WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ARNOLDO GALVAN, *Applicant*

vs.

DONAGHY SALES, LLC., insured by SENTINEL INSURANCE COMPANY, LTD, administered by GALLAGHER BASSETT, *Defendants*

Adjudication Number: ADJ9046738
Fresno District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant seeks removal and/or reconsideration of the June 30, 2025 Findings of Fact, Award, and Orders, wherein the workers' compensation administrative law judge (WCJ) found, as stipulated by the parties, that applicant sustained a cumulative trauma during the period of July 25, 2012 to July 12, 2013 to sleep, neck, bilateral knees, bilateral arms, bilateral hands/fingers, bilateral wrists, entire back, bilateral shoulders, and bilateral legs arising out of and in the course of employment as a driver by employer Donaghy Sales, LLC, insured by Sentinel Insurance Company, Ltd. Administered by Gallagher Bassett. The WCJ also found that the defendants in this case failed to provide treating physician Dr. William Foxley with the correct fax number for submission of Request for Authorization (RFA) forms to utilization review, but they did receive RFAs dated June 12, 2024, July 15, 2024, August 8, 2024, September 11, 2024, November 6, 2024, November 20, 2024, December 4, 2024, January 2, 2025, January 22, 2025, February 24, 2025, and April 17, 2025 on May 26, 2025, when these RFAs were faxed to the claims administrator by the defense attorney of record. The WCJ found that at the time of expedited hearing on June 18, 2025, defendants' claims file did not include RFAs dated June 12, 2024, July 15, 2024, August 8, 2024, September 11, 2024, November 6, 2024, November 20, 2024, December 4, 2024, January 2, 2025, January 22, 2025, February 24, 2025, and April 17, 2025, and that these RFAs were never submitted for utilization review. The WCJ found that medical treatment in those

RFAs is medically reasonable and necessary, and issued a notice of intention (NIT) to order sanctions against defendants for failure to conduct a timely investigation and to deal fairly and in good faith with all claimants and lien claimants as required by section 10109 of title 8 of the California Code of Regulations.

Defendants' timely, verified petition of July 23, 2025 seeks both reconsideration and removal. The petition seeks reconsideration based on six contentions, lettered A though F: (A) Utilization Review (UR) was timely and properly conducted; (B) because UR was timely, the Workers' Compensation Appeals Board (WCAB) does not have jurisdiction over the issue of medical necessity; (C) the Medical Treatment Utilization Schedule (MTUS) was ignored or misapplied; (D) the WCJ improperly excluded Defendant's Exhibit C and disregarded unrebutted evidence of notice of UR routing requirements; (E) applicant's attorney ignored notice of UR procedures as shown in a fax communication of December 24, 2024; and (F) the WCJ should have considered the December 24, 2024 fax as newly discovered evidence. The petition seeks removal based on the WCJ's final orders of treatment, as well as his decision not to admit Defendant's Exhibit C and the fax of December 24, 2024 into evidence.

We have not received any answer to the petition.

The WCJ issued an August 4, 2025 Report and Recommendation on Petition for Reconsideration, recommending that the petition be denied.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant applicant's Petition for Reconsideration and/or Removal and defer a final decision. Our order granting the petition 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 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.

Preliminarily, we note that former Labor Code[1] section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days

[1] All further statutory references are to the Labor Code, unless otherwise noted.

from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) 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 August 4, 2025, and 60 days from the date of transmission is Friday, October 3, 2025. This decision is issued by or on Friday, October 3, 2025, 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 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 WCJ, the Report was served on August 4, 2025, and the case was transmitted to the Appeals Board on August 4, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 4, 2025.

II.

