

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

SHEILA BAUTISTA, *Applicant*

vs.

**VIVOPOOLS, LLC;
TECHNOLOGY INSURANCE COMPANY administered by AMTRUST NORTH
AMERICA, *Defendants***

**Adjudication Number: ADJ10540221
Van Nuys District Office**

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

Applicant seeks reconsideration of the Findings and Order (F&O) issued on July 29, 2025, in which the workers' compensation administrative law judge (WCJ) found, in pertinent part, that the request for authorization (RFA) submitted by Vibhay Prasad, M.D., on March 20, 2025 failed to meet their burden of proof to demonstrate a need for expedited review, and that the Utilization Review determination (UR) performed by Genex was timely and valid.

Applicant argues that the medical record supports review on an expedited basis as Dr. Prasad's opinion provided the requisite bases for expedited review pursuant to Labor Code section 4610(i)(3)¹. Thus, when defendant did not issue a UR decision within 72 hours pursuant to WCAB Rule 9792.9.1, the decision was not timely.

Defendant filed an Answer. The WCJ issued a Report and Recommendation (Report) recommending denial of the petition.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and as discussed below, we will grant reconsideration, rescind the F&O, substitute it with new Findings that defendant's March 26, 2025 UR determination was untimely, and return this matter to the WCJ for further proceedings consistent with this decision.

FACTS

Applicant alleges injury on August 1, 2016 while employed with VivoPools, LLC, to her head, brain, post-concussion syndrome, psyche, back, shoulders, neck, internal, digestive, and reproductive systems. The medical record is limited. Applicant apparently suffered a mild traumatic brain injury and post-concussion syndrome secondary to falling backwards and striking her head while unloading pool cleaning equipment. (Applicant's 3, p. 2.)

Dr. Prasad issued a report dated March 17, 2025 documenting a telehealth examination for the same date. (Applicant's 3.) The report notes that applicant presented for rehabilitation medicine follow up at Centre for Neuroskills Los Angeles where she had been referred for post-acute rehabilitation and assessment for long term supported living services. (*Id.* at p. 2.) The report notes that applicant had been denied therapy last year and had worsening headache and anxiety. Applicants also reported inability to sleep, worsening back pain, difficulty performing home exercises, lack of appetite with missed meals, as well as agitation with scratching of her face. (*Id.*) Her active medications include Prozac, BuSpar, Flexeril, and Motrin. Her diagnoses are acute frontal lobe and executive function deficit, acute anxiety with depression, acute post-concussion syndrome, acute diffuse traumatic brain injury with loss of consciousness of unknown duration. (*Id.* at p. 3.) Dr. Prasad made recommendations for treatment. The relevant recommendations for treatment included:

- “1. Request authorization for return to Day treatment program 4 hours per day 3 days per week for structured brain injury treatment. 90 treatment days per week,
 - a. PT/OT/CR/CN services
 - b. CNS nursing staff to assist with medication management and filling her pill box
 - c. **This request is made on an expedited basis due to her decline in function and worsening anxiety.**
 - d. **The denial of her continued care represents an eminent serious threat to her health and safety due to her inability to manage her medical care and control her emotional outbursts...**
 - Refill Prozac 60 mg for depression; #30 with 3
 - Refill Buspar, 10 mg PO BID #60 x3 refills
 - Refill Flexeril 10 mg PO prn spasm #30 refills
 - Refill Ibuprofen 400 mg q 4 hrs prn pain #60 refill”

(*Id.* at p.3 emphasis added.)

Dr. Prasad also requests approval of a guardian ad litem to protect her financial interests as she anxious and worried about the management of her financial affairs. (*Id.* at p. 4.)

Dr. Prasad issued an RFA three days later, on March 20, 2025, requesting day treatment at Center for Neuro Skills at four hours per day, three days per week for 60 days and refills with adjustment to her existing medications. The request was made on an expedited basis. (Applicant's 2.) Applicant's Exhibit 1 is a fax confirmation from Centre for Neuro Skills for the RFA sent on March 21, 2025 at 4:14 and 4:16 pm to "Fred Sachs," applicant's counsel, and "CNS Medical records." There appears to be no dispute by the parties as to service of the RFA and receipt by defendant.

