaration of Readiness to Proceed to an Expedited Hearing alleging that defendant refused to authorize "surgery and pain medication recommended by PTP/Dr. Mealer and PQME/Dr. Gumbs."

On May 28, 2020, the parties agreed to continue the expedited hearing. Per the Minutes of Hearing, defendant would authorize spinal surgery if the "psych doctor clears applicant for surgery." (Minutes of Hearing, May 28, 2020.)

In a report dated June 24, 2020, Dr. Eugene Dorsey indicated the following: "Clear for surgery from a psychiatric viewpoint; competent to consent, no foreseeable mental complications." (Exhibit 3, p. 4.)

After numerous additional continuances, trial was ultimately held on November 3, 2020 on the issue of whether the February 3, 2020 Stipulation and the May 28, 2020 Minutes of Hearing superseded "the UR/IMR process as it pertains to the applicant's potential spine surgery." (Minutes of Hearing, November 3, 2020.) The parties also stipulated to injury AOE/COE to the lumbar spine. (*Ibid*.)

On December 28, 2020, the WCJ issued an F&A wherein the WCJ found, in relevant part, that applicant sustained injury AOE/COE to the lumbar spine and the parties had agreed to defer the issue of the need for lumbar surgery to PQME, Dr. Gumbs, and psyche clearance for said surgery to Dr. Dorsey, rather than proceed with UR/IMR. The WCJ awarded "further medical care related to the potential lumbar spine surgery in line with the opinions of PQME Gumbs and Dr. Dorsey."

On January 15, 2021, defendant sought reconsideration of the December 28, 2020 F&A, alleging that "there was no intent to waive the defendant's statutory rights" with respect to UR/IMR, and that the opinions of PQME Dr. Gumbs on the issue of lumbar surgery, and psychiatrist Dr. Dorsey on the issue of psyche clearance for surgery, are not substantial medical evidence. (Petition for Reconsideration, January 15, 2021, pp. 13, 18.)

On March 16, 2021, the Appeals Board issued an Opinion and Order Granting Reconsideration and Decision After Reconsideration (Opinion and Decision) amending the WCJ's December 28, 2020 F&A to provide that, rather than proceed with UR/IMR, the issue of lumbar

spine surgery would be deferred to PQME, Dr. Gumbs, and psyche clearance for the surgery, deferred to Dr. Dorsey. (Opinion and Decision, p. 2.)

A petition for writ of review was not filed. The April 19, 2022 Opinion therefore became final.

On January 26, 2022, the matter was set for hearing once again and proceeded to trial on the issue of whether Dr. Gumbs had determined the need for lumbar spine surgery on an industrial basis or deferred the issue to another doctor. (Minutes of Hearing, January 26, 2022.)

On February 18, 2022, the WCJ issued an F&A which held that Dr. Gumbs did not provide a definitive answer on the need for lumbar spine surgery.

On February 25, 2022, applicant sought reconsideration of the February 18, 2022 F&A, alleging that Dr. Gumbs had in fact found lumbar spine surgery to be reasonable and necessary.

On April 19, 2022, the Appeals Board issued an Opinion and Decision concluding that the "most practical course of action would be to obtain reporting from a spinal surgeon addressing which specific type of surgery, if any, is recommended to be performed on the lumbar spine." (Opinion and Decision, p. 6.)

A petition for writ of review was not filed. The April 19, 2022 Opinion therefore became final.

After numerous additional hearings, in a Minutes of Hearing dated April 24, 2023, the WCJ concluded that PQME, Dr. Vincent Gumbs, "continues to…not provide clear guidance regarding applicant's potential low back surgery." As such, "[i]n the interest of advancing the dispute and the applicant's injury claim toward resolution as efficiently as possible, Laura Hatch, M.D. is appointed as the 'regular physician' per Labor Code § 5701[.]" The WCJ also included the following:

> Parties are ORDERED to utilize Dr. Hatch to address *all* orthopedic issues stemming from the specific injury from August 18, 2017, including the applicant's potential low back surgery.

