

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

RICHARD IRBY SR., *Applicant*

vs.

UNITED CONTINENTAL HOLDINGS, INC., permissibly self-insured, *Defendants*

**Adjudication Numbers: ADJ18785621; ADJ18785634
San Francisco District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant United Continental Holdings, Inc. (defendant) seeks reconsideration of the January 14, 2026 Findings of Fact and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a composite technician/mechanic on July 5, 2023 (ADJ18785621) and during the cumulative injury period ending July 5, 2023 (ADJ18785634) sustained industrial injury to his cervical spine. The WCJ found in relevant part that defendant had not previously authorized home health care services (Finding of Fact No. 1) and that the request submitted by applicant's treating physician for 40 hours of weekly home health care services to be provided by applicant's spouse was medically necessary (Finding of Fact No. 5).

Defendant contends the WCJ's decision does not indicate estimated services, hours, and duration of services on a daily/weekly basis, and that additional information is required before determining the issue of medical necessity.

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

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

FACTS

In Case No. ADJ18785621, applicant sustained injury to his cervical spine while employed as a composite technician/mechanic by defendant on July 5, 2023. In ADJ18785634, applicant sustained industrial injury to his cervical spine while similarly employed during the cumulative injury period ending July 5, 2023.

The parties have selected Ramin Shiva, D.C., as the Qualified Medical Evaluator (QME) with respect to applicant's musculoskeletal injuries, Tirath Gill, M.D., as the QME in psychiatry, and Timothy Lo, M.D., as the QME in neurology.

On September 11, 2024, Dr. Shiva evaluated applicant and conducted a comprehensive record review and clinical examination. (Ex. 3, Report of Ramin Shiva, D.C., dated September 11, 2024.) The QME noted applicant to be status post "posterior cervical fusion from C3-C6 using titanium facet cages with supplemental screw fixation." (*Id.* at p. 19.) The QME diagnosed applicant with multiple medical conditions including cervical sprain with neuromechanical dysfunction; cervical spinal stenosis with myelopathy; spastic myelopathy and gait disturbance post cervical fusion; bilateral upper and lower extremity weakness and paresthesia; lumbosacral neuromechanical dysfunction, post-industrial injury; upper and lower extremity weakness post cervical fusion; bilateral hip and knee pain; repetitive stress injury in both hips and knees; myalgia/myositis; bilateral carpal tunnel syndrome; left ulnar neuropathy at the elbow; distal symmetric demyelinating more than axonal mixed sensory-motor diabetic peripheral neuropathy; psychiatric symptoms, including depression, anxiety, and sleep disorder, post-industrial injury; chronic headache, and hearing problems. (*Ibid.*) The QME concluded that applicant had sustained industrial injury as a result of both the claimed specific and cumulative injuries, and that applicant remained temporarily totally disabled. (*Id.* at pp. 19-21.)

On March 26, 2025, QME Dr. Shiva reevaluated applicant. The QME noted applicant's reports of constant moderate neck pain with repetitive neck movements and extension, but no pain while applicant remained still. Applicant reported ongoing upper extremity pain and numbness consistent with cervical myelopathy. (Ex. 2, Report of Ramin Shiva, D.C., dated March 26, 2025, at p. 3.) Applicant's injury was noted to impact his Activities of Daily Living (ADLs) in multiple respects, including difficulty with various personal hygiene activities, bathing and dressing, communications, ambulatory activities, walking, standing, balancing, pushing, pulling and squatting. (*Id.* at p. 4.) Applicant reported significant difficulty with a wide array of hand-related

activities, including gripping, grasping, and activities involving finger dexterity. (*Ibid.*) Applicant's spouse was noted to assist applicant with all self-care activities, including dressing, personal hygiene, writing, texting and computer use, and household chores. (*Ibid.*) Following a review of the submitted medical record and a clinical examination of applicant, the QME determined that applicant had reached a permanent and stationary plateau and opined as to both impairment and apportionment. (*Id.* at pp. 13-17.) The QME further addressed applicant's functional capacity and work restrictions, noting that applicant "demonstrates significant functional limitations, including an inability to bend or twist at the neck and waist, reach with upper extremities, maintain balance reliably, or perform repetitive hand use." (*Id.* at p. 18.) Applicant was further restricted from prolonged walking and standing, and was limited to lifting, carrying, pushing, and pulling no more than 10 pounds. (*Ibid.*)