On March 26, 2025, "Genex," defendant's UR vendor, issued a determination on the March 20, 2025 request. (Applicant's 5.) The determination notes that the request was received by defendant on March 21, 2025 and that the request was received by Genex March 25, 2025. The determination recommends non-certification of the 60-day treatment program at Centre for Neuro Skills, modifies the dosage and amount of Prozac and Buspar, and non-certifies Flexeril and Ibuprofen. The determination also states:

"The request for authorization dated 3/20/2025 certifies that the patient faces an imminent and serious threat to his or her health. This request for expedited review is not accompanied by evidence reasonably establishing that the injured worker faces an imminent and serious threat to his or her health; or that the timeframe for utilization review under 8 CCR 9792.9.1(c)(3) would be detrimental to the injured worker's condition. Accordingly, consistent with 8 CCR 9792.9.1(c)(4), the review of this request for authorization shall be completed consistent with the timeframes set forth in 8 CCR 9792.9.1(c)(3)."

(*Id.* at p. 3).

The matter went forward to expedited trial on June 3, 2025 wherein the issues were,

1. Timeliness of a modified UR determination from Genex dated March 26, 2025.
2. Whether applicant is entitled to treatment specified by Dr. Prasad in two separate RFAs, both dated March 20, 2025 which were later reviewed and there is one determination pending.

(Minutes of Hearing (MOH), 06/03/2025.)

No testimony was taken and two of defendant's exhibits were marked for identification only.

In the F&O, the WCJ found that the UR determination dated March 26, 2025 was timely as Dr. Prasad failed to establish the appropriate bases for expedited review pursuant to WCAB Rule 9792.9.1(c)(4) in his report and therefore defendant timely issued its determination pursuant to the standard review timelines of WCAB Rule 9792.9.1(c)(3).

DISCUSSION

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:

- (2) 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 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).)¹ 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

¹ 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.

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 August 27, 2025 however the case was not transmitted to the Appeals Board until November 5, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under Labor Code section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on November 5, 2025.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by Labor Code section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on November 5, 2025.

II

Section 4610 provides for a Utilization Review process to evaluate requested medical treatment, and subdivision (i)(3) makes specific provision for expedited review as follows:

If the employee's condition is one in which the employee faces an imminent and serious threat to the employee's health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decision making process, as described in paragraph (1), would be detrimental to the employee's life or health or could jeopardize the employee's ability to regain maximum function, decisions to approve, modify, or deny requests by physicians prior to, or concurrent with, the provision of medical treatment services to employees shall be made in a timely fashion that is appropriate for the nature of the employee's condition, but not to exceed 72 hours after the receipt of the information reasonably necessary to make the determination.

(Lab. Code, § 4610(i)(3).)

Administrative Director (AD) Rule 9792.9.1(c) provides, in relevant part:

(3) Prospective or concurrent decisions to approve, modify, delay, or deny a request for authorization shall be made in a timely fashion that is appropriate for the nature of the injured worker's condition, not to exceed five (5) business days from the date of receipt of the completed DWC Form RFA.

(4) Prospective or concurrent decisions to approve, modify, delay, or deny a request for authorization related to an expedited review shall be made in a timely fashion appropriate to the injured worker's condition, not to exceed 72 hours after the receipt of the written information reasonably necessary to make the determination. The requesting physician must certify in writing and document the need for an expedited review upon submission of the request. A request for expedited review that is not reasonably supported by evidence establishing that the injured worker faces an imminent and serious threat to his or her health, or that the timeframe for utilization review under subdivision (c)(3) would be detrimental to the injured worker's condition, shall be reviewed by the claims administrator under the timeframe set forth in subdivision (c)(3).

(Cal. Code Regs., tit. 8, § 9792.9.1(c).)

Pursuant to Rule 9792.9.1(c)(4), an RFA marked for expedited review involves two determinations, both of which are medical in nature. The reviewer must make an initial determination as to whether the request is reasonably supported by evidence establishing that the injured worker faces an imminent and serious threat to their health, or that the timeframe for non-expedited review would be detrimental to the injured worker's condition. Thereafter, the reviewer must determine whether the requested medical treatment is reasonably medically necessary, as supported by evidence-based medicine and applicable treatment guidelines. Both determinations involve an evaluation of medical issues, including the severity of the condition or diagnosis, the likelihood of imminent and serious threat to the applicant's health, factors mitigating or exacerbating the condition, and the interplay between evidence-based medicine, treatment guidelines, and the requested medical treatment modalities. Given the medical determinations inherent in evaluating both the urgency of the RFA as well as the requested treatment, the determination should be made by a medical professional, rather than a claims professional. In short, the initial review of whether the evidence supports expedited review should be accomplished within the timeframe described in AD Rule 9792.9.1(c)(4).

