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

**RICARDO RUBALCABA, Applicant**

**vs.**

**A&A READY MIXED CONCRETE INC.;**
**INSURANCE COMPANY OF THE WEST, *Defendants***

**Adjudication Number: ADJ19406087**
**Santa Ana District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings & Award (F&A) issued on October 31, 2025, by the workers' compensation administrative law judge (WCJ).

The WCJ found, in pertinent part, that applicant, while employed on May 23, 2024 as a driver, at Irvine, California, sustained injury arising out of in the course of employment (AOE/COE) to his left eye, left side of face, head, neck, left arm, chest, left shoulder, and injury in the form of a concussion with all other body parts deferred. The WCJ further found that the treatment request for continual care at Casa Colina is reasonable and necessary, and that defendant has not provided evidence of a change in applicant's condition or circumstances that show that applicant's treatment at Casa Colina is no longer reasonably required. Additionally, the WCJ found that applicant does not have the burden of being required to provide a new Request for Authorization (RFA), and that defendant failed to meet the requirements of Labor Code Section 4610(i)(4)(C)[1] and Title 8, California Code of Regulations 9792.9.1(e)(6). Applicant was awarded further medical treatment at Casa Colina.

Defendant contends that the Trial Judge erred in (1) exercising jurisdiction over a medical necessity dispute that the legislature has mandated must be resolved exclusively through utilization review and independent medical review, asserting that the Utilization Review (UR) denials remain effective for 12 months, and (2) that applicant failed to demonstrate any documented change in material facts. Defendant further argues that the WCJ's reliance on *Patterson v. The Oaks Farm*

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

(2014) 79 Cal.Comp.Cases 910, 2014 LEXIS 98 (*Patterson)*and *Nat'l Cement Co., Inc.v. Workers' Comp.Appeals Bd.* (*Rivota*) (2021) 86 Cal.Comp.Cases 595, 2021 Cal.Wrk.Comp. LEXIS 21.) was misplaced, and was expressly rejected by the Court of Appeal in *Illinois Midwest Ins. Agency, LLC v. Workers' Comp. Appeals Bd. (Rodriguez)* (2025) 90 Cal.Comp.Cases 1127, 115 Cal. App. 5th 1168.

We received an Answer from applicant.

The WCJ issued a Report and Recommendation (Report) recommending that the Petition be granted and that the F&A for continued medical treatment be reversed and disallowed.

We have considered the Petition, the Answer, and the contents of the Report. Based upon our preliminary review of the record, we will grant the 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 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.**

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. (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 December 5, 2025, and 60 days from the date of transmission is Tuesday, February 3, 2026. This decision is issued by or on February 3, 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, the Report was served on December 5, 2025, and the case was transmitted to the Appeals Board on December 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 December 5, 2025.

## II.

## BACKGROUND

On June 13, 2024, applicant filed an Application for Adjudication of Claim (Application) asserting industrial injury while employed by defendant on May 23, 2024 to his left eye, left side of face, head, neck, left arm, chest, left shoulder, concussion with loss of consciousness, dizziness, loss of memory and sleep disturbance, as a result of his industrial cement truck tilting completely over. (Application, 6/13/24, at p.9.)

On June 17, 2024, defendant authorized Casa Colina Hospital to treat Applicant as the primary treating physician pursuant to section 4600. (Ex. 10.)

Applicant was subsequently authorized for inpatient care at Casa Colina on June 27, 2024; July 17, 2024; July 18, 2024; August 22, 2024; and October 8, 2024. The UR determination dated Thursday, June 27, 2024 states UR certified for inpatient care at Casa Colina covers the period June 20, 2024 through October 24, 2024. (Ex. 6.)

On June 19, 2025, Dr. David Patterson of Casa Colina submitted an RFA for continued care at the Casa Colina Transitional Living Center Interdisciplinary Post-Acute Residential Rehabilitation Program, with 4–6 hours of therapy, due to uncontrolled pain, status post clavicle surgery, and traumatic brain injury. The RFA is signed and dated June 19, 2025 and the FAX sheet is dated Friday, June 20, 2025 3:53 p.m. (Ex. 8.)

On June 24, 2025, defendant certified Dr. Patterson's RFA dated June 19, 2025. (Ex. 1, Ex. 8.)

On August 8, 2025, Dr. Patterson of Casa Colina submitted an RFA for continued care at the Casa Colina Transitional Living Center Interdisciplinary Post-Acute Residential Rehabilitation Program, with 4–6 hours of therapy, due to uncontrolled pain, status post clavicle surgery, and traumatic brain injury. The box marked Expedited Review is checked. The RFA is signed and dated August 8, 2025 and the FAX sheet is dated August 11, 2025 3:09 pm (Ex. 7.)

On August 14, 2025[2], defendant non-certified Dr. Patterson's August 8, 2025 RFA for prospective request for 1 continued transitional living center interdisciplinary post-acute residential rehabilitation program (4-6 hours of therapy per day). (Ex. R.)

On August 14, 2025, defendant noncertified Dr. Patterson's prior June 19, 2025 RFA- UR certified - for prospective request for Casa Colina transitional living center interdisciplinary post-acute residential rehabilitation program (4-6 hours of therapy per day) after re-reviewing the RFA (Ex. 1, Ex. Q.)