Applicant has selected Angela Soo Hoo, M.D., as his primary treating physician (PTP). (Minutes of Hearing and Summary of Evidence (Minutes), dated October 21, 2025, at p. 2:34.) In an interim report dated March 28, 2025, the PTP noted applicant's reports of sharp neck pain with cervical spine movement, and pain and paresthesia in the bilateral upper extremities. (Ex. 9, Report of Angela Soo Hoo, M.D., dated March 28, 2025, at p. 1.) Applicant further reported weakness in both legs, left greater than right. Dr. Soo Hoo noted limited cervical spine range of motion, and grip weakness, and recommended medications, psychological evaluation, and a home healthcare evaluation "as the patient needs assistance for self care activities of daily living." (*Id.* at p. 2.)

On April 25, 2025, Dr. Soo Hoo issued an interim report of evaluation, noting applicant to have "intermittent sharp pain in his neck with radiation to the shoulder and intermittent radiation down the right greater than left upper extremity and the constant numbness and tingling in the right upper extremity extending to the hand." (Ex. 8, Report of Angela Soo Hoo, M.D., dated April 25, 2025, at p. 1.) Applicant continued to experience "significant bilateral grip weakness and bilateral lower extremity weakness (left greater than right)," and had a history of falling down on at least two occasions despite use of a cane and a walker.

On April 28, 2025, Amber Taylor-Duque, R.N., performed a home health care assessment of applicant. The report observed that applicant was restricted from lifting, pulling, sitting for more than four hours daily, grasping with both hands, reaching above the shoulder level, overhead work, repetitive neck motions, standing more than two hours daily and walking more than one hour each day. (Ex. 5, Report of Home Healthcare Assessment, dated April 28, 2025, at p. 4.) Applicant was

deemed in need of varying levels of assistance across multiple ADLs, including toileting, mobility, bathing, personal hygiene, eating, meal preparation, errands, housekeeping, laundry, transportation, leisure activities and administration of medications. (*Id.* at pp. 3-4.)

On May 30, 2025, PTP Dr. Soo Hoo reevaluated applicant, and reviewed the results of the home health care assessment. Dr. Soo Hoo noted a recommendation for 40 hours per week of home health care services, but that applicant was not comfortable with a stranger providing the necessary “self care.” (Ex. 7, Report of Angela Soo Hoo, M.D., dated May 30, 2025, at p. 1.) The PTP modified her ongoing treatment plan in relevant part to include a request for 40 hours of weekly home health care services to be provided by applicant’s spouse. (*Ibid.*) Dr. Soo Hoo submitted the corresponding RFA for “home health care 40 hours per week” on May 30, 2025. (Ex. 13, Request for Authorization, dated May 30, 2025.)

On August 12, 2025,¹ defendant’s Utilization Review (UR) physician Venkata Lakkimsetty, M.D., issued a conditional non-certification of the request for home health care, averring a need for additional information to include “the objective functional deficits upon examination to warrant home health; the number of hours per days that is being requested; the duration of home health that is being requested (days, weeks, months, etc.); [and] the specific services that are being requested for home health care.” (Ex. 12, Utilization Review Determination, dated August 12, 2025, at p. 2.) In addition, the notice indicates “this outcome represents an administrative action taken to comply with regulatory time frame constraints, and does not represent a denial based on medical necessity.” (*Id.* at p. 3.) The notice indicates service to PTP Dr. Soo Hoo by facsimile and mail, to applicant’s counsel by facsimile and mail, and by mail to applicant at an address on “Broadway” in Millbrae, California. (*Id.* at p. 4.)

