

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

3
4 **ALAN TABLAS,**

5 *Applicant,*

6 vs.

7 **REGENTS OF THE UNIVERSITY OF**
8 **CALIFORNIA, Permissibly Self-Insured,**

9 *Defendant.*

Case No. ADJ9902475
(Marina Del Rey District Office)

OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

10 Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ)
11 Findings of Fact of April 20, 2016, wherein it was found that defendant timely completed utilization
12 review (UR) of a January 20, 2016 request for authorization for medical treatment submitted by
13 applicant's treating physician Simon Lavi, D.O. As a consequence of the finding that the UR denial was
14 timely, the WCAB has no jurisdiction to determine the issue of whether the requested treatment was
15 reasonably necessary, and any appeal of the utilization review decision must be determined by the
16 independent medical review process outlined in Labor Code section 4610.5 et seq. (*Dubon v. World*
17 *Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298 [Appeals Board en banc].) In this matter, while
18 employed as a painter on February 21, 2012, applicant sustained industrial injury to his back and right
19 knee.

20 Applicant contends that the UR denial was not timely, and thus the WCAB had jurisdiction to
21 determine the medical necessity of the requested treatment. We have received an answer and the WCJ
22 has filed a Report and Recommendation on Petition for Reconsideration (Report).

23 For the reasons stated by the WCJ in the Report, which we adopt and incorporate, we will deny
24 reconsideration. Dr. Lavi submitted the request for authorization on January 20, 2016. Pursuant to
25 Labor Code section 4610(g)(1) and Administrative Director Rule 9792.9.1(c)(3) (Cal. Code Regs., tit. 8,
26 § 9792.9.1, subd. (c)(3)), defendant had five business days to issue a decision to approve, modify, delay
27 or deny the request. Five business days later, on January 27, 2016, defendant's UR provider issued a

1 timely denial. Applicant apparently argues that the UR denial was untimely because the treating
2 physician was not notified of the UR denial within 24 hours of the decision. In fact, defendant has
3 presented a fax transmission form showing that the UR denial was faxed to Dr. Lavi on the date of the
4 decision. Additionally, in a report authored the very next day after the UR denial, Dr. Lavi confirms
5 receipt of the UR denial. Clearly, the UR denial was communicated to Dr. Lavi within 24 hours of the
6 determination. Although applicant argues that the UR provider did not provide a proof of service as
7 purportedly required by WCAB Rule 10505(f) (Cal. Code Regs., tit. 8, § 10505), Rule 10505 is part of
8 the Workers' Compensation Appeals Board Rules of Practice and Procedure, and applies to proceedings
9 before the WCAB, not to UR proceedings.¹ In any case, although the best practice is to include a proof
10 of service, a proof of service is not the exclusive means for proving that a utilization review document
11 has been timely served. In this case, the fax transmission sheet and Dr. Lavi's confirmation, both of
12 which were unrebutted, constitute ample evidence that utilization review timelines were met in the
13 instant case.

14 Accordingly, we will deny the applicant's Petition.

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27 ¹ In fact, subparagraph (f) of Rule 10505 is limited to instances in which "a document is served by a party or lien claimant by fax on persons listed on the official address record who have designated fax as their preferred method of service" Here, Dr. Lavi is not "on the official address record" since he is not a party to the WCAB proceedings.

1 For the foregoing reasons,

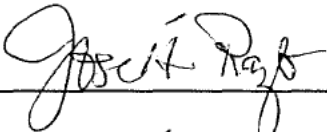
2 **IT IS ORDERED** that Applicant's Petition for Reconsideration of the Findings of Fact of April
3 20, 2016 is hereby **DENIED**.

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5 **WORKERS' COMPENSATION APPEALS BOARD**

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9 **KATHERINE ZALEWSKI**

10 **I CONCUR,**

11 

12 **JOSÉ H. RAZO**

13 **CONCURRING, BUT NOT SIGNING**

14
15 **MARGUERITE SWEENEY**



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

17 **JUL 11 2016**

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

20 **ALAN TABLAS**
21 **BERKOWITZ AND COHEN**
22 **FLOYD, SKEREN & KELLY**

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26 **DW:oo**