

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JEANNETTE RENEE SOTO, *Applicant*

vs.

**KAKIA SMAINIS, insured by FIREMAN'S FUND INSURANCE COMPANY,
administered by ESIS, *Defendants***

**Adjudication Number: ADJ2759816 (SBA 0083712)
Santa Barbara District Office**

**OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION**

Applicant seeks reconsideration of the October 8, 2025 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that a timely utilization review (UR) determination deprived the WCJ of jurisdiction to act on a non-certification of a request for authorization (RFA) of previously authorized medications.

Applicant contends that the WCJ erred by enforcing a redundant UR of previously authorized medications, instead of applying the reasoning in *Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910 (Appeals Board Significant Panel Decision) to prevent further UR pending a relevant change in circumstances.

We have not received an answer to the petition on behalf of defendants.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be denied.

We have considered the Petition for Reconsideration 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 applicant's petition and defer a final decision. Our order granting the petition 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 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.¹

FACTS

Applicant sustained industrial injuries on April 14, 1998 to her bilateral upper extremities, lower extremities, neck, back, psyche, and RSD, resulting in a Stipulation and Award dated May 22, 2008, which found applicant permanently and totally disabled, with a need for medical treatment to cure or relieve from the effects of the injury.

On August 26, 2025, the matter was set for trial, and the issue raised was listed as “need for further medical treatment.” The Minutes of Hearing and Summary of Evidence (MOH/SOE) also note that applicant asserts that the various medications prescribed by her primary treating physician (PTP) should be provided regardless of a Utilization Review (UR) denial in line with *Patterson* and case law. Defendant asserts that the UR was timely and therefore a valid basis to deny treatment.

The matter was submitted, and on October 8, 2025, the WCJ’s F&A of October 8, 2025 included, in pertinent part, a finding of injury consistent with the award of May 22, 2008. The WCJ also found that at the time of injury, the employer’s workers’ compensation insurance carrier was ESIS. We note that this is inconsistent with the stipulated provision of the 2008 award that the insurer was Fireman’s Fund Insurance Company.²

The WCJ further found that the UR determinations denying applicant’s medical treatment were performed in a timely manner, depriving the WCJ of jurisdiction to act. (Findings 6.). The Award indicates it is in favor of Defendant, ESIS, and against applicant as follows: “a. Treatment is denied as provided in Finding number 5.”³

The facts relevant to this issue pursuant to the WCJ’s Report are as follows:

Applicant has a history of being prescribed various medications for both her orthopedic (pain complaints) and psychotropic drugs.

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

² The Adjudication (ADJ) File of the WCAB’s Electronic Adjudication Management System (EAMS) identifies ESIS as the claims administrator.

³ Finding number 5 is a finding that “no attorney fees have been paid; and no attorney fee arrangements have been made in connection with this instant trial.” We thus presume the Award was erroneous as it relates to Finding number 5.

The Requests for Authorization (RFA) for these various medications were submitted to Utilization Review (UR), and the medications were approved by Defendant from June 2022 - May 2023.

In October 2024, at an Expedited Hearing before me, based upon a RFA for psychotropic medications being issued- and based on an untimely denial by UR- the WCJ exercised jurisdiction and did find and order the medications be provided because they were found to be both reasonable and necessary pursuant to ACOEM and MTUS. No appeal was taken from that Findings of Fact and Order.

The matter proceeded to trial on August 26, 2025. Defendant asserted that the URs were performed timely (without objection by Applicant), and Applicant maintains that given the long history of taking the medications, this case is analogous to *Patterson*; and neither RFAs [n]or URs should apply in this case.

Following a decision and Order issuing finding the UR determinations to have performed timely, thus depriving the WCJ jurisdiction to act. In response, Applicant filed this reconsideration petition.

(Report, 11/7/2025, p. 2, lines 4-18.)

DISCUSSION

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.”

Here, according to Events, the case was transmitted to the Appeals Board on November 7, 2025, and 60 days from the date of transmission is January 6, 2026. This decision is issued by or on Tuesday, January 6, 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 WCJ, the Report was served on November 7, 2025, and the case was transmitted to the Appeals Board on November 7, 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 7, 2025.

II.

As noted in the Report, the WCJ relied upon the opinion in *Dubon v. World Restoration* (2014) 79 Cal.Comp.Cases 1298 (Appeals Board en banc) to reach the conclusion that he had no jurisdiction to consider the reasonableness and necessity of the medications prescribed for applicant’s pain and psyche. In that opinion, which is often referred to as *Dubon II* because it modified an earlier en banc opinion in the same case, the appeals board 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.

(*Dubon II, supra*, 79 Cal.Comp.Cases 1298, 1299-1300.)

The Report also noted that the WCJ had previously found applicant's prescribed medications to be reasonable and necessary. Specifically, the WCJ had noted on Minutes of Hearing (MOH) dated October 15, 2024: "UR determination untimely and meds in UR determination were both reasonable and necessary under MTUS." (MOH 10/15/2024, p. 1.) The WCJ did not cite the holding in *Dubon II* in this previous finding and order, but his finding appears to follow *Dubon II* by determining the reasonableness and necessity of a medical dispute that is addressed by an untimely UR decision. As noted by the Report, neither party sought reconsideration of this previous finding and order that the medications were reasonable and necessary. (Report, 11/7/2025, p. 2, lines 8-12.)

Indeed, none of the salient facts seems to be in dispute. The parties agree that applicant has a stipulated award that includes an ongoing right to further medical care to cure or relieve the effects of an industrial injury of April 14, 1998. Furthermore, the parties do not appear to be disputing that the medications currently in dispute were previously authorized by defendant, both pursuant to prior utilization review decisions and pursuant to the WCJ's order of October 15, 2024. Moreover, there appears to be no dispute that after defendant's authorization of applicant's prescribed medications, a contradictory UR decision concluded that the same medications were not reasonable and necessary. No one disputes the timeliness of the subsequent, contradictory UR decision.

The present dispute appears to be purely legal in nature. The parties disagree on the legal effect of the inconsistency between UR decisions on essentially duplicative RFAs for ongoing medications, particularly in light of the WCJ's final decision of October 15, 2024 that applicant's prescribed medications are reasonable and necessary.

III.

Although we have preliminarily considered the Petition for Reconsideration, the WCJ's Report, and the record in this matter, we are not persuaded that the record is properly developed on one or more of the above issues, including the issue of whether the doctrine of collateral estoppel applies to the WCJ's finding and order of October 15, 2024. Further, the reasoning of

Patterson, which is cited by applicant as the basis for his petition, and which has stood as the basis for numerous similar cases over the past ten years, has recently been called into question by one of the six districts of the California Courts of Appeal. That decision is not final as it is still subject to pending petitions for depublication and review, given the conflict of authority in the various Courts of Appeal.

Accordingly, 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 how the facts of this case apply to unaddressed and developing legal issues, and to ensure that the parties are afforded due process. Thereafter, a final decision after reconsideration will be issued by the Appeals Board, from which any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

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 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 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 of the October 8, 2025 Findings and Award 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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PAULE E. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 6, 2026

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

**JEANNETTE RENEE SOTO
STOUT, KAUFMAN, HOLZMAN & SPRAGUE
BENTHALE, McKIBBIN, McKNIGHT & BITZ**

CWF/cs

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