Applicant challenged the validity and timeliness of defendant’s UR decision, and on October 21, 2025, the parties proceeded to trial. The parties stipulated that “the Utilization Review decision of August 12, 2025, for a scooter and home health care, was both untimely and defective.” (Minutes, at p. 2:40.) The issues framed for decision included, in relevant part, whether applicant’s home health care services were previously authorized by defendant, and “whether the treatments in question meet requirements for medical necessity.” (*Id.* at p. 3:23.) The WCJ heard testimony from applicant and ordered the matter submitted the same day.

¹ The UR determination letter indicates the May 30, 2025 RFA authored by PTP Dr. Soo Hoo was received by the employer on May 30, 2025, but that the RFA was not transmitted to the third-party UR provider until August 8, 2025.

On January 14, 2026, the WCJ issued the instant F&A, determining in relevant part that home health care services were not previously authorized by defendant, and that “Home health care provided by applicant’s wife for 40 hours per week to assist with activities of daily living, as requested by Dr. Soo Hoo in her RFA dated May 30, 2025, is medically necessary to cure or relieve from the effects of the injuries identified in Finding of Fact No. 1.” (Findings of Fact, Nos. 3 & 5.) The WCJ’s Opinion on Decision observed there is no evidence of a prior authorization by defendant for home health care services. (Opinion on Decision, at p. 6.) With respect to the issue of home health care services, the Opinion cited the medical reporting of PTP Dr. Soo Hoo and the independent home health care evaluation as supporting the medical necessity of the requested home health care services. (Opinion on Decision, at p. 6.)

Aggrieved by the F&A, defendant now seeks reconsideration.

DISCUSSION

I.

Former Labor Code² 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

² All further references are to the Labor Code unless otherwise noted.

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 13, 2026, and 60 days from the date of transmission is April 14, 2026. This decision is issued by or on April 14, 2026, so that we have timely acted on the petition as required by Labor Code 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 February 13, 2026, and the case was transmitted to the Appeals Board on February 13, 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 13, 2026.

II.

In *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298, 1299 (Appeals Board en banc) (*Dubon II*), the Appeals Board held that if a UR decision is untimely, the UR decision is invalid and not subject to independent medical review (IMR). The *Dubon II* decision further held that the Appeals Board has jurisdiction to determine whether a UR decision is timely. (*Id.*) If a UR decision is untimely, the determination of medical necessity for the treatment requested may be made by the Appeals Board. (*Id.* at p. 1300.) As stated by the Appeals Board in *Dubon II*, “timeliness cannot be fixed. Whether a UR decision is timely is a legal determination and must be decided by a WCJ. An untimely UR decision is the same as no UR.” (*Id.* at p. 1311.)

Subsequent to *Dubon II*, in a significant panel decision, the Appeals Board held that a UR decision that is timely made, but is not timely communicated, is untimely. (*Bodam v. San*

Bernardino County/Department of Soc. Servs. (2014) 79 Cal.Comp.Cases 1519.) 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.

Here, the parties have stipulated that “the Utilization Review decision of August 12, 2025, for a scooter and home health care, was both untimely and defective.” (Minutes, at p. 2:40.) The WCJ has accepted the parties’ stipulation, and based on a review of the evidence, entered a corresponding Finding of Fact that “the Utilization Review decision of August 12, 2025, for a mobility scooter and home health care, was both untimely and defective.” (Finding of Fact No. 2; Lab. Code, § 5702; Cal. Code Regs., tit. 8, § 10835.) Neither the stipulation of the parties in this respect nor the WCJ’s corresponding Finding of Fact are challenged herein.