(Minutes of Hearing, April 24, 2023, p. 2, emphasis added.)

A petition challenging the April 24, 2023 Order was not filed. As such, the Order was made final.

On January 23, 2024, applicant filed a Declaration of Readiness to Proceed to Expedited Hearing on the issue of defendant's continued denial of the lumbar spine surgery.

After numerous continuances, the matter proceeded to trial on January 22, 2025. Issues set for trial included whether defendant complied with the February 3, 2020 Stipulation; whether UR/IMR should be reinstated; entitlement to lumbar spine surgery; and whether Dr. Hatch's opinions are substantial medical evidence. (Minutes of Hearing, January 22, 2025.)

On April 1, 2025, the WCJ issued an F&A which found, in relevant part, that applicant sustained injury AOE/COE to the lumbar spine and parties were in compliance of the February 3, 2020 Stipulation when Dr. Hatch was designated to address "all of the applicant's orthopedic issues stemming from the specific injury on August 18, 2017, including the applicant's potential low back surgery" and that per to Dr. Hatch, "applicant should proceed with Lumbar Spine decompression or fusion at L5-S1" (F&A, p. 2.) The WCJ therefore awarded applicant "further medical care in the form of lumbar spine surgery[.]" (*Ibid*.) The WCJ also indicated that after surgery was completed, "all future requests for authorization related to the applicant's lumbar spine" would proceed through UR/IMR. (*Ibid*.)

DISCUSSION

I.

Preliminarily, 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, 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 under the Events tab 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 April 23, 2025, and 60 days from the date of transmission is June 22, 2025, which is a Sunday. The next business day that is 60 days from the date of transmission is Monday, June 23, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision was issued by or on June 23, 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 shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on April 23, 2025, and the case was transmitted to the Appeals Board on April 23, 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 April 23, 2025.

II.

We also find it relevant here to discuss the distinction between a petition for reconsideration and a petition for removal. A petition for reconsideration is taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order is defined as one that determines "any substantive right or liability of those involved in the case" or a "threshold" issue fundamental to a claim for benefits. (*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*

[3] 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.

Bd. (Kramer) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]; *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, injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of limitations. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian*, *supra*, at 1075 ["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"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, and other similar issues.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether 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 Bd. 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.

Here, the April 1, 2025 F&A includes threshold and interlocutory issues. Defendant disputes Findings of Fact numbers 3 and 5, which pertain to the appointment of Dr. Hatch and compliance with a February 3, 2020 Stipulation. These are non-final orders on interlocutory issues. Defendant also disputes Findings of Fact number 4 (lumbar spine surgery found by Dr. Hatch to

be reasonable and necessary) and the WCJ's corresponding award for surgery. These are final decisions and are therefore subject to reconsideration.

III.

We find it important to note that the decision to bypass UR/IMR and appoint Dr. Hatch was made via an April 24, 2023 order. (Minutes of Hearing, April 24, 2023, p. 2.) In the order, the WCJ indicated that Dr. Hatch would "address *all* orthopedic issues stemming from the specific injury from August 18, 2017, including the applicant's potential low back surgery." (*Ibid*., emphasis added.) A petition for removal of the decision to appoint Dr. Hatch was not filed by defendant. Nor was a petition for reconsideration of the WCJ's final decision for Dr. Hatch to address "all orthopedic issues."

Further, in defendant's prior January 15, 2021 petition for reconsideration, defendant similarly argued that there was no intent to waive "statutory rights" to UR/IMR. (Petition for Reconsideration, January 15, 2021, pp. 13, 18.) In response, the Appeals Board issued a March 16, 2021 Opinion and Decision concluding that the parties would bypass UR/IMR and defer the issue to PQME, Dr. Gumbs. (Opinion and Decision, p. 2.) A petition for writ of review of this decision was not filed. Unfortunately, Dr. Gumbs was unable to provide a definitive answer on the need for lumbar surgery. As such, in a subsequent April 19, 2022 Opinion and Order, the Appeals Board once again concluded that parties should bypass UR/IMR and appoint another doctor to address the need for lumbar spine surgery. The Appeals Board stated, in relevant part, that the "most practical course of action would be to obtain reporting from a spinal surgeon addressing which specific type of surgery, if any, is recommended to be performed on the lumbar spine." (*Ibid*.) The parties did not petition for writ of review of the April 19, 2022 Opinion and Decision. As such, the decision is now final.