On September 17, 2025, applicant filed a Declaration of Readiness to Proceed to Expedited Hearing (DOR). The basis for the DOR is listed as entitlement to medical treatment. Declarant states that applicant has sustained an admitted injury and has been at Casa Colina since June 19, 2024, but defendants denied a continued residential care program on August 14, 2025, and that under *Patterson*, there has been no change in circumstances to the applicant's condition. (DOR, 9/17/25, at p.7.)

On October 8, 2025, the matter proceeded to an expedited hearing wherein the parties stipulated, in pertinent part, that applicant while employed on May 23, 2024 as a driver, at Irvine, California by defendant A&A Ready Mixed Concrete, Inc., sustained injury AOE/COE to his left eye,

[2] The WCJ Report notes August 8, 2025 when defendant non-certified Dr. Patterson's August 8, 2025 RFA for prospective request. We note a corrected date of UR non-certification as August 14, 2025. (Report at p.3, Ex. R.)

left side of face, head, neck, left arm, chest, left shoulder, and injury in the form of a concussion with all other body parts deferred. (MOH at p. 2:4-7.)

The issue raised at trial was whether the defense can prove that there was a change of circumstances [of applicant's condition] pursuant to the *Patterson* and *Rivota* cases, with defendant disputing the applicability of such cases. (MOH at p. 2:10-12.)

On October 31, 2025, the WCJ issued an F&A in which it was found in pertinent part that; (1) on May 23, 2024, applicant sustained injury AOE/COE to his left eye, left side of face, head, neck, left arm, chest, left shoulder, and concussion; (2) exhibits A, K, L,M,N,Q, and R, are admitted into evidence; (3) the treatment request for continual care at Casa Colina is reasonable and necessary; (4) defendant has not provided evidence of a change in applicant's condition or circumstances that show that applicant's treatment at Casa Colina is no longer reasonably required; (5) applicant does not have the burden of being required to provide a new RFA, thereby starting the process over again; (6) defendant failed to meet the requirements of Labor Code Section 4610(i)(4)(C) and Title 8, California Code of Regulations 9792.9.1(e)(6); and (7) applicant is entitled to further medical treatment at Casa Colina, which was awarded by the WCJ. (F&A, 10/31/25, pp. 1-2.)

It is from this F&A that defendant seeks reconsideration.

**DISCUSSION**

We highlight several legal principles that may be relevant to our review of this matter. 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 employer's review of an employees' medical treatment requests are governed solely by UR. (Lab. Code, § 4610(g); *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. (Lab. Code, § 4610.) 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, pages 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.)

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.)

Section 4610(i)(4)(C) sets forth the requirement for notice of denial to the employee's physician and the creation of an agreed upon care plan with the employee physician.

> "In the case of concurrent review, medical care shall not be discontinued until the employee's physician has been notified of the decision and a care plan has been agreed upon by the physician that is appropriate for the medical needs of the employee." (Lab. Code § 4610(i)(4)(C).)

Here, based upon the existing record, we cannot discern such a care plan having been implemented or created by the parties.

Section 4610.3(a) sets forth guidelines following authorized medical treatment disallowing the employer an opportunity to rescind the authorization after treatment has been provided.

> "…an employer that authorizes medical treatment shall not rescind or modify that authorization after the medical treatment has been provided based on that authorization for any reason….. If the authorized medical treatment consists of a series of treatments or services, the employer may rescind or modify the authorization only for the treatments or services that have not already been provided." (Labor Code § 4610.3(a).)

Based upon our initial review, it appears that the retroactive non-certification on August 14, 2025 of the previously certified/authorized June 19, 2025 RFA may be in conflict with section 4610.3(a). Further, the existing record is unclear as to whether applicant was treating as an inpatient at Casa Colina during the eight-month gap between October 2024 and June 2025 and whether in-patient treatment at Casa Colina following the June 19, 2025 RFA/UR certification was provided and started.

**III.**

Any decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [520 P.2d 978, 113 Cal. Rptr. 162] [39 Cal.Comp.Cases 310]*; Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [475 P.2d 451, 90 Cal. Rptr. 355] [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [463 P.2d 432, 83 Cal. Rptr. 208] [35 Cal.Comp.Cases 16].)

The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id*. at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).)

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (§§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [65 Cal. Rptr. 2d 431, 62 Cal.Comp.Cases 924] ["The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims."]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [72 Cal. Rptr. 2d 898, 63 Cal.Comp.Cases 261]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805]; *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

The Appeals Board also has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Here, it appears that the existing record may not properly set forth all relevant issues and include all evidence sufficient to support the conclusions of the WCJ. Further development of the record may be necessary with respect to the issues noted above.

**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 *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 also 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 therefore.].)

"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 [62 Cal.Rptr. 757, 432 P.2d 365]; *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.

Accordingly, we grant 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 Findings and Award issued on October 31, 2025, 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/ CRAIG L. SNELLINGS, COMMISSIONER**

**I CONCUR,**


**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

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

**FEBRUARY 3, 2026**

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

**RICARDO RUBALCABA**
**SOLOV & TEITELL**
**LAW OFFICES OF BRIAN T. RILEY**

**VC/bp**

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