The WCJ's Report summarizes the expedited hearing of June 18, 2025 as follows:

> The RFAs at issue for the 6/18/25 expedited hearing were dated 6/12/24, 7/15/24, 8/8/24, 9/11/24, 11/6/24, 11/20/24, 12/4/24, 1/2/25, 1/22/25, 2/24/25, 3/20/25, 4/17/25. All these RFAs were prepared by industrial primary treating physician William Foxley, M.D. The only witness at trial was Defense witness Melanie Courtemanche, hereinafter referred to as the witness. The witness testified she is the Assistant Vice President of Utilization Review of GB Care a Division of Gallagher Bassett. The witness has held this position for seven and a half years.
>
> During Applicant Attorney's cross examination, the witness testified the following RFAs were not in the claims file, and there was no explanation in the claims file: 6/12/24, 7/15/24, 8/8/24, 9/11/24, 11/6/24, 11/20/24, 12/4/24, 1/2/25, 1/22/25, 2/24/25, 4/17/25. Out of the twelve RFAs set for trial, only the following RFAs were listed in the claims file; 7/15/24, and 3/20/25. The witness testified at trial there was a letter dated 12/4/24 in the claims file. The letter was sent to Dr. Foxley. This Court asked the witness if there was proof of service for the letter dated 12/4/24 to Dr. Foxley.
>
> The witness testified the letter was faxed. The witness explained the fax confirmation sheet listed sixteen (16) pages. The status of the fax was: failed to receive. The witness also testified Gallagher Bassett Care never notified Dr. Foxley of the correct fax number for utilization review.

(Report and Recommendation, dated August 4, 2025, page 2, lines 5-24.)

The written evidence submitted by the parties consisted of eleven exhibits from applicant, all of which were admitted into evidence, and three exhibits from defendant, which were marked for identification but not admitted into evidence, based on applicant's objection that they were merely argument.

Applicant's Exhibit 1 contains copies of two letters from applicant's attorney to defendants' attorney of record dated May 23, 2025. The letters indicate that they were sent by fax. One letter indicates that it was sent with RFAs dated June 7, 2024, June 28, 2024, August 2, 2024, September 6, 2024, October 4, 2024, November 1, 2024, November 22, 2024, December 20, 2024, January 17, 2025, February 14, 2025, March 14, 2025, and April 11, 2025, and a fax stamp indicates receipt of 127 pages including this letter on May 23, 2025 at 10:37 AM. The other letter states that it is transmitting an RFA of March 20, 2025 and a UR decision dated March 27, 2025, and a fax stamp indicates receipt of 36 pages including this letter on May 23, 2025 at 9:39 AM.

Applicant's Exhibit 2 is a copy of an RFA dated January 22, 2025. No proof of service or date stamp is included in this exhibit. Applicant's Exhibit 3 is a copy of an RFA dated February 24, 2025. No proof of service or date stamp is included in this exhibit. Applicant's Exhibit 4 is a copy of an RFA dated March 20, 2025. No proof of service or date stamp is included in this exhibit. Applicant's Exhibit 5 is a copy of a UR determination dated March 27, 2025. The UR determination indicates that a form RFA was received on March 20, 2025.

Applicant's Exhibit 6 is a copy of a UR determination dated June 3, 2025. The UR determination indicates that a form RFA was received on May 26, 2025. The word "late" is handwritten on this exhibit.

Applicant's Exhibit 7 is an email message dated March 20, 2025 from defendants' attorney of record which appears to have been addressed to Dr. Foxley and Sue from applicant's attorney's office. It indicates that defendants received no RFAs since May 3, 2024.

Applicant's Exhibit 8 is a November 15, 2024 advocacy letter from defense counsel to Qualified Medical Evaluator (QME) in psychology Amyanne Freeburg, Psy.D. The letter includes a list of previously served reports, records, and surveillance. The letter indicates that a copy was sent to the claims administrator but does not indicate whether a copy was sent to applicant's attorney of record, and there is no proof of service in the exhibit.

Applicant's Exhibit 9 is a report from Dr. Foxley dated January 17, 2025 and signed on January 22, 2025. A proof of service states that the report, along with a form RFA and billing were served by mail on January 22, 2025, but the Form RFA and billing are not included in the exhibit. The body of the report requests authorization for treatment. Applicant's Exhibit 10 is a report from Dr. Foxley dated February 14, 2025 and signed on February 20, 2025. A proof of service states that the report, along with a form RFA and billing were served by mail on February 24, 2025, but the Form RFA and billing are not included in the exhibit. The body of this report also requests authorization for treatment. Applicant's Exhibit 11 is a report from Dr. Foxley dated March 14, 2025 and signed on March 20, 2025. A proof of service states that the report, along with a form RFA and billing were served by mail on March 20, 2025, but the Form RFA and billing are not included in the exhibit. The body of the report requests authorization for treatment.

