WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DAWN LEAH GURITZKY, *Applicant*

vs.

REGENTS OF THE UNIVERSITY OF CALIFORNIA, SANTA MONICA UCLA MEDICAL CENTER;
Permissibly Self-Insured Administered, Administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Numbers: ADJ268422 (MON0326162), ADJ1140304 (MON0329012)
Marina del Rey District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the September 10, 2025 Findings and Order issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant sustained injury arising out of and in the course of employment (AOE/COE) to her back, shoulders, and psyche while employed on February 10, 2004 as a "nurse (RN)." The WCJ further found that an Findings and Award issued on July 29, 2021 finding the applicant 100% disabled; that the applicant's appeal of the IMR (Independent Medical Review) Final Determination is timely filed granting jurisdiction to the Workers' Compensation Appeals Board (WCAB); and that the applicant's appeal of the IMR Final Determination is denied in that the Determination is not based upon plainly erroneous facts. Based on these findings, the WCJ issued an order denying applicant's Appeal of the IMR Final Determination and ordering further development of the record.

Applicant contends that the WCJ erred in denying applicant's Appeal of the IMR Final Determination arguing that the determination was based on plainly erroneous facts consisting of "a clear misreading of the [Medical Treatment Utilization Schedule (MTUS)] supporting homecare for [activities of daily living (ADLs)]" and also erred in ordering further development of the record.

Defendant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration of lien claimant's petition.

We have considered the Petition for Reconsideration, the contents of the Report, and have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant applicant's Petition 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[1] section 5950 et seq.

I.

Preliminarily, we note that 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 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."

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

Here, according to Events, the case was transmitted to the Appeals Board on November 5, 2025 and 60 days from the date of transmission is Sunday, January 4, 2026. The next business day that is 60 days from the date of transmission is Monday, January 5, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, January 5, 2026, 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 November 5, 2025, and the case was transmitted to the Appeals Board on November 5, 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 November 5, 2025.

II.

The WCJ stated the following in the Report:

JURISDICTIONAL FACTS

> The issues presented in this case began with the Request for Authorization (RFA) submitted for Utilization Review (UR) by the Primary Treating Physician, Dr. Mealer on 2/15/2024. The UR issued a timely denial on 2/21/2024 and the Petitioner then filed a timely Application for Independent Medical Review (IMR) on 2/27/2024. The IMR Final Determination is dated 3/25/2024, and the Applicant's appeal is dated 6/13/2024, or approximately two and one-half months after the date of the IMR Final Determination. The WCJ found at trial that, based on the evidence, and in accordance with *Labor Code Section*

[2] 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.

4610.6(h), the Petitioner's appeal was timely filed, thereby granting the WCAB with jurisdiction to hear the matter. The WCJ further found against the Petitioner however on the merits of the appeal leading to the instant Petition for Reconsideration.

DISCUSSION

A. THE WCJ MAINTAINS ITS POSITION THAT THE IMR FINAL DETERMINATION IS NOT SUBJECT TO REVERSAL BASED ON FACTUAL ERROR

Petitioner invoked Labor Code Section 4610.6(h)(5) in her Appeal of the IMR Determination. This section provides that if the Determination is the result of "plainly erroneous express or implied Findings of Fact, provided that the mistake of fact is a matter of ordinary knowledge based on the information submitted for review pursuant to Labor Code Section 4610.5, and not a matter that is subject to expert opinion". The WCJ may overturn the decision and refer back to IMR. Petitioner posits that the IMR Final Determination mistakenly confuses skilled nursing care with basic home care service necessary to assist an injured worker with activities of daily living.

Based on the WCJ's review of the record, it appears that the UR reviewer's analysis does not amount to a "mistake of fact of ordinary knowledge based on the information submitted for review", but rather, concludes that there is a lack of clinically supported evidence substantiating the need for home health care services. (See E. BB, Genex Review #6336053, attached to IMR Appeal).

The IMR Final Determination found a further lack of documentation in relying upon the Non-MTUS Official Disability Guideline (ODG). According to IMR, the ODG is relied on as the MTUS does not specifically address indications for home health care requests. The IMR reviewer discusses the required documentation for such requests, including the medical condition of the Applicant, the objective deficits, the tasks and services that can be performed without charge by the Applicant's spouse and other household members, the physician's treatment plan, and the need for in-home evaluations. It is noted that the Applicant did testify in some detail to these issues at trial, but that information was not included in the original RFA to the extent required by the ODG. (See Ex. BB, IMR Final Determination, attached to IMR Appeal).

The UR reviewer does not mistake skilled nursing care with basic home care. The IMR Determination upholds the UR denial, which notes the documentation submitted was insufficient to support the request for home health care services. The IMR Final Determination was based on insufficient documentation, not on a mistake of fact of ordinary knowledge. Furthermore, the question of how the law defines "home health care services" is a legal term of art, and not a "mistake

of fact of ordinary knowledge" as is required by Labor Code Section 4610.6(h)(5). For these reasons, the appeal of the IMR Determination must be denied.

B. DEVELOPMENT OF THE RECORD ON THE ISSUE OF SANCTIONS FOR VIOLATING THE DUTY OF CARE

With respect to the remaining issues noted in Finding of Fact Number 5, namely the alleged failure of Defendant fulfill its duty to investigate the need for benefits pursuant to Cal Code of Reg. 10109, the attorney's fees pursuant to Labor Code Sections 5307.8 and 5814.5, and the claim for Sanctions per Labor Code Section 5813 for bad faith denial of home health care, this WCJ ruled that the record on these issues is inadequate and is in need of further development. This was done in an abundance of caution and to allow both parties the opportunity to produce further evidence of actions taken after the Continuity of Care documents were provided by Petitioner to Defendant on 1/30/2020 and 3/31/2023. (See Ex. 50 and Ex. 51, respectively).

