

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

JAMES ELIZONDO, *Applicant*

vs.

CITY OF SANTA ANA, Permissibly Self-Insured, *Defendant*

**Adjudication Numbers: ADJ11324341, ADJ10923796, ADJ15075868, ADJ13976350
Santa Ana District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant¹ seeks reconsideration of four decisions concurrently issued by a workers' compensation administrative law judge (WCJ) on February 10, 2026.

In case ADJ11324341, it was found that while employed during a cumulative period ending on May 15, 2018 as a correctional officer, applicant sustained admitted industrial injury to his left elbow, wrists, and psyche and claimed industrial injury to the heart, in the form of hypertension, and in the form of diabetes. In the February 10, 2026 decision in this matter, the WCJ deferred the issues of industrial injury to the left elbow, wrists, and psyche, and ordered further development of the medical record in the form of a supplemental report from orthopedist Soheil M. Aval and directing the parties to select an agreed medical evaluator in internal medicine.

In case ADJ10923796, it was found that while employed on February 4, 2015 as a correctional officer, applicant sustained admitted industrial injury to the elbows. In this matter, the WCJ deferred all outstanding issues ordering further development of the medical record.

In case ADJ13976350, it was found that while employed on November 2, 2020 as a correctional officer, applicant sustained admitted industrial injury to the psyche causing permanent

¹ The Petition mistakenly identifies applicant's attorneys as "Attorneys for Defendants" and the Petition begins "COMES NOW, Defendants, CitiStaff Solutions Inc., insured by Old Republic Insurance c/o Gallagher Bassett Services..." This party, insurance carrier, and third-party administrator are not involved in this matter, and we have interpreted these errors as typographical. Applicant's counsel is reminded to exercise more care in reviewing their filings in future matters before the Appeals Board.

disability of 7% and the need for further medical treatment. This case was the only one of the four in which the WCJ issued final orders on disputed matters.

In case ADJ15075868, it was found that while employed on December 23, 2020 as a correctional officer, applicant claimed industrial injury in the forms of COVID-19, hypertension, diabetes, and gastroesophageal reflux disorder, and to the lungs, heart and psyche. In this matter, the WCJ deferred the issues of industrial injury to all body parts and ordered further development of the medical record directing the parties to select an agreed medical evaluator in internal medicine.

The applicant's Petition makes numerous arguments, all of which can be summarized as the WCJ having erred by not issuing final decisions on contested issues, instead deferring these issues and ordering further development of the record. We have not received an answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.²

We will deny the applicant's Petition since applicant seeks review of non-final orders and has not demonstrated the requisite significant prejudice or irreparable harm to entitle him to relief.

Preliminarily, we note that former Labor Code 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, Labor Code 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 Labor Code 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

² In the Report, the WCJ notes that the applicant initially filed an unverified Petition, which subjected it to dismissal if the lack of verification was not cured. However, the applicant's counsel subsequently filed a verification of the Petition.

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 March 12, 2026 and 60 days from the date of transmission is May 11, 2026. This decision is issued by or on May 11, 2026, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 March 12, 2026, and the case was transmitted to the Appeals Board on March 12, 2026. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on March 12, 2026.

Turning to the merits, we note that a decision issued by the WCAB 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. Although the decisions here contain some findings that are final such as employment and indemnity rate, orders deferring issues for future determination pending further development of the record are not final orders and are thus subject to the removal standard rather than the reconsideration standard. (See *Capital Builders Hardware, Inc. v. Workers’ Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658 [81 Cal.Comp.Cases 1122].) The removal standard requires “significant prejudice” or “irreparable harm.” (Cal. Code Regs, tit. 8, § 10955, subd. (a).) We find that this standard has not been met in this case.

Here, there is no final order regarding the availability of the Labor Code section 3212.5 heart trouble presumption.³ Although the WCJ states in the Report on Reconsideration that applicant is not entitled to this presumption, this does not appear in any of the actual decisions, and applicant should be allowed to present argument and evidence that he comes under the protection of the statute in the future proceedings.

