WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MAVERICK CISSELL, ***Applicant***

vs.

ORANGE COUNTY FIRE AUTHORITY;
Permissibly Self-Insured, Administered by CORVEL CORPORATION, ***Defendants***

Adjudication Number: ADJ19473797
Santa Ana District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration and removal of the September 12, 2025 Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found in pertinent part that applicant sustained an injury to his psyche arising out of and in the course of employment (AOE/COE) while employed by defendant during the period from January 18, 2023 to May 27, 2024; that defendant demonstrated there was a good-faith personnel action; and that the record lacks sufficient evidence to determine permanent and stationary date, permanent disability, apportionment and the need for further medical treatment. The WCJ deferred those issues, ordered that the parties develop the record on those issues; and ordered that the parties return to the respective psych doctors to complete a *Rolda* analysis and issue a final report.

Defendant contends that applicant's testimony was not credible; that treating physician Dr. Dorsey's reporting is not substantial medical evidence; and that applicant did not sustain a work-related psychiatric injury. Defendant also challenges the finding that there was good-faith personnel action, and that there was sufficient evidence for the WCJ to determine all of the pending issues.

We received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration and Removal be denied.

We have considered the Petition, the contents of the Report, and have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant defendant's Petition,

as a Petition for Reconsideration. 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 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[1] section 5950 et seq.

BACKGROUND

Applicant filed an Application for Adjudication on June 28, 2024, claiming cumulative injury to his nervous system, including post-traumatic stress disorder (PTSD), stress and anxiety, while working as a firefighter for defendant during the time period January 18, 2023 to May 27, 2024. Applicant filed an amended Application on July 20, 2024 in which he added additional body parts of ear, skin, and sleep.

On May 27, 2024, applicant was seen at Marque Urgent Care where he was evaluated by Ryan Pham, PA-C. (Joint Exh. M.) He was diagnosed with an acute stress reaction and was referred to a mental health provider to determine if he had PTSD. (*Ibid*.)

On May 29, 2024, applicant was evaluated by Dr. Luis Rivera at Concentra who diagnosed him with "situational mixed anxiety and depressive disorder" and "PTSD." (Joint Exh. L., at p. 2.) Dr. Rivera referred applicant to a provider in psychology for evaluation and treatment. (*Ibid*.) Dr. Rivera saw applicant for a follow up visit on June 6, 2024 and reiterated his prior diagnosis. (Joint Exh. K.)

Applicant was evaluated and treated by Dr. E. Richard Dorsey, a psychiatrist, who served as applicant's primary treatment provider (PTP). In his Initial Psychiatric Evaluation, dated June 7, 2024, Dr. Dorsey diagnosed applicant with PTSD and major depression, explaining that applicant's claim was based on:

> [T]he following sequence of events…:
> 1. He was exposed to all the usual stressors of a firefighter/first response namely heat, danger, and destruction.
> 2. On one instance, he recalls an unsuccessful attempt to save a small child who pronounced dead on arrival to hospital despite his resuscitative efforts.
> 3. On another case, he was involved in a DUI auto accident resulting in a death of two parents plus subsequent death of both children in the car.

[1] All section references are to the Labor Code, unless otherwise indicated.

4. On yet another occasion, he was involved in a stabbing/car incident involving death of a local doctor.

(Applicant's Exh 2. at pp. 2, 7.)

Dr. Dorsey wrote that applicant's onset of mental health symptoms began "four years ago", then gradually worsened, he took a year off work, during which time his mental health improved, he then returned to work, and shortly after, "he experienced a recurring of symptoms, now gradually worsening…" (*Id*. at p. 2.) Applicant's current psychiatric complaints include: anxiety, tension, irritability, and quick temper most of the time; depression most of the time; insomnia due to worry; bad dreams of work; recurrent and intrusive thoughts of work; impaired memory and concentration; heightened anxiety and physiological reactivity with reminders; low appetite, weight and energy; low sociability; low interest in sexual activity. (*Id*. at 3.) Dr. Dorsey described in detail how applicant meets the diagnostic criteria for PTSD and for Major Depression. (*Id*. at pp. 7-9.) He concluded that applicant has "temporary total psychiatric disability," and that "occupational mental stressors constitute the predominant cause of his current mental symptoms and disability." (*Id*. at p. 9.) Dr. Dorsey prescribed and provided ongoing treatment, including medications for anxiety, insomnia and depression, and therapy. (Applicant's Exh. 2, at p. 9, Exhs. 1, 3, 5-7.)