It should be noted that some cases have held that a failure to investigate was not sufficient to render Defendant liable for the attendant/home health care assistance to the injured worker where, although evidence was provided to Defendant indicating a need for such services earlier, there were no actual physician's report with an attendant RFA for said home care services. (See *Tikhonoff v. WCAB* (2022) 87 CCC 419. Here, Petitioner provided the Defendant with the Continuity of Care reports on 1/30/2020 and 3/31/2023, while Dr. Mealer's report with an RFA for home health care services was sent on 2/15/2024. According to *Tikhonoff*, for the period prior to the RFA, there would need to be a showing of substantial evidence that the Defendant failed to investigate whether the treatment was necessary or not. The mere forwarding of the Continuity of Care reports would not satisfy that requirement. Nevertheless, more factual evidence is needed in order to determine whether there was a failure on the part of Defendant to investigate.

(Report, at pp. 2-5.)

III.

We highlight the following legal principles that may be relevant to our review of this matter:

Employers are required to provide reasonable medical treatment to cure or relieve from the effects of an industrial injury. (Lab. Code, § 4600.) For home health care services, the Labor Code provides:

Home health care services shall be provided as medical treatment only if reasonably required to cure or relieve the injured employee from the effects of the employee's

> injury and prescribed by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, and subject to Section 5307.1 or 5307.8. The employer is not liable for home health care services that are provided more than 14 days prior to the date of the employer's receipt of the physician's prescription.
>
> (Lab. Code, § 4600(h).)

Employers are required to conduct UR of treatment requests received from physicians. (Lab. Code, § 4610; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230, 236.) Section 4610.5 makes IMR applicable to "any dispute over a utilization review decision," and requires that any such dispute, "shall be resolved only" by IMR. The Medical Unit reviews UR plans and the IMR programs used to resolve disputes about medical treatment and medical legal billing. The AD, although not a party to this action, is charged with oversight of Medical Unit programs that provide care to injured workers.

The Appeals Board has jurisdiction to determine whether a UR decision is timely. (*Dubon v. World Restoration, Inc*. (2014) 79 Cal.Comp.Cases 1298, 1299 (Appeals Board en banc) (*Dubon II*).) If a UR decision is untimely, the determination of medical necessity for the requested treatment may be made by the Appeals Board. (*Id*. at p. 1300.) However, "where a UR decision is timely, IMR is the sole vehicle for reviewing the UR physician's expert opinion regarding the medical necessity of a proposed treatment." (*Id*. at pp. 1310-1311; see also Lab. Code, §§ 4062(b), 4610.5; *King v. CompPartners, Inc*. (2018) 5 Cal.5th 1039, 1048 [83 Cal.Comp.Cases 1523] [IMR "is the exclusive mechanism for review of a utilization review decision"].) "All other disputes regarding a UR decision must be resolved by IMR." (*Dubon II, supra*, 79 Cal.Comp.Cases at p. 1299.)

Section 4610.6(h) authorizes the Appeals Board to review an IMR determination of the AD. The section explicitly provides that the AD's determination is presumed to be correct and can only be set aside by clear and convincing evidence of one or more of the following: (1) The AD acted without or in excess of the AD's powers; (2) The determination of the AD was procured by fraud; (3) The IMR reviewer was subject to a material conflict of interest that is in violation of section 139.5; (4) the determination was the result of bias on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability; or (5) the determination was the result of a plainly erroneous express or implied finding of fact, provided that the mistake of fact is a matter of ordinary knowledge based on the information submitted for

review pursuant to section 4610.5 and not a matter that is subject to expert opinion. Section 4610.6, subdivision (i) provides: "If the determination of the administrative director is reversed, the dispute shall be remanded to the administrative director to submit the dispute to independent medical review by a different independent review organization…. In no event shall a workers' compensation administrative law judge, the appeals board, or any higher court make a determination of medical necessity contrary to the determination of the independent medical review organization."

All decisions by a WCJ must be supported by substantial evidence. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246 [54 Cal.Comp.Cases 349].) Substantial evidence has been described as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and must be more than a mere scintilla. *(Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159 [48 Cal.Comp.Cases 566].)

Here, it is unclear from our preliminary review whether the existing record is sufficient to support the WCJ's decision to deny Applicant's Appeal of the IMR Final Determination where IMR failed to consider the assessment of ADLs by Continuity Home Care in-home evaluation. (Applicant's Exhibit 46.) Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza, supra*; *LeVesque v. Workmen's 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 Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) To constitute substantial evidence "… a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in

support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Based on our review, we are not persuaded that the record is properly developed. Where the evidence or opinion on an issue is incomplete, stale, and no longer germane, or is based on an inaccurate history, or speculation, it does not constitute substantial evidence. (*Place v. Workers' Comp. Appeals Bd*. (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) Here, we are not persuaded that there is substantial evidence to support the WCJ's decision.

Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

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 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 Labor Code sections 5950 et seq.

V.

Accordingly, we grant applicant'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 applicant's Petition for Reconsideration 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/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 5, 2026

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

DAWN LEAH GURITZKY
LAW OFFICE OF BRUCE KORDIC
LAUGHLIN, FALBO, LEVY & MORESI, LLP

PAG/bp

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