Defendant's Exhibit A is a letter dated June 16, 2025 from defendants' attorney of record to the WCJ, as well as a position statement addressing the subject of the June 18, 2025 expedited

hearing. The exhibit includes no indication of how this communication was served on applicant's counsel of record.

Defendant's Exhibit B is an email message received by defense counsel on April 11, 2025, with a UR determination dated March 27, 2025. The UR determination appears to be part of an email communication from defendants' utilization review organization to the claims administrator, which was then forwarded by email to defendants' attorney on April 11, 2025. There is no proof of service indicating when this UR determination was served on Dr. Foxley or applicant's attorney of record. The first page of the exhibit is a statement, apparently prepared by defense counsel, summarizing the exhibit and asserting that it shows full compliance with statutory UR procedures.

Defendant's Exhibit C is an email dated March 20, 2025 from defendants' counsel of record indicating that no RFAs had been received by defendants since May 3, 2024. It appears to be the same as Applicant's Exhibit 7 in all respects, except that it is preceded by a statement summarizing the exhibit and asserting that it proves that defendants did not receive any RFAs since May 3, 2024, as well as defendants' correct UR fax number.

Following the expedited hearing, the WCJ issued a June 30, 2025 Findings of Fact, Award, Orders, Opinion on Decision, and Notice of Intention to Impose Sanctions. The WCJ made the following findings:

> 1. Defendant knew the industrial treating physician in this case Dr. William Foxley, had a problem preparing RFAs for this case.
>
> 2. Defendant failed to provide industrial primary treating physician Dr. William Foxley with the correct GB Care fax number for utilization review in this case.
>
> 3. Defendant never checked the fax confirmation sheet from their own attorney to ensure Defendant had all the RFAs that were faxed by Defense Counsel to Defendant on 5/26/25.
>
> 4. The RFAs dated 6/12/24, 7/15/24, 8/8/24, 9/11/24, 11/6/24, 11/20/24, 12/4/24, 1/2/25, 1/22/25, 2/24/25, 4/17/25 were received by Defendant on 5/26/25.
>
> 5. Defendant did not have the RFAs dated 6/12/24, 7/15/24, 8/8/24, 9/11/24, 11/6/24, 11/20/24, 12/4/24, 1/2/25, 1/22/25, 2/24/25, 4/17/25 in their claims file at trial on 6/18/25.
>
> 6. The RFAs dated 6/12/24, 7/15/24, 8/8/24, 9/11/24, 11/6/24, 11/20/24, 12/4/24, 1/2/25, 1/22/25, 2/24/25, 4/17/25 were never submitted for utilization review.

> 7. The medical treatment in the RFAs dated 6/12/24, 7/15/24, 8/8/24, 9/11/24, 11/6/24, 11/20/24, 12/4/24, 1/2/25, 1/22/25, 2/24/25, 4/17/25 is medically reasonable and necessary.

The WCJ awarded medical treatment set forth in the RFAs pursuant to Findings of Fact #4, 5, 6, and 7. The WCJ also issued an NIT to order sanctions and attorney fees pursuant to Labor Code section 5813 and ordered that a Mandatory Settlement Conference (MSC) be set on the issue of sanctions and attorney fees.

Through their counsel of record, defendants have filed a timely, verified petition seeking both reconsideration and removal. The petition contends that UR was timely and properly conducted, and that therefore the WCAB does not have jurisdiction over the issue of medical necessity. The petition also contends that the WCJ ignored or misapplied the MTUS and improperly excluded Defendant's Exhibit C and disregarded unrebutted evidence of notice of UR routing requirements. The petition further asserts that applicant's attorney ignored notice of UR procedures as shown in a fax communication of December 24, 2024, and that the WCJ should have considered the December 24, 2024 fax as newly discovered evidence. The petition seeks removal based on the WCJ's final orders of treatment, as well as his decision not to admit Defendant's Exhibit C and the fax of December 24, 2024 into evidence.

III.