In his August 29, 2024 Psychiatric Permanent & Stationary Report, Dr. Dorsey found that 100% of applicant's disability is apportioned to occupational stressors. (Applicant's Exh. 7, at p. 10.) He found, further, that applicant is "permanently disabled from returning to work as a firefighter/engineer for Orange County Fire Department or any other fire department. He is able to work in other jobs, particularly construction without restriction." (*Ibid*.)

Applicant was also evaluated by physician Nicholas S. Thaler, PhD., in the specialty of psychology. (Joint Exh. E.) Dr. Thaler's initial evaluation of applicant included completing "the clinical interview, history, and mental status examination …. administer[ing] … psychodiagnostic tests to the patient" and "review[ing] the database." (*Id*., at p. 1.) In his July 18, 2024 report, Dr. Thaler found that applicant's diagnosis was "Posttraumatic Stress Disorder (in remission)" with "Occupational stressors." (*Id*. at p. 6.) Dr. Thaler recommended that applicant continue treatment with his psychiatrist, Dr. Dorsey, and that he "should not return to his career as a firefighter." (*Ibid*.)

Dr. Thaler subsequently changed his opinion as to applicant's diagnosis. (Joints Exhs. A-D.) In his September 29, 2024 Supplemental Report, Dr. Thaler noted that he was issuing the report based on a review of applicant's deposition testimony (but no further meetings with applicant).

(Joint Ex. D, at p. 1.) He noted that applicant had not discussed "the full circumstances of his work history" in the initial evaluation, and based on this concern, he questioned applicant's "veracity" and concluded that the applicant "did not manifest signs of PTSD at the time I evaluated him," and thus additional "psychological records from Dr. Dorsey and other providers" as well as "objective test data" were required to determine if applicant had PTSD. (*Id*. at p. 3.) After reviewing Dr. Dorsey's reports, Dr. Thaler concluded in his October 27, 2024 supplemental report that "I do not have substantial evidence that [applicant] is permanently psychiatrically disabled." (Joint Exh. C, at p. 3.)

Applicant was provided with a performance improvement plan (PIP) on May 25, 2024 focused on his schedule changes and use of sick leave, and on June 11, 2024, he was notified that he had been demoted from his position as a probational Fire Apparatus Engineer back to his former classification of "Firefighter/Paramedic." (Defendant's Exhs. A and B.)

The matter proceeded to trial on August 11, 2025. The parties stipulated, in relevant part, to applicant's employment as a "fire apparatus engineer, Occupational Group No. 490" at Orange County Fire Authority, and that applicant claimed industrial injury during the time period January 18, 2023 through May 27, 2024 to PTSD, stress, anxiety, IBS, hearing loss, skin and sleep. (8/11/25 MOH, at p 2.) Framed for decision were the following issues: whether applicant was injured AOE/COE; parts of body injured, including PTSD, stress, anxiety, IBS, hearing loss, skin, and sleep; permanent and stationary date; permanent disability; apportionment; need for further medical treatment; and affirmative defense, good-faith personnel action. (8/11/25 MOH, at p. 2.)

The WCJ issued the F&O and opinion on decision on September 12, 2025.

I.

Preliminarily, we note that former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days 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 October 17, 2025, and 60 days from the date of transmission is December 16, 2025. This decision is issued by or on December 16, 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 workers' compensation administrative law judge, the Report was served on October 13, 2025, and the case was transmitted to the Appeals Board on October 17, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on October 17, 2025.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on October 17, 2025.

II.

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

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. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) 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. 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 v. Hagler* (1989) 211 Cal.App.3d 1171, 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar 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.

Here, the WCJ's decision includes findings regarding threshold issues and is a final order subject to reconsideration rather than removal. Petitioner challenges the WCJ's finding that applicant sustained a psychiatric injury AOE/COE, during the time period January 18, 2023 through May 27, 2024, and the finding that "there was a good-faith personnel action," which are final threshold orders. Thus, we treat the Petition as one for reconsideration.