With regard to the reporting and deposition testimony of panel qualified medical evaluator internist Amrit R. Singh, M.D., this has not been stricken from the evidentiary record. Applicant will still be able to argue for the applicability of Dr. Singh's conclusions, and applicant is not irreparably harmed by the fact that there may be a competing opinion in the field of internal medicine.

With regard to applicant's argument that the WCJ completely ignored the issue of penalties, we note that the WCJ deferred this issue at the November 19, 2025 hearing. (Minutes of Hearing and Summary of Evidence of November 19, 2025 trial at p. 4.) Applicant's counsel is reminded to accurately recount the proceedings. Since the issue of penalties was specifically excluded from the issues to be decided, this issue is preserved for future determination pursuant to Labor Code section 5814(c).

While it does not appear that applicant's Petition claims error with regard to the finding of 7% permanent disability in case ADJ13976350, to the extent that he does, we affirm this finding for the reasons stated in the WCJ's Report (footnotes omitted):

As to Dr. Goodman's reporting, the Undersigned Judge found the opinions of Dr. Goodman persuasive and substantial evidence on the issue.

Dr. Goodman diagnosed the applicant with Depressive Disorder Not Otherwise Specified with Anxiety, Post-Traumatic Stress Disorder, chronic, mostly resolved. Eating Disorder Not Otherwise Specified, Sleep Disorder Not Otherwise Specified.

Dr. Goodman found that the applicant was psychologically permanent and stationary on July 25, 2022, and remained so as of Dr. Goodman's May 2, 2023, evaluation. The Undersigned Judge found that the applicant was permanent and stationary for his psychological injuries on July 25, 2022.

Dr. Goodman found that 80% of the applicant's permanent psychiatric

³ In the Petition, the applicant erroneously refers to Labor Code section 3212 which creates a presumption of industrial injury for hernias sustained by members of police departments. The relevant statute for "heart trouble" sustained by members of city police departments is Labor Code section 3212.5.

impairment was apportioned to his industrially related injuries. Dr. Goodman found that 20% of the applicant's permanent psychiatric impairment is apportioned to non-industrial factors, including his father's recent COVID illness, his mother's stroke, his daughter's psychological issues, and his own internal medicine problems, including obesity, hypertension, and diabetes.

Dr. Goodman provides further clarification regarding apportionment. Of the 80% of the applicant's permanent psychiatric impairment apportioned to his industrially related injuries, Dr. Goodman found that: 45% would be attributed to his orthopedic injuries, 35% was attributed to the applicant's witnessing of the dead inmate who had committed suicide at the workplace, and 20% attributed to his COVID infection involving persistent extreme fatigue, ongoing loss of taste and smell, and occasional asthma symptoms requiring use of inhalers and nebulizer treatments.

Based on the above, the Undersigned Judge found that 28% of the applicant's psychological injury is a result of his November 2, 2020, industrial injury. (35% of 80% is equal to 28% of the total psychological disability sustained by the applicant.)

As to the applicant's permanent disability for his psychological claim of November 2, 2020, Dr. Goodman provides the applicant with a Global Assessment of Functioning score of 64.38 This equates to a whole-person impairment of 9, which, after adjustment for age, occupation, and apportionment, resulted in a whole-person impairment of 7% for the applicant's specific injury on November 30, 2022.

(Report at pp. 13-14.)

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings and Order of February 10, 2026 in case ADJ11324341, Findings and Order of February 10, 2026 in case ADJ10923796, Findings and Order of February 10, 2026 in case ADJ15075868, and Findings, Award and Order of February 10, 2026 in case ADJ13976350 is **DENIED**.

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

May 11, 2026

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

**JAMES ELIZONDO
SLATER & ASSOCIATES
SAMUELSEN, GONZALEZ, VALENZUELA & BROWN**

DW/oo

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