We highlight several legal principles that may be relevant to our review of this matter. First, as noted by the WCJ, section 4610, subsection (i)(1) governs the timeline for UR of a physician's RFA of current or future treatment. That subsection provides, in relevant part:

> (i) In determining whether to approve, modify, or deny requests by physicians prior to, retrospectively, or concurrent with the provisions of medical treatment services to employees, all of the following requirements shall be met:
>
> (1) Except for treatment requests made pursuant to the formulary, prospective or concurrent decisions shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five normal business days from the receipt of a request for authorization for medical treatment and supporting information reasonably necessary to make the determination, but in no event more than 14 days from the date of the medical treatment recommendation by the physician. …

(Lab. Code, § 4610(i)(1).)

With respect to WCAB jurisdiction over medical treatment disputes, the en banc decision in *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298 [2014 Cal. Wrk. Comp. LEXIS 131] (*Dubon II*) held as follows:

> 1. A utilization review (UR) decision is invalid and not subject to independent medical review (IMR) only if it is untimely.
>
> 2. Legal issues regarding the timeliness of a UR decision must be resolved by the Workers' Compensation Appeals Board (WCAB), not IMR.
>
> 3. All other disputes regarding a UR decision must be resolved by IMR.
>
> 4. If a UR decision is untimely, the determination of medical necessity may be made by the WCAB based on substantial medical evidence consistent with Labor Code section 4604.5.

(*Id.* at pp. 1299-1300.)

Service of RFAs is addressed in California Code of Regulations, title 8, section 9792.9.1(a), which provides, in relevant part:

> (a) The request for authorization for a course of treatment as defined in section 9792.6.1(d) must be in written form set forth on the "Request for Authorization (DWC Form RFA)," as contained in California Code of Regulations, title 8, section 9785.5.
>
> > (1) For purposes of this section, the DWC Form RFA shall be deemed to have been received by the claims administrator or its utilization review organization by facsimile or by electronic mail on the date the form was received if the receiving facsimile or electronic mail address electronically date stamps the transmission when received. If there is no electronically stamped date recorded, then the date the form was transmitted shall be deemed to be the date the form was received by the claims administrator or the claims administrator's utilization review organization. A DWC Form RFA transmitted by facsimile after 5:30 PM Pacific Time shall be deemed to have been received by the claims administrator on the following business day, except in the case of an expedited or concurrent review. The copy of the DWC Form RFA or the cover sheet accompanying the form transmitted by a facsimile transmission or by electronic mail shall bear a notation of the date, time and place of transmission and the facsimile telephone number or the electronic mail address to which the form was transmitted or the form shall be accompanied by an unsigned copy of the affidavit or certificate of transmission, or by a fax or electronic mail transmission report, which shall display the facsimile telephone number to which the form was transmitted. The requesting physician must indicate if there is the need for an expedited review on the DWC Form RFA

> (2)(A) Where the DWC Form RFA is sent by mail, the form, absent documentation of receipt, shall be deemed to have been received by the claims administrator five (5) business days after the deposit in the mail at a facility regularly maintained by the United States Postal Service.
>
> (B) Where the DWC Form RFA is delivered via certified mail, with return receipt mail, the form, absent documentation of receipt, shall be deemed to have been received by the claims administrator on the receipt date entered on the return receipt.
>
> (C) In the absence of documentation of receipt, evidence of mailing, or a dated return receipt, the DWC Form RFA shall be deemed to have been received by the claims administrator five days after the latest date the sender wrote on the document.
>
> (3) Every claims administrator shall maintain telephone access and have a representative personally available by telephone from 9:00 AM to 5:30 PM Pacific Time, on business days for health care providers to request authorization for medical services. Every claims administrator shall have a facsimile number available for physicians to request authorization for medical services. Every claims administrator shall maintain a process to receive communications from health care providers requesting authorization for medical services after business hours. For purposes of this section the requirement that the claims administrator maintain a process to receive communications from requesting physicians after business hours shall be satisfied by maintaining a voice mail system or a facsimile number or a designated email address for after business hours requests.

