

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

PATRICK FERNANDEZ, *Applicant*

vs.

**CALIFORNIA CONSERVATION CORPS;
legally uninsured, administered by STATE COMPENSATION INSURANCE FUND,
*Defendants***

**Adjudication Number: ADJ767111
Los Angeles District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Lien claimant Reliable Medical Supply seeks reconsideration of the June 26, 2025 Findings and Order issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant sustained injury arising out of and in the course of employment (AOE/COE) to his chest, back, and leg, while employed as a laborer on February 17, 2002. The WCJ further found that lien claimant failed to meet its burden to prove that the medical treatment services provided were reasonably required to cure or relieve applicant from the effects of the industrial injury. Based on these finding, the WCJ disallowed Reliable Medical Supply's lien.

Lien claimant contends that the WCJ erred in finding they failed in their burden to prove medical treatment services were reasonably required to cure or relieve applicant from the effects of the industrial injury, and further, that defendant failed to perform appropriate utilization review.

We did not receive an answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration recommending that we deny reconsideration.

We have considered the Petition for Reconsideration, the contents of the Report, and have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant lien claimant's 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 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 Code¹ section 5950 et seq.

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 July 23, 2025 and 60 days from the date of transmission is Sunday, September 21, 2025. The next business day that is 60 days from the date of transmission is Monday, September 22, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday September 22, 2025, so that we have timely acted on the petition as required by section 5909(a).

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

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 July 23, 2025, and the case was transmitted to the Appeals Board on July 23, 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 July 23, 2025.

II.

The WCJ stated following in the Report:

INTRODUCTION

Patrick Fernandez, a 23-year-old laborer for California Conservation Corp, filed an Application for Adjudication on 5/6/03 alleging that on 2/17/02, he sustained injury arising out of and occurring in the course of employment to his back, chest, and leg, as a result of a motor vehicle accident. The claim was accepted by the employer.

Lien Claimant Reliable Medical Supply (hereinafter "Petitioner") has filed a timely, verified, Petition for Reconsideration of the Findings and Order dated 6/17/25 alleging that:

1. The Findings of Fact are not justified by the evidence.

Petitioner contends the Court erred in determining that the burden of proof relative to the medical necessity of the treatment provided was not met.

FACTS

Dr. Ford conducted an internal medicine consult as the request of Dr. Gomez on 11/10/03 (Lien Claimant exhibit 3). Due to ongoing pain in the lumbar spine, Dr. Ford recommended a series of epidural injections. Additionally, Dr. Ford prescribed an interferential cold unit and heating pad to aid in post procedural discomfort. Although it was reported by Dr. Chun (Lien Claimant's exhibit 8) that Applicant had the injections, no medical reports corresponding to those procedures are in evidence. Petitioner provided the interferential unit and heating pad (Lien Claimant's exhibits 1, 3, and 5).

The lien issue was tried on 5/2/05. There was no utilization review placed in evidence. There was no evidence offered regarding whether the items provided (or the underlying injections) were consistent with the Medical Treatment Utilization Schedule (hereinafter MTUS).

The Court disallowed Petitioner's lien by Findings and Order dated 6/17/25 due to lack of proof of medical necessity.

(Report, at pp. 1-2.)

The parties stipulated that the underlying matter was settled by Compromise and Release on December 14, 2006. (Minutes of Hearing and Summary of Evidence (MOH/SOE), 5/2/25, at p. 2:9-10.) The issues framed for trial on May 2, 2025 were (1) Reliable Medical Supply's lien for medical treatment expenses, (2) penalties and interest, (3) the statute of limitations pursuant to section 4903.5, (4) whether the lien was settled by way of global settlement, (5) necessity of the services, and (6) value of the charges. (MOH/SOE, 5/2/25, at p. 2:12-18.)

III.

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

Pursuant to section 5705, "The burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.) A lien claimant has the burden of proving all elements necessary to establish the validity of its lien. Section 3202.5 states that, "All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence." (Lab. Code, § 3202.5; *Boehm & Associates v. Workers' Comp. Appeals Bd. (Brower)* (2003) 108 Cal.App.4th 137, 150 [68 Cal.Comp.Cases 548, 557].) A lien claimant treating physician's burden of proof includes the burden of showing that he or she provided medical treatment "reasonably required to cure or relieve" the injured worker from the effects of an industrial injury. (Lab. Code, § 4600(a); *Williams v. Industrial Acc. Com.* (1966) 64 Cal.2d 618 [31 Cal.Comp.Cases 186]; *Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd.* (1994) 26 Cal.App.4th 789 [59 Cal.Comp.Cases 461]; *Workmen's Comp. Appeals Bd. v. Small Claims Court (Shans)* (1973) 35 Cal.App.3d 643 [38 Cal.Comp.Cases 748].) Where a lien claimant, rather than the injured worker, litigates the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured worker and the lien claimant must establish injury by preponderance of evidence. (*Kaiser Foundation*

Hospitals v. Workers' Comp. Appeals Bd. (Martin) (1985) 39 Cal.3d 57, 67 [50 Cal.Comp.Cases 411]; *Kunz, supra*, 67 Cal.Comp.CasAyes at p. 1592.)

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, supra*; *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 Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) 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 Board en banc).)

Based on our review, we are not persuaded that the record is properly developed. Where the evidence or opinion on an issue is incomplete, stale, and no longer germane, or is based on an inaccurate history, or speculation, it does not constitute substantial evidence. (*Place v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) Here, we are not persuaded that there is substantial evidence to support the WCJ's decision.

Although the WCJ failed to rule on the admissibility of several of lien claimant's exhibits marked for identification only, it appears lien claimant has met its burden of proof. Lien claimant submitted several medical reports; a prescription from the primary treating physician (PTP) Gilberto Gomez, D.C., (exhibit 2 (marked for identification only), and exhibits 11-16), a report from consulting physician, Mary Jo Ford, M.D., (exhibit 9) and reports from consulting physician Noel Lee Chun, M.D., (exhibits 10 and 8), addressing the reasonableness and necessity of the medical treatment at issue. Lien claimant also submitted an itemized billing statement (exhibit 5, marked for identification only) and *Kunz* lists for inferential units and cold therapy units (exhibits 6 and 7, marked for identification only). Moreover, defendant did not present rebuttal evidence or utilization review. Thus, it appears from our preliminary review, that lien claimant may be entitled

to reimbursement and to penalties and interest. However, in addition to the absence of rulings on the admissibility of the exhibits marked for identification, the WCJ did not rule on necessary issues raised at trial, including the statute of limitations and whether the lien was settled by way of a global settlement.

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.

IV.

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* (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 Labor Code sections 5950 et seq.

V.

Accordingly, we grant lien claimant’s Petition for Reconsideration, 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. ***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 lien claimant's 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/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 22, 2025

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

**RELIABLE MEDICAL SUPPLY
ZA MANAGEMENT
STATE COMPENSATION INSURANCE FUND**

PAG/bp

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