

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

MICHAEL GARCIA, *Applicant*

vs.

**CITY OF SEASIDE, permissibly self-insured; administered by
ATHENS ADMINISTRATORS, *Defendants***

Adjudication Number: ADJ13458859

Salinas District Office

**OPINION AND ORDER
GRANTING RECONSIDERATION
ON APPEALS BOARD MOTION**

On February 7, 2024, we issued our “Opinion and Decision After Reconsideration” (Decision). Subsequently, defendant filed a Petition for Writ of Review (Writ Petition).

In our Decision, we affirmed the Findings of Fact (Findings) issued by a workers’ compensation administrative law judge (WCJ) on May 2, 2022, where the WCJ found in pertinent part that defendant owed applicant Labor Code section 4850 benefits for the period beginning November 9, 2021, and continuing for one year, less any temporary disability indemnity or Labor Code section 4850 benefits paid during the period.

Defendant contended in its Petition for Reconsideration that applicant’s entitlement to section 4850 benefits ran concurrently under both the psychiatric cumulative injury claim (ADJ13458859) and the prior hypertension cumulative injury claim (ADJ11613231) during the period from November 2, 2020, through October 18, 2021, so that applicant is not entitled to any additional Labor Code section 4850 benefits as a result of the psychiatric injury claim.

Based upon our preliminary review of the record, we will grant reconsideration of our Decision on our own motion. Our order granting the 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.

I.

Labor Code section 5900(b) provides that “within 60 days after the filing of an order, decision, or award made by a workers’ compensation judge and the accompanying report, the appeals board may, on its own motion, grant reconsideration.” Labor Code section 5911 provides that the Appeals Board may grant reconsideration of its decision “within the same limitations specified for reconsideration” as an original decision. Thus, the Appeals Board may grant reconsideration of its own decision within 60 days of the issue of that decision.

Here, the Appeals Board panel Decision issued on February 7, 2024, thus under our statutory authority in Labor Code section 5900(b) and 5911, we will grant reconsideration on our own motion.

We briefly review the relevant facts:

In ADJ11613231, applicant claimed injury to his heart and cardiovascular system in the form of hypertension while employed by defendant as firefighter during the periods from July 17, 2016, through July 17, 2017, and in ADJ11814983, applicant claimed injury to his heart and cardiovascular system in the form of hypertension while employed by defendant as firefighter during the periods from December 20, 2017, through December 20, 2018. The parties resolved those two injuries by way of Stipulations, and an Award issued on January 5, 2023. In ADJ13458859, applicant claimed injury to his nervous system/psyche while employed by defendant as a firefighter during the period from December 20, 2018, through January 5, 2020. The parties agreed that applicant’s last day of work was November 1, 2020, and that applicant received Labor Code section 4850 benefits from November 2, 2020 to October 18, 2021.

Defendant’s argument appears to hinge on the date that Labor Code section 4850 benefits were *actually paid*, rather than the dates of injury. Based on our initial re-review occasioned by receipt of defendant’s Writ Petition, we are concerned as to the issues of: (1) whether applicant was entitled to other periods of temporary disability at some other time during the more than 20 year period of hazardous exposure; and (2) whether there were one or multiple injuries.

In any given situation, there can be more than one injury, either specific or cumulative or a combination of both, arising from the same event or from separate events. (*Western Growers Ins. Co. v. Workers’ Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323].) The number and nature of the injuries suffered are questions of fact for the WCJ or the WCAB. (*Aetna Cas. & Surety Co. v. Workmen’s Comp. Appeals Bd. (Coltharp)* (1973)

35 Cal.App.3d 329, 341 [38 Cal.Comp.Cases 720]; *LeVesque v. Workmen's Comp. App. Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16].) Here, it appears that entirety of the claimed injuries arose from applicant's cumulative industrial exposures while working as a firefighter up to November 1, 2020.

Based on our preliminary review, the parties' arguments are based on the premise that applicant had two separate cumulative injuries ending in 2017, and in 2018, but that liability for temporary disability and/or Labor Code section 4850 benefits arose for both injuries at the same time beginning on November 2, 2020. However, given that applicant remained in the same occupation up to the last date of injurious exposure of November 1, 2020, with little or no missed time, it is at least plausible that applicant had one cumulative injury claim up to November 1, 2020, to any and all claimed body parts.

Following the filing of defendant's Writ Petition, we have begun a preliminary re-review of the evidentiary record before us. Although we concluded in our Decision that applicant could recover Labor Code section 4850 benefits for both injuries, we are unable to ascertain without a more extensive review whether that underlying factual premise was actually correct, and whether further development of the evidentiary record may be appropriate.

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.) "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]).)

Additionally, 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.) Here, based on our preliminary review, it appears that further development of the record may be appropriate.

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.”].)

Moreover, the Appeals Board’s broad power to grant reconsideration on its own motion and its responsibility to ensure compliance with the law and due process means that even where a matter may be granted and properly decided on the existing record, the Appeals Board must still go beyond the issues raised by an individual petition and consider the entire record. Here, we are unable to determine at this time what the appropriate result is herein, and we conclude that we must further consider the evidentiary record and the statutory and decisional law. Therefore, we will grant reconsideration on our own motion so as to issue a just and reasoned decision.

Consequently, while this Opinion provides the parties with some indication of the issues raised, we wish to make clear that once we have completed our review of the evidentiary record and the statutory and decisional law, our final decision on the merits may not be on the basis indicated herein.

II.

“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 [32 Cal.Comp.Cases 431]; *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 reconsideration on our own motion, and order that a final decision after reconsideration is deferred pending further review of the merits and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

IT IS ORDERED on motion of the Appeals Board that reconsideration of the Opinion and Decision After Reconsideration issued by the Workers' Compensation Appeals Board on February 7, 2024 is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

JOSEPH V. CAPURRO, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 8, 2024

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

**MICHAEL GARCIA
BRITTANY HUYNH
MACINTYRE & WHITE**

SAR/abs/mc



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