It is clear, based upon the numerous instances upon which this issue has been raised, that UR/IMR has been waived by defendant, particularly with respect to the need for lumbar spine surgery. It is well settled that where a party fails to prevail on a petition for reconsideration, the Appeals Board will not entertain a successive petition by that party unless the party is newly aggrieved. (*Goodrich v. Industrial Acc. Com.* (1943) 22 Cal.2d 604, 611 [8 Cal.Comp.Cases 177]; *Ramsey v. Workmen's Comp. Appeals Bd.* (1971) 18 Cal.App.3d 155, 159 [36 Cal.Comp.Cases 382]; *Crowe Glass Co. v. Industrial Acc. Com.* (*Graham*) (1927) 84 Cal.App. 287, 293-295 [14 IAC 221].). As stated in our en banc opinion in *Navarro v. A&A Framing* (2002) 67

Cal.Comp.Cases 296, 299: "The general rule is that where a party has filed a petition for reconsideration with the [Appeals] Board, but the party does not prevail on that petition for reconsideration, the petitioning party cannot attack the [Appeals] Board's action by filing a second petition for reconsideration; rather, the petitioning party must either be bound by the [Appeals] Board's action or challenge it by filing a timely petition for writ of review." It is improper for defendant to file multiple petitions which attempt to relitigate issues that have already been determined.

We note also that the workers' compensation system "was intended to afford a simple and nontechnical path to relief." (*Elkins v. Derby* (1974) 12 Cal.3d 410, 419 [39 Cal.Comp.Cases 624]; Cf. Cal. Const., art. XX, § 21; § 3201.) In the instant case, it is clear that the appointment of Dr. Hatch was intended to quickly and simply address the issue of the need for lumbar spine surgery. Particularly given the parties' preceding issues with UR/IMR, returning to UR/IMR at this late stage would be imprudent. Accordingly, we conclude that the appointment of Dr. Hatch was appropriate and proper.

IV.

Having determined that Dr. Hatch was properly appointed by the WCJ, we turn now to the issue of whether Dr. Hatch's opinions are substantial medical evidence. As explained in *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) A medical opinion proffered as substantial evidence must be framed in terms of reasonable medical probability, be based on pertinent facts, an adequate examination, and history, set forth reasoning in support of its conclusions, and not be speculative. (*E.L. Yeager v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71

Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc).) Reasonable medical probability, however, does not require that applicant prove causation by "scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700- 1701 [58 Cal.Comp.Cases 313].) Also, "[a] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (citations) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (citations)" (*Gatten*, *supra*, at p. 928.) "A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial evidence to support a denial of benefits. (citation)" (*Kyle v. Workers' Comp. Appeals Bd* (*City and County of San Francisco*) (1987) 195 Cal.App.3d 614, 621.)

Here, defendant alleges that Dr. Hatch's findings are not substantial medical evidence because she lacks surgical experience, defers to a spinal surgeon, does not rely on diagnostics, disregards applicant's non-industrial factors, and fails to analyze apportionment or reconcile contradictory surveillance. (Petition, pp. 7, 9.) Based upon our review of the reports and deposition testimonies of Dr. Hatch (Exhibits AAA – DDD), we find that Dr. Hatch provided adequate reasoning and relied upon relevant facts and history, including a thorough examination of the applicant and detailed analysis of various medical records including diagnostic exams pertaining to applicant's lumbar spine in reaching her conclusion that lumbar spine surgery is reasonable and necessary. Although use of a spinal surgeon was recommended in our April 19, 2022 Opinion, it is well established that surgical experience is not required for a doctor to provide an opinion on the issue of reasonableness and necessity of medical treatment. Further, with respect to defendant's argument that Dr. Hatch disregarded non-industrial factors and failed to analyze apportionment or surveillance, we reiterate what was stated in her November 16, 2023 report: given the applicant's need for lumbar spine surgery and the fact that applicant is not yet permanent and stationary, "[i]t is premature to address potential permanent work restrictions, an impairment rating, future treatment options, and an apportionment determination." (Exhibit BBB, p. 85.)

