

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**RAMIRO GIRON, *Applicant***

**vs.**

**KDF FORESTRY; EVEREST NATIONAL INSURANCE COMPANY, administered by  
SEDGWICK CMS, *Defendants***

**Adjudication Numbers: ADJ15322493  
Santa Rosa District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Applicant filed a Petition for Reconsideration (Petition) of the workers' compensation judge's (WCJ) Findings and Order (F&O) issued on January 23, 2026. In the F&O, the WCJ found in pertinent part that the utilization review (UR) determination was timely and there was no jurisdiction to overrule the determination denying lumbar fusion surgery.

Applicant contends the UR determination was untimely as it was issued more than five working days after defendant received the request for authorization (RFA) of lumbar surgery and that the lumbar surgery is medically supported.

Defendant filed an Answer.

The WCJ's Report and Recommendation (Report) recommends reconsideration be denied.

After our review of the record and for the reasons discussed below, we will grant applicant's Petition for Reconsideration and rescind the F&O and return the matter to the WCJ for further proceedings consistent with this opinion.

**I.**

Former Labor Code section 5909<sup>1</sup> 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.

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

(Former 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.

(Lab. Code, § 5909.)

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 February 5, 2026, and 60 days from the date of transmission is Monday, April 6, 2026. This decision issued by or on April 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 shall be notice of transmission.

According to the proof of service, the Report was served on February 5, 2026, and the case was transmitted to the Appeals Board on February 5, 2026. 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 February 5, 2026.

## II.

As found by the WCJ in the Findings and Order, applicant, while employed by defendant as a tree trimmer, sustained injury to his low back.<sup>2</sup>

The record before us begins with an August 28, 2025, progress report dictated by “Crystelee Kammerer PA-C, Teodoro P. Nissen M.D., Q.M.E.” of Bay Area Orthopedic. The report lists the date of injury as February 9, 2021, and notes applicant underwent micro decompression by Christian Athanassious, M.D., at L3-S1 nearly two years prior. (Exhibit 4, PDF pp. 1-2.) The history is described as “he was bending over lifting branches, [and] he had acute pain in his back which shot down to his left leg.” (Exhibit 4, PDF p. 3.)

On September 4, 2025, Dr. Athanassious issued a Request for Authorization (RFA) which included “L5/S1 Anterior and Posterior spinal fusion with instrumentation use of autograft and allograft use of xray” and “Co-surgeon (anterior).” (Exhibit 1<sup>3</sup>, PDF p. 2.) The RFA bears the header “09/04/2025 11:11 AM Fax Services →15104443604 pg 2 of 39.” (Exhibit 1, PDF p. 2.) Together with the RFA, as part of the exhibit, are treating records from February 7, 2024, through August 26, 2025. (Exhibit 1, PDF pp. 6-33.)

There is a fax confirmation page dated September 4, 2025, indicating “[y]our 39 page fax has been successfully delivered to +18779227236 on 09/04/2025 11 :10 AM.” (Exhibit 3.)

On September 12, 2025, a Sedgwick Adverse Determination was directed to Dr. Athanassious denying the RFA. The determination notes “Request for Authorization First Received: 9/4/2025.” (Exhibit J1, PDF p. 3.) The determination appears unsigned and reflects that copies were sent to different entities. (Exhibit J1, PDF p. 6.)

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<sup>2</sup> There is no date of injury identified in the F&O. “An injury may be either: (a) “specific,” occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) “cumulative,” occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment.” (Lab. Code § 3208.1.) Without a date of injury, the finding becomes difficult to enforce as payment of compensation may be based on the date of injury. In any further proceedings the date of injury must be identified.

<sup>3</sup> In Exhibit 2, there are twenty-two PDF pages of duplicate medical records previously included as part of Exhibit 1. Multiple different documents are identified as Exhibit 1 and as Exhibit 2. The use of the same identifier for multiple documents makes review difficult. In any further proceedings the WCJ is to uniquely identify each joint and proponent exhibit sequentially to avoid confusion. (Cal. Code Regs., tit. 8, § 10759(c).)

We also note Exhibit A was marked for identification pending a ruling on admissibility. Although we did not consider proposed Exhibit A in reaching our decision, to avoid uncertainty as to the extent of the record, the WCJ should rule on the admissibility of proposed Exhibit A in any further proceedings.

With the determination is a “Peer Review Report” which includes a referral date for initial review of September 10, 2025.<sup>4</sup> The report indicates two calls were made to Dr. Athanassious’s office on September 10, 2025, resulting in messages being left with office staff. On September 11, 2025, a message was left on voicemail. The messages were described as “I left a detailed message with my call back number for a return call.” On September 12, 2025, the denial determination was left on voicemail. (Exhibit J1, PDF p. 12.)

