

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

**RIGOBERTO VACA VALDEZ, *Applicant***

**vs.**

**EMERALD LANDSCAPE COMPANY, INC., and OAK RIVER  
INSURANCE COMPANY, administered by BERKSHIRE HATHAWAY  
HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ11444894  
San Francisco District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION**

Cost petitioner Citywide Scanning Service, Inc. (Citywide) seeks reconsideration of the Findings of Fact and Order issued by the workers' compensation administrative law judge (WCJ) in this matter on August 16, 2023. In that decision, the WCJ found that cost petitioner had not met its burden of proof in order to recover for copy services rendered as per their Petition to resolve medical-legal dispute dated March 28, 2022, and ordered Citywide take nothing for such services.

Petitioner contends that the WCJ erred in failing to properly consider and apply the existing law when considering and rejecting reimbursement for petitioner Citywide Scanning's medical-legal copy services.

Citywide asserts in their petition that while a lien claimant is required to establish that a contested claim existed at the time the expenses were incurred, the time when the expenses were incurred is the time when lien claimant carried out its copying services, not when the request by applicant's counsel for the services issued, and that the existing evidence establishes that there was a contested claim at the time of lien claimant's services.

Citywide also asserts that they have proven the services were reasonably, actually, and necessarily incurred.

Defendant requests denial of the petition, stating, in pertinent part:

It is established and clear from the WCAB's decision in *Colamonico v. Secure Transportation* (2019) 84 Cal.Comp.Cases 1059, that Citywide Scanning Service has the burden of proof to demonstrate a contested claim existed at the time services were provided and that the expenses were incurred for the purpose of proving or disproving a contested claim. It then has the burden of proof to demonstrate that the services were reasonably, actually, and necessarily incurred.

Petitioner requests the WCJ either rescind her decision, return the matter for further consideration to find Citywide Scanning Service, Inc. did meet its burden of proof, or that reconsideration be granted by the Appeals Board, with such further orders issue as deemed appropriate.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending denial of the Petition.

We have reviewed the allegations in the Petition for Reconsideration and the Answer, and the contents of the Report.

Based upon our preliminary review of the record, we will grant cost petitioner's Petition for Reconsideration, and we will order that this matter be referred to a workers compensation administrative law judge or designated hearing officer of the Appeals Board for a status conference. Our order granting applicant's 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 for Reconsideration 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.

We also highlight the following legal principles that may be relevant to our review of this matter:

“A contested claim exists when the employer knows or reasonably should know that the employee is claiming entitlement to any benefit arising out of a claimed industrial injury and one of the following conditions exists: (1) The employer rejects liability for a claimed benefit. (2) The employer fails to accept liability for benefits after the expiration of a reasonable period of time within which to decide if it will contest the claim. (3) The

employer fails to respond to a demand for payment of benefits after the expiration of any time period fixed by statute for the payment of indemnity.” (Lab. Code, § 4620(b).)

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) “The term ‘substantial evidence’ means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value.” (*Braewood Convalescent Hospital v. Workers’ Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed, and citations omitted.)

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) “It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) 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 WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board 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.)

Labor Code section 5310 states in relevant part that: “The appeals board may appoint one or more workers’ compensation administrative law judges in any proceeding, as it may deem necessary or advisable, and may refer, remove to itself, or transfer to a workers’ compensation administrative law judge the proceedings on any claim. . . .” (See also Lab. Code, §§ 123.7, 5309.)

Here, it is unclear from our preliminary review whether the legal issues have been properly identified; whether the existing record is sufficient to support the decision, order, and legal conclusions of the WCJ; and/or whether further development of the record may be necessary. Thus, we will order the matter to a status conference before a workers’ compensation administrative law judge or designated hearing officer of the Appeals Board.

## II.

Finally, we observe that 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 also *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 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 therefor.”]

“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”].)

Labor Code 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 Labor Code sections 5950 et seq.

### III.

Accordingly, we grant cost petitioner's Petition for Reconsideration, order that this matter be set for a status conference, 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.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings of Fact and Order issued on August 16, 2023 by a workers' compensation administrative law judge is **GRANTED**.

**IT IS FURTHER ORDERED** that this matter will be set for a Status Conference with a workers' compensation administrative law judge or designated hearing officer of the Appeals Board. Notice of date, time, and format of the conference will be served separately, to be heard in the Lifesize electronic platform, in lieu of an in-person appearance at the San Francisco office of the Appeals Board.

**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/ NATALIE PALUGYAI, COMMISSIONER**

**I CONCUR,**

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

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



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

**November 3, 2023**

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

**CITYWIDE SCANNING SERVICE, INC.  
FINNEGAN, MARKS, DESMOND & JONES**

**LAS/ara**

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