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

Timely communication of a decision to modify, delay, or deny treatment is addressed in subsection (e)(3):

> (3) For prospective, concurrent, or expedited review, a decision to modify, delay, or deny shall be communicated to the requesting physician within 24 hours of the decision, and shall be communicated to the requesting physician initially by telephone, facsimile, or electronic mail. The communication by telephone shall be followed by written notice to the requesting physician, the injured worker, and if the injured worker is represented by counsel, the injured worker's attorney within 24 hours of the decision for concurrent review and within two (2) business days for prospective review and for expedited review within 72 hours of receipt of the request.

(Cal. Code Regs, tit. 8, § 9792.9.1(e)(3).)

It has been held that with respect to an RFA for prospective treatment, lack of compliance with section 9792.9.1(e)(3) gives the WCAB the authority to determine the issue of medical

necessity. (*Bodam v. San Bernardino County Department of Social Services* (2014) 79 Cal.Comp.Cases 1519, 1523 [2014 Cal. Wrk. Comp. LEXIS 156].) However, the Medical Treatment Utilization Schedule (MTUS), contained in sections 9792.20 through 9792.27.23 of the regulations, must be applied and is presumptively correct unless rebutted. (Lab. Code, §§ 4604.5, 5307.27; Cal. Code Regs., tit. 8, §§ 9792.20 – 9792.27.23.) Furthermore, any decision regarding the medical necessity of treatment request must be supported by substantial evidence in light of the entire record. (*Dubon II, supra*; *Lamb v. Workers' Comp. Appeals Bd.* (1974) 11 Cal. 3d 274 [113 Cal. Rptr. 162, 39 Cal. Comp. Cases 310]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal. 3d 627 [83 Cal. Rptr. 208, 35 Cal. Comp. Cases 16].)

Although we have preliminarily considered the Petition for Reconsideration, the WCJ's Report, and the record in this matter, we are not persuaded that the record is properly developed on one or more of the above issues, including whether there was a timely made and timely communicated UR determination for each of Dr. Foxley's RFAs, and if not, how the MTUS applies to each specific request for treatment. Accordingly, taking into account the statutory time constraints for acting on the petitions, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. Thereafter, a final decision after reconsideration will be issued by the Appeals Board, from which any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

IV.

The grounds for a petition for reconsideration are set forth in Labor Code section 5903:

> At any time within 20 days after the service of any final order, decision, or award made and filed by the appeals board or a workers' compensation judge granting or denying compensation, or arising out of or incidental thereto, any person aggrieved thereby may petition for reconsideration upon one or more of the following grounds and no other:
>
> > (a) That by the order, decision, or award made and filed by the appeals board or the workers' compensation judge, the appeals board acted without or in excess of its powers.
> >
> > (b) That the order, decision, or award was procured by fraud.
> >
> > (c) That the evidence does not justify the findings of fact.

> (d) That the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and produced at the hearing.
>
> (e) That the findings of fact do not support the order, decision, or award.
>
> Nothing contained in this section shall limit the grant of continuing jurisdiction contained in Sections 5803 to 5805, inclusive.

(Lab. Code, § 5903.)

With respect to the petition's request for both reconsideration and removal, we note that a petition for reconsideration may only be properly taken from a "final" order. (Lab. Code, §§ 5900(a), 5902, 5903; *Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn, Republic Indem. Co. of America* (2006) 71 Cal. Comp. Cases 783, 784, fn. 2 [2006 Cal. Wrk. Comp. LEXIS 189] (Appeals Board en banc).) If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Ibid*.) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions, which requires a showing that the order, decision or action will result in significant prejudice and will result in irreparable harm. (Cal. Code Regs., tit. 8, § 10955(a).)

In this case, since there are final findings resulting in an award of benefits in the form of treatment, the appropriate remedy is reconsideration rather than removal.

V.

In addition, 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 14 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"].)

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 sections 5950 et seq.

VI.

Accordingly, we grant applicant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the petition and further consideration of the entire record in light of the applicable statutory and decisional law. While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to WCABmediation@dir.ca.gov.

For the foregoing reasons,

IT IS ORDERED that applicant's petition for reconsideration of the June 30, 2025 Findings of Fact, Award, and Orders, is **GRANTED**.

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 3, 2025

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

ARNOLDO GALVAN
LAW OFFICES OF BRYAN K. LEISER
LAW OFFICES OF NATHAN D. MCMURRY

CWF/*cs*

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