The peer review report found: “Criteria has not been met. Therefore, the request for L5/S1 Anterior And Posterior Spine fusion With Instrumentation Use Of Autograft And Allograft Use Of Xray, C- Surgeon (anterior) is not medically necessary.” (Exhibit J1, PDF p. 13.) There does not appear to be proof of service associated with Exhibit J1.

The case was tried on October 6, 2025. The issues were: “1. Whether or not defendant’s Utilization Review dated September 12, 2025 was timely, with defendant claiming that the time period should be extended for a peer to peer review. 2. Whether or not the RFA submitted by Dr. Athanassious is reasonable medical treatment and a lumbar fusion surgery should be authorized.” (Minutes of Hearing, Offer of Proof and Summary of Evidence (MOH), October 6, 2025, p. 2, Ins 4-25.)

The Offer of Proof confirms “[i]f the surgery would authorize, [applicant] would undergo the surgery.” (MOH, p. 3, Ins 43-44.) Applicant also testified through a Spanish interpreter that “he is comfortable proceeding with the surgery if it were authorized.” (MOH, p. 4, Ins 25-26.)

On January 2, 2026, Findings and Order issued, which included the findings that “By timely attempting to contact Dr. Athanassious the Utilization Review timeline was extended from 5 days to 14 days,” and the “Court lacks jurisdiction to take further action.” It was ordered that “[t]he Court lacks jurisdiction to overrule the Utilization Review decision.”

On January 23, 2026, applicant filed the instant Petition for Reconsideration.

### III.

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*,

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<sup>4</sup> Although it appears the RFA was received on September 4, 2025, it also appears it was not referred to the reviewer until September 10, 2025. This is the same day phone calls to the treating physician were initiated. (Exhibit J1, PDF p. 12.) It is unclear why there was a delay in referral to the reviewer in light of the employer’s duty to conduct timely investigation. (Cal. Code Reg., tit. 8, § 10109(c).)

*McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc.) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, territorial 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. (Lab. Code § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision is issued.

Here the F&O included a finding as to the threshold issue of employment. We also note that the WCJ concluded that the “Court lacks jurisdiction” over the UR determination, and jurisdiction is generally a threshold issue. Therefore, the F&O is a final decision subject to reconsideration.

#### IV.

Section 4600 requires the employer to provide reasonable medical treatment to cure or relieve from the effects of the industrial injury. (Lab. Code, § 4600(a).) An employers' review of an employees' medical treatment requests are governed solely by utilization review. (Lab. Code, §§ 4610, 4610.5; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230, 236 [73 Cal.Comp.Cases 981].) Section 4610 provides time limits within which a UR decision must be made by the employer. These time limits are mandatory.

In *Dubon v. World Restoration, Inc. (Dubon II)* (2014) 79 Cal.Comp.Cases 1298 (Appeals Board en banc), the Appeals Board held that it has jurisdiction to determine whether a UR decision is timely. If a UR decision is untimely, the determination of medical necessity for the treatment requested may be made by the Appeals Board. (*Dubon II, supra*, at pp. 1299, 1300.) If the UR decision is timely, the Appeals Board has no jurisdiction to address disputes regarding the UR because “[a]ll other disputes regarding a UR decision must be resolved by IMR.” (*Id. at p.* 1299.)

Section 4610(i)(1) states that:

[P]rospective 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), emphasis added; see Cal. Code Reg., tit. 8, § 9792.9.1(a)(1).)

Here, the RFA was faxed on September 4, 2025, and bears the header “09/04/2025 11:11 AM Fax Services →15104443604 pg 2 of 39.” (Exhibit 1, PDF p. 2.) From this, we discern that the RFA was received on September 4, 2025. (See Cal. Code Reg., tit. 8, § 9792.9.1(a)(1).) This is also consistent with the September 12, 2025 determination denying the RFA which notes “Request for Authorization First Received: 9/4/2025.” (Exhibit J1, PDF p. 3.) There is no evidence to rebut that the RFA was received on September 4, 2025, and therefore, UR action was required within five normal business days from receipt of the RFA, or on or before September 11, 2025. (Lab. Code, § 4610(i)(1).)

Section 4610(j)(2) states in relevant part that if an employer cannot make a timely decision “because the employer or other entity is not in receipt of, or in possession of, all of the information reasonably necessary to make a determination, the employer *shall immediately notify the physician and the employee, in writing*, that the employer cannot make a decision within the required timeframe, *and specify the information that must be provided by the physician* for a determination to be made.” (Lab. Code, § 4610(j)(2).) Thus, the five days to act under subdivision (i)(1) may include a written request for additional information. (*Ibid.*)

The WCJ found the “Utilization Reviewer attempted to contact Dr. Athanassious twice on 9/10/2025 and once on 9/11/2025 without success,” and therefore “the Utilization Review timeline was extended from 5 days to 14 days.” (F&O, findings 4 and 5.) It appears this conclusion as to the timeline extension is predicated on the reasoning in the panel decision *Smith v. Scholle Packaging, Liberty Mut. Ins. Co.*, 2015 Cal. Wrk. Comp. P.D. LEXIS 616. Due to legislative changes to section 4610, however, the reasoning in *Smith* is not persuasive here.<sup>5</sup>