Petitioner also challenges non-final findings and orders, including the finding that the record is "void of sufficient evidence" to make determinations regarding the issues of permanent and stationary date, permanent disability, apportionment, and the need for further medical treatment;

and, the order to further develop the record on these issues. These are interlocutory findings/orders in the decision, and we will apply the removal standard to our review of these issues. (See *Gaona, supra*.)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd*. (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

Since defendant challenges the threshold orders of injury AOE/COE and good faith personnel actions, we treat the Petition as one for reconsideration, and we grant the Petition as one for reconsideration.

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, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) To constitute substantial evidence ". . . a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Bd. en banc).) The relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions. (*Place v. Workers' Comp. Appeals Bd*. (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525].) A WCJ's credibility determination(s) are given great weight because the WCJ had the opportunity to observe the demeanor of the witness(es). (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].)

If the threshold for a compensable psychiatric injury has been met under section 3208.3(b), and the employer has asserted that some of the actual events of employment were good faith personnel actions, the WCJ must determine whether section 3208.3(h) bars applicant's claim.

Section 3208.3(b)(3) defines substantial cause as "at least 35 to 40 percent of the causation from all sources combined." (Lab. Code, § 3208.3(b)(3).)

A multilevel analysis is required when an industrial psychiatric injury is alleged and the employer raises the affirmative defense of a lawful, nondiscriminatory, good faith personnel action. (*Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc).) Pursuant to *Rolda*, whether the psychiatric injury involves actual events of employment is a factual/legal determination for the WCJ. Alternatively, whether actual events of employment meet the causation threshold for a psychiatric injury is a medical determination. While the WCJ determines what constitute actual events of employment, the physician determines whether the psychiatric injury was predominantly caused by the event(s), or whether the psychiatric injury was substantially caused by the event(s) if the injury resulted from being a victim of a violent act or direct exposure to a significant violent act.

In the case of certain public employees, the Labor Code contains a series of presumptions of industrial causation. Sections 3212 through 3213 contain statutory presumptions regarding the industrial nature of various injuries applicable to certain public safety officers. "These presumptions provide that when specified public employees develop or manifest particular injuries or illnesses, during their employment or within specified periods thereafter, the injury or illness is presumed to arise out of and in the course of their employment." (*City of Long Beach v. Workers' Comp. Appeals Bd.* (*Garcia*) (2005) 126 Cal.App.4th 298, 310-311 [70 Cal.Comp.Cases 109], citing Lab. Code, §§ 3212-3213.2; *Marinwood Community Services, Inc. v. Workers' Comp. Appeals Bd.* (*Romo*) (2017) 10 Cal.App.5th 231, 241 [82 Cal.Comp.Cases 317].) The purpose of these presumptions "is to provide additional compensation benefits to employees who provide vital and hazardous services by easing their burden of proof of industrial causation." (*Garcia, supra*, at p. 311.) A presumption becomes operative at trial when the basic facts giving rise to the presumption are established by the pleadings, by stipulation, by judicial notice, or by evidence. This is because the Appeals Board must take judicial notice of all federal and state decisional, constitutional, and statutory laws, and therefore applying a statutory presumption is mandatory and not dependent upon whether a party timely raises the provision as an issue. (*Gee v. WCAB* (2002) 96 Cal.App.4th 1418, 1425-1426, [67 Cal.Comp.Cases 236].)

Here, the presumption of industrial causation found in section 3212.15 is relevant. That section creates a rebuttable presumption of industrial causation in favor of various public safety

employees, including firefighters, who are diagnosed with post-traumatic stress disorder. (Lab. Code, § 3212.15(a), (b), (c).) Although the applicability of the section 3212.15 presumption was not listed as an issue at trial in this matter, it was raised and argued by applicant in his post-trial brief and requires further consideration here. (Lab. Code, § 3212.15; 8/11/25 MOH, at p. 2; Applicant's Post-Trial Brief, at pp. 3-5.)

Taking into account the statutory time constraints for acting on the petition, 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. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

III.

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

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, supra,* 211 Cal.App.3d at 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*., *supra*, 81 Cal.App.4th at 1070 and 1075 ["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.

IV.

Accordingly, we grant defendant's Petition, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and Removal and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration 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 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/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 16, 2025

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

MAVERICK CISSELL
STRAUSSNER, SHERMAN, LONNE, TREGER, HELQUIST
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN, LLP

MB/*ara*

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