In light of the defective UR decision, the Appeals Board retains the jurisdiction to determine the medical necessity of the requested treatment. (Lab. Code, § 4604.5; *Dubon II, supra*, 79 Cal.Comp.Cases 1298.)

However, “where a defendant’s UR decision was untimely, the injured employee is nevertheless entitled only to ‘reasonably required’ medical treatment (§ 4600(a)) and it is the employee’s burden to establish his or her entitlement to any particular treatment (§§ 3202.5, 5705), including showing either that the treatment falls within the presumptively correct MTUS or that this presumption has been rebutted. (§ 4604.5; see also § 5307.27).” (*Dubon II, supra*, 79 Cal. Comp. Cases at p. 1312; *State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230, 242 [the employee bears the burden of proving treatment is reasonable and necessary by “demonstrating that the treatment request is consistent with the uniform guidelines (§ 4600(b)) or, alternatively, rebutting the application of the guidelines with a preponderance of scientific medical evidence (§ 4604.5)”].) Applicant therefore bears the burden of showing entitlement to the disputed treatment based on substantial medical evidence. (*Dubon II, supra*, 79 Cal.Comp.Cases at p. 1312; see also Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310] [decisions of the Appeals Board must be supported by substantial evidence].)

The MTUS³ provides guidelines⁴ for the provision of home health care services including both skilled and unskilled services. (ACOEM Initial Approaches to Treatment, October 22, 2021, at p. 16.) Unskilled services are noted to include “personal care and domestic care,” commonly including ADLs such as feeding, bathing and toileting. (*Ibid.*) The need for home health care is established through a discussion of the medical conditions requiring the home health care services, objective functional deficits and the activities precluded by those deficits, the necessity of skilled and unskilled services, and the duration and frequency of home health care services (e.g., per day or per week). A home health evaluation may assist in “assess[ing] patient safety, equipment needs, and care requirements to help prevent (re)hospitalization,” with reassessments undertaken at regular intervals. (*Ibid.*)

The WCJ’s Opinion reviews the medical evidence responsive to the issue of the need for home health care as follows:

Referring again to the March 26, 2025, report of QME Shiva (exhibit 2), the quoted passages set forth a list of restrictions. Dr. Shiva finds that applicant needs assistance with the most basic activities of daily living, including shopping, cooking cleaning and basic home maintenance. This is consistent with the RFA of Dr. Soo Hoo (exhibit 13). Applicant also testified that he needs help with bathroom activities, and he is embarrassed to have a stranger assist him in the bathroom. He would prefer to have his wife provide home health care. This unskilled healthcare should not cost defendant any more than an outside service. This request is supported by the opinions of Dr. Soo Hoo and Dr. Gill. Based on the medical evidence and applicant’s credible testimony, home health care is medically necessary and should be provided by applicant’s wife. Dr. Soo Hoo prescribed 40 hours per week of home health care. I will issue an award accordingly.

(Opinion on Decision, at p. 6.)

Applicant’s functional limitations and their corresponding effect on his ADLs are well documented in the evidentiary record. Applicant’s impairments are discussed in the reporting of PTP Dr. Soo Hoo, whose March 28, 2025 reporting reflects applicant’s complaints of significant pain upon any cervical spine movement coupled with cervical myelopathy resulting in pain and paresthesia in the bilateral upper extremities as well as diminished grip strength bilaterally. (Ex. 9,

³ Cal. Code Regs., tit. 8, § 9792.22.