We note also that section 3600 imposes liability on an employer for workers' compensation benefits if the employee sustains an injury "arising out of and in the course of employment." (Lab. Code, § 3600(a).) When an applicant claims a physical injury, the applicant has the burden of

proving industrial causation by showing that the employment was a contributing cause of the injury. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, § 5705.) An applicant must prove by a preponderance of the evidence that an injury occurred AOE/COE. (Lab. Code, §§ 3202.5, 5705.) An applicant, however, need only show that industrial causation was "not zero" to show sufficient contribution from work exposure for the physical injury to be compensable. (*Clark*, *supra*, at p. 303.)

Here, the parties stipulated to injury AOE/COE at trial on November 3, 2020. (Minutes of Hearing, November 3, 2020.) Injury AOE/COE to the lumbar spine was also noted in subsequent F&As dated December 28, 2020, March 17, 2025 and April 1, 2025.

Pursuant to section 4600, upon establishing injury AOE/COE, the employer is to provide reasonable medical treatment to cure or relieve from the effects of the industrial injury. (Lab. Code, § 4600(a).) Per the opinions of Dr. Hatch, lumbar surgery is reasonable and necessary for applicant to cure or relieve the effects of the industrial injury. Accordingly, we agree with the WCJ's decision to award applicant lumbar spine surgery.

V.

Lastly, in our review of the record, we see that Dr. Hatch was appointed by the WCJ via an Order issuing April 24, 2023. In the April 1, 2025 F&A, Findings of Fact number 3, the WCJ lists April 23, 2023 as the date of appointment. To correct this error, we will grant defendant's Petition for Reconsideration and rescind and substitute the April 1, 2025 F&A with a new F&A which provides for the proper appointment date of April 24, 2023. Further, in Findings of Fact number 5, the WCJ states that "all future requests for authorization related to applicant's lumbar spine shall proceed through utilization review and independent medical review." Pursuant to the April 24, 2023 Order, Dr. Hatch is to "address *all* orthopedic issues stemming from the August 18, 2017 specific injury[,]" not simply the lumbar spine surgery. (emphasis added.) As noted above, this is a final order. The new F&A will also be updated to reflect this.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the April 1, 2025 Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the April 1, 2025 Findings and Award is **RESCINDED** and **SUBSTITUTED** with a new Findings and Award, as provided below.

FINDINGS OF FACT

1. Applicant, Michael Fishel, born [], while employed on August 18, 2017, at Carson, California, by Rick's Lube & Complete Auto, sustained injury arising out of and in the course of employment (AOE/COE) to his lumbar spine.

2. At the time of injury, the employer's workers' compensation carrier was Oak River Insurance Company, administered Berkshire Hathaway Homestate Companies.

3. On April 24, 2023, Laura Hatch, M.D., was appointed as the orthopedic "regular physician" pursuant to Labor Code section 5701 for the purpose of addressing all of applicant's orthopedic issues stemming from the August 18, 2017 specific injury.

4. Pursuant to Dr. Hatch, lumbar spine decompression or fusion at the L5-S1 region is reasonable and necessary to cure or relieve from the effects of the August 18, 2017 injury.

5. Parties are in compliance with the February 3, 2020 Stipulation.

AWARD

AWARD IS MADE in favor of Michael Fishel against Rick's Lube & Complete Auto/Oak River Insurance Company, administered by Berkshire Hathaway Homestate Companies, for medical care in the form of lumbar spine surgery in accordance with the opinions of Dr. Laura Hatch.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 23, 2025

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

MICHAEL FISHEL
MOORE AND ASSOCIATES
HEFLEY LAW

RL/*cs*

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