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<sup>5</sup> When *Smith* was decided in 2015, section 4610(g)(1) required that prospective or concurrent UR decisions “shall be made in a timely fashion ..., not to exceed five working days from receipt of the 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.” The *Smith* panel relied on this language to find a reviewer’s telephonic requests for additional information from the primary treating physician made within five working days of receiving the RFA automatically extended the five-day deadline to fourteen days. (*Id.*) Former section 4610, including subsection 4610(g)(1) as referenced in *Smith*, was repealed effective January 1, 2018. Current section 4610 became effective January 1, 2018, and was last amended on January 1, 2024, before the current dispute. (Stats 2016 ch 868 § 4.5 (SB 1160), effective January 1, 2017, operative January 1, 2018; last amended by Stats 2023 ch 131 § 143 (AB 1754), effective January 1, 2024.) Timeliness is now contained in current subsection 4610(i) and requests for information is contained in subsection 4610(j) as detailed above. Because the language in former section 4610 relied on by *Smith* was repealed and replaced, *Smith* is no longer persuasive.

Instead, we must acknowledge and look to the actual language of subsection 4610(j)(2). On the record before us, we see no evidence that written notice of the need for additional information was provided within five days of receipt of the RFA as required. On return, the WCJ should determine if the employer sent the notification and provided the information required by subsection 4610(j)(2).

The Appeals Board has held that a UR decision that is timely made, but is not timely communicated, is untimely. (*Bodam v. San Bernardino County/Dept. of Social Services* (2014) 79 Cal.Comp.Cases 1519 (Significant Panel).) In *Bodam*, the employer did not notify the requesting physician of its UR decision within 24 hours and did not send written notice of the UR decision to the physician, applicant, or applicant's attorney within two business days after the UR decision was made. (*Id.* at p. 1523.) The UR decision was therefore deemed untimely, and the Appeals Board had authority to determine the issue of medical necessity for the disputed treatment.

WCAB Rule 10625(c) defines a "proof of service" as follows:

(c) "Proof of service" means a dated and verified declaration identifying the document(s) served and the parties who were served, and stating that service has been made and the method by which it has been made. If the proof of service names attorneys for separately represented parties, it must also state which party or parties each of the attorneys served represents. If a document is served electronically, the proof of service must also state the names and email addresses of the person serving electronically and the person served electronically.

(Cal. Code Regs., tit. 8, § 10625(c))

Evidence Code section 641 creates a rebuttable presumption that a correctly addressed and mailed letter has been received. "Whether that presumption has been rebutted is a question of fact to be resolved in the trial court." (*Glasser v. Glasser* (1998) 64 Cal.App.4th 1004, 1010-1011, 75 Cal.Rptr.2d 621.) The presumption of receipt may be rebutted by testimony denying receipt. (*Bear Creek Master Assn. v. Edwards* (2005) 130 Cal.App.4th 1470, 1486; *Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 421-422; *Slater v. Kehoe* (1974) 38 Cal.App.3d 819, 832, fn. 12.)

Once the presumption has been rebutted, it is removed, and it is within the province of the trier of fact to weigh the conflicting evidence to determine whether the correspondence was received. "[I]f the adverse party denies receipt, the presumption is gone from the case. *The trier of fact must then weigh the denial of receipt against the inference of receipt arising from proof of*

*mailing and decide whether or not the letter was received.* [Citation]” (*Craig, supra*, at p. 422, italics in original.)

Additionally, we note that in response to applicant’s complaints about the determination lacking a proof of service, the WCJ states “[w]hile proofs of service would probably be ideal, the court is willing to assume that the denial was timely conveyed to the parties listed at the proper addresses.” (Report, p. 3.) Generally, without some form of proof of service, it is unclear how, when, or to what addresses, an unsigned written communication was made.

As required by section 5313 and stated by the Appeals Board “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Board en banc).)

On return, the WCJ should not simply “assume that the denial was timely conveyed to the parties,” but must create a proper record, including providing applicant with an opportunity to show that correspondence was not received, before determining the issue.

## V.

Following our independent review of the record occasioned by applicant’s Petition, we are persuaded that January 2, 2026 Findings and Order did not properly consider the current language in subsections 4610(i) and (j).

Accordingly, we grant applicant’s Petition for Reconsideration, rescind the January 2, 2026 Findings and Order, and return the case to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

**IT IS ORDERED** that applicant’s Petition for Reconsideration of the January 2, 2026 Findings and Order is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the January 2, 2026 Findings and Order is **RESCINDED**, and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**April 6, 2026**

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

**RAMIRO GIRON PINEDA  
RATTO LAW FIRM  
BLACK & ROSE**

**PS/oo**

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