

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **LISA WEILMANN,**

5 *Applicant,*

6 **vs.**

7 **UNITED TEMPORARY SERVICE; TIG**
8 **SPECIALTY INSURANCE COMPANY,**
Administered by ZENITH INSURANCE
COMPANY,

9 *Defendants.*

Case Nos. **ADJ3299212 (MON 0205468)**
ADJ1198812 (MON 0241022)

OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION

10
11 Defendant, United Temporary Service, by and through its insurer, TIG Specialty Insurance
12 Company, seeks reconsideration of the Findings of Fact and Order, issued January 17, 2014, in which a
13 workers' compensation administrative law judge (WCJ) found defendant's Utilization Review (UR)
14 denials of applicant Lisa Weilmann's medical treatment were invalid, and ordered defendant to authorize
15 the treatment requested by applicant's treating physicians. The WCJ found defendant's UR denials
16 invalid because the physicians who issued the denials failed to sign their reports, were not within a
17 relevant specialization to review the recommended treatment, and did not review the report of the Agreed
18 Medical Examiner which explained the medical necessity for the requested treatments.

19 Defendant contends the WCJ erred in ordering defendant to authorize the medical treatment that
20 was denied by its UR physicians, arguing first that the WCJ lacked jurisdiction since Labor Code section
21 4610.5 provides that applicant's sole remedy to review the denial of treatment is through the Independent
22 Medical Review (IMR) process. Second, defendant contends the WCJ erred in finding the UR decision
23 was invalid due to the failure of the reviewing physicians to sign their reports, asserting that the
24 physicians' failure to sign their reports does not make the reports inadmissible. Third, defendant contends
25 the WCJ erred in finding the UR physicians lacked the proper specialization to review applicant's
26 treating physician's treatment requests, asserting that the UR physicians were competent to review the
27 requests. Finally, defendant contends the WCJ erred in finding the UR review invalid where defendant

1 did not provide the reviewing physician with the reports of the AME. Defendant argues that the UR
2 reviewers were provided the required supporting medical documentation and that the requesting
3 physician may provide additional documentation, but that such additional documentation is not required.
4 Applicant has not filed an answer to defendant's petition.

5 We shall affirm the WCJ's determination in which she found the UR denials to be invalid, but
6 will grant reconsideration to defer a determination as to whether the requested medical treatment is
7 reasonable and necessary. We have considered the allegations and arguments of the Petition for
8 Reconsideration and have reviewed the record in this matter and the WCJ's Report and Recommendation
9 on Petition for Reconsideration of March 6, 2014, which considers, and responds to, each of the
10 defendant's contentions. Based upon our review of the record, and for the reasons stated in the WCJ's
11 Report, which we adopt and incorporate as the decision of the Board, except for the discussion in Section
12 2(b), on pages 6-10 of her report, involving whether the UR reviewers held appropriate specializations,
13 we will affirm the WCJ's determination finding the UR denials to be invalid.

14 Subsequent to the hearing in this matter and the issuance of the WCJ's Findings of Fact and
15 Order, the Appeals Board issued its *en banc* decision in *Dubon v. World Restoration, Inc.* (2014) 79
16 Cal.Comp.Cases 313. In that matter, the Appeals Board held that a "UR decision is invalid if it is
17 untimely or suffers from material procedural defects that undermine the integrity of the UR decision,"
18 and further, that "the issue of medical necessity is not subject to IMR but is to be determined by the
19 WCAB based upon substantial medical evidence, with the employee having the burden of proving the
20 treatment is reasonably required."

21 We concur with the WCJ's determination that the cited defects in the UR process, the failure of
22 all of the reviewing physicians to sign their reports and the failure to provide the relevant AME reports
23 that explain necessity for the requested treatments, are sufficient to undermine the integrity of the UR
24 decisions and renders invalid the UR determinations in this case.

25 A finding that the UR determination is not valid to deny the requested treatment does not mandate
26 that the treatment be authorized. As held in *Dubon*, the applicant must still provide substantial medical
27 evidence to establish that the requested treatment is reasonable and necessary. After finding the UR

1 determinations were invalid in this case, the WCJ ordered defendant to provide the request treatments
2 without making findings that the treatments are reasonable and necessary.

3 Accordingly, we shall grant reconsideration to amend the Findings of Fact and Order to defer the
4 order authorizing the disputed Xyrem and Botox treatments, pending a determination as to whether the
5 treatments are reasonable and necessary.

6 For the foregoing reasons,

7 **IT IS ORDERED** that the Reconsideration of the Findings of Fact and Order, issued January 17,
8 2014, be, and hereby is, **GRANTED**, and as our Decision After Reconsideration, the Findings of Fact
9 and Order is **AFFIRMED**, except that it is **AMENDED** to defer the order authorizing the disputed
10 medical treatment, as follows:

11 **FINDINGS OF FACT**

- 12 1. Lisa Weilmann, born March 24, 1958, while employed on April 1990 through February 1995, as
13 a word processor/HR manager at Brea, California, by United Temporary Services insured by
14 TIG/Zenith, sustained injury arising out of and occurring in the course of employment to her
15 bilateral upper extremities, neck, fibromyalgia, and psyche.
- 16 2. The matter is settled by Stipulation with Request for Award dated 7/18/02.
- 17 3. UR denials for Xyrem dated September 16, 2013 and October 9, 2013 are invalid and the WCAB
18 has jurisdiction over treatment for Xyrem as recommended by Applicant's physicians.
- 19 4. The UR denials for Botox dated September 9, 2013 and September 26, 2013 are invalid and the
20 WCAB has jurisdiction over treatment for Botox as recommended by Applicant's physicians.
- 21 5. The issue of attorney's fees is deferred until Applicant's Attorney files a verified declaration for
22 the amount of attorney's fees requested.

23 **ORDER**

24 **IT IS HEREBY ORDERED** that the issue of whether defendant must provide the Xyrem and
25 Botox treatments is deferred, pending a determination as to whether they are reasonable and necessary.

26 ///

27 ///