⁴ <https://www.dir.ca.gov/dwc/DWCPropRegs/2021/MTUS-Evidence-Based-Update-December2021/Initial-Approaches-to-Treatment.pdf>

Report of Angela Soo Hoo, M.D., dated March 28, 2025, at p. 1.) Applicant further reported weakness in both legs, left greater than right. Following her evaluation, Dr. Soo Hoo recommended applicant undergo a home healthcare evaluation “as the patient needs assistance for self care activities of daily living.” (*Id.* at p. 2.) The PTP’s April 25, 2025 report similarly reflected applicant’s complaints of “intermittent sharp pain in his neck with radiation to the shoulder and intermittent radiation down the right greater than left upper extremity and the constant numbness and tingling in the right upper extremity extending to the hand,” and “significant bilateral grip weakness and bilateral lower extremity weakness (left greater than right).” (Ex. 8, Report of Angela Soo Hoo, M.D., dated April 25, 2025, at p. 1.) The PTP also noted applicant’s history of falling down despite use of a cane and a walker. (*Ibid.*)

The April 28, 2025 home health care assessment accomplished by Amber Taylor-Duque, R.N., documents in detail applicant’s impaired ADLs. Applicant’s impaired activities arising out of his industrial cervical spine injury include the need for “extensive assistance” in bathing, eating/feeding, meal preparation, errands, housekeeping and laundry. Applicant is need of “complete assist” for all of his transportation needs. Applicant requires assistance in varying levels to take his medication, for personal hygiene, dressing, and for mobility issues related to walking, transferring, and getting into and out of bed. Applicant also requires “one person assist” in toileting activities. The home health care assessment thus aligns with the functional limitations discussed in the MTUS guidelines. Moreover, the third-party evaluator indicates the need for broad-based restrictions that will reasonably affect many if not all of applicant’s generalized ADLs, including lifting, pulling, sitting for more than four hours daily, grasping with both hands, reaching above the shoulder level, overhead work, repetitive neck motions, standing more than two hours daily and walking more than one hour each day. (Ex. 5, Report of Home Healthcare Assessment, dated April 28, 2025, at p. 4.)

Based on her clinical evaluation, and a review of the home health assessment, Dr. Soo Hoo’s May 30, 2025 RFA documents the need for unskilled services to be provided by applicant’s spouse, quantified on a weekly basis at 40 hours. In addition, we note that the opinions of QMEs Dr. Gill, in psychiatry, and Dr. Lo, in neurology, document a similarly broad array of functional limitations and corresponding ADLs that have been adversely impacted by applicant’s industrial injury. (See, Ex. 4, Report of Tirath Gill, M.D., dated June 30, 2025, at pp. 11-12; Ex. 15, Report of Timothy Lo, M.D., dated August 22, 2025, at pp. 4-5, 21.) **In short, there is broad consensus**

in the medical record documenting applicant’s industrially-related functional deficits, the impacted ADLs, and the medical necessity of home health care services to be provided by applicant’s spouse in the specified amount of 40 hours per week. We therefore concur with the WCJ’s determination that the record establishes the medical necessity of the requested home health care services as set forth in the May 30, 2025 RFA.

Defendant asserts that the May 30, 2025 RFA does not adequately specify the number of hours per day being requested, and that the failure to specify a duration of the home health care is dispositive of the issue of medical necessity. (Petition, at p. 5:12.) However, we observe that the MTUS Guidelines allow for provision of home healthcare services on a daily or weekly basis, in this case, 40 hours per week. (ACOEM Guidelines, Initial Approaches to Treatment, dated October 22, 2021, at p. 16.) We also observe that to the extent that defendant’s position as set forth in its Petition reflects the rationale offered in the August 12, 2025 UR decision that the parties agree was untimely and invalid, the UR decision itself acknowledges that the “outcome represents an administrative action taken to comply with regulatory time frame constraints, and *does not represent a denial based on medical necessity.*” (Ex. 12, Utilization Review Determination, dated August 12, 2025, at p. 3.)

Following our review of the entire record occasioned by defendant’s Petition, we conclude that the evidentiary record reasonably supports the WCJ’s determination of the medical necessity of the request home health care services to be provided by applicant’s spouse up to 40 hours per week. We will deny reconsideration, accordingly.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 14, 2026

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

**RICHARD IRBY SR.
PENINSULA INJURED WORKERS CENTER
CHAVEZ & BREault**

SAR/kl

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