In *RJ Hall v. Western Medical* (December 13, 2017, ADJ9619437) [2017 Cal. Wrk. Comp. P.D. LEXIS 581]]², we held that “defendant is not authorized to disregard the treating

² Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

physician's characterization of an RFA ... No statute or case allows a defendant to ignore the statutory and regulatory time frames for acting by simply declaring that the RFA did not meet the criteria for expedited treatment." (*Id.* at pp. 3-4.) Conversely, in *Diaz v. Pacific Coast Framers* (August 14, 2023, ADJ14244911) [2023 Cal. Wrk. Comp. P.D. LEXIS 211], we held that defendant properly reviewed an RFA marked for expedited review under the non-expedited timeframe. However, the UR decision therein was prepared by a UR physician and specifically addressed the issue of whether the RFA established an imminent and serious threat to applicant's health. In *Correa v. Display Products* (2024) 89 Cal.Comp.Cases 1075 [2024 Cal. Wrk. Comp. P.D. LEXIS 198] we reviewed the aforementioned cases and concluded that because the issue of whether an injured worker faces an imminent and serious threat to his health is in itself medical question that a claims examiner may not evaluate for expedited review before seeking consult with a medical professional.

Here, defendant's determination notes receipt on March 21, 2025 and the fax confirmations, which were admitted without objection, note service at 4:14 pm. Pursuant to WCAB Rule 9792.9(a)(1) the written authorization is deemed to have been received by the claims administrator by facsimile on the date if there is a date stamp on the transmission or if no date stamp, the date it was transmitted. The RFA was transmitted prior to 5:30 PM, thus it is deemed received on March 21, 2025. (Cal. Code Regs., tit. 8 §9792.9.1(a)(1)). Thus, 72 hours from receipt was March 24, 2025 at 4:14 pm. The request was not sent to Genex until March 25, 2025, at which point 72 hours had already lapsed. There is no evidence that a medical professional reviewed the request for expedited review, or that any action was taken within the required timeframe for expedited review pursuant to AD Rule 9792.9.1(c)(4).

In *Lopez Franco v. JDMC Medina Construction*, 90 Cal. Comp. Cases 956 [2025 Cal. Wrk. Comp. P.D. LEXIS 208] we concluded that a UR determination was not timely where there was no review by a medical professional within the requisite timeframe. The facts in that case are nearly identical to the claim at issue here. In that case, a treating physician submitted an RFA requesting expedited review for a supported living program and medication management for an applicant who had suffered a head injury. The record did not reflect any sort of response from defendant's UR provider, coincidentally also Genex, within 72 hours. The determination noted that the vendor began review six days after the RFA was received. When the determination did issue the provider only stated that expedited review was not supported by the record, did not cite

to the record, and was generally non-specific. We concluded,

“to allow a claims administrator to make an after-the-fact determination as to whether an RFA substantiated the need for expedited review would effectively vitiate the expedited review procedure mandated by section 4610(i) and WCAB Rule 9792.9.1(c)(4).

Accordingly, we conclude that in order to accomplish a meaningful assessment of whether a request for urgent review is substantiated in the medical record, a determination as to whether the RFA establishes the need for expedited review must be made and communicated by a medical professional within the timeframe required for expedited review under AD Rule 9792.9.1(c)(4).”

(*Id.* at 965-966)

Here, there is no evidence that a medical professional evaluated whether the RFA submitted on March 21, 2025 established the need for expedited review, or that any such determination was communicated to the prescribing physician within 72 hours of defendant’s receipt of the RFA. As a result, defendant’s March 26, 2025 UR decision was untimely, and the WCAB is vested with jurisdiction over the underlying medical treatment dispute. (*Dubon v. World Restoration* (2014) 79 Cal.Comp.Cases 1298 [2014 Cal. Wrk. Comp. LEXIS 131].) Accordingly, we will grant reconsideration, rescind the F&O, substitute new Findings of Fact that defendant’s March 26, 2025 UR determination was untimely, and return this matter to the WCJ for determination of whether applicant has met the burden of establishing that the requested medical treatment is medically necessary under applicable medical treatment utilization schedule and recommended guidelines. (Lab. Code, §§ 4604.5; 5307.27 et seq.)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of July 29, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the Findings and Order dated July 29, 2025 is **RESCINDED**, and **SUBSTITUTED** with new Findings of Fact, as provided below, and that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

FINDINGS OF FACT

1. Sheila Bautista, while employed on August 1, 2016, as a pool service technician by VivoPools, LLC, sustained injury arising out of and in the course of employment to her head and claims to have sustained injury arising out of and in the course of employment to brain, post-concussion syndrome, psyche, back, shoulders, neck, internal, digestive, and reproductive systems.
2. Defendant's Utilization Review determination dated March 26, 2025 was untimely.
3. The Workers' Compensation Appeals Board has jurisdiction to determine the issue of whether the treatment requested in the March 20, 2025 Request for Authorization is medically necessary.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



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.

**SHEILA BAUTISTA
ASVAR LAW
LLARENA MURDOCK**

TF/md

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