WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ARIANA ESKRA; BRANDY ESKRA, for herself and as Guardian ad Litem of JOVIE FISCHER, and AUSTIN EVENSON, alleged dependents of SCOTT ESKRA (Deceased), ***Applicants***

vs.

AF BUILDERS, INC., insured by STATE COMPENSATION INSURANCE FUND, ***Defendants***

Adjudication Number: ADJ17262790
Redding District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION, GRANTING PETITION FOR RECONSIDERATION AND OPINION AND DECISION AFTER RECONSIDERATION

Applicant Ariana Eskra, daughter and dependent of decedent Scott Eskra, and applicant Brandy Eskra, for herself and as guardian ad litem for her daughter, Jovie Fischer, together with Austin Evenson, Brandy Eskra's son who was an adult when the decedent died, each seek reconsideration of the Findings of Fact (Findings) issued by the workers' compensation administrative law judge (WCJ) on February 13, 2026, which found that decedent's widow Brandy Eskra is a presumptive total dependent, and that her children, Jovie Fischer and Austin Evenson, are partial dependents.

Ariana Eskra contends that the WCJ erred when she found that Brandy Eskra was a total dependent.

Brandy Eskra, Jovie Fischer, and Austin Evenson contend that the WCJ erred when she found that Jovie Fischer was a partial dependent.

The petitioners have answered each other's petitions. The WCJ has prepared a Report and Recommendation on Petion for Reconsideration (Report), recommending that we deny reconsideration.

We have considered the contents of both petitions, the answers, the WCJ's Report, and the record herein. For the reasons set forth below, we will deny the petition of Ariana Eskra, and grant the petition of Brandy Eskra, Jovie Fischer, and Austin Evenson. We will affirm the February 13, 2026 decision, except that we will amend it to find that Jovie Fischer was a presumptive total dependent based upon Labor Code section 3501(a) (Finding of Fact 3).

FACTS

The WCJ's Report sets forth the relevant facts as follows:

> Scott Eskra was employed by AF Builders when he sustained injuries on 3/7/2018 after being struck by a falling tree, resulting in his death. Scott Eskra was survived by his biological daughter, Ariana Eskra, then a minor, and his wife, Brandy Eskra. At the time of death, Jovie Fischer, daughter of Brandy Eskra, was living most of the time with Scott and Brandy. (See MOH dated 7/21/2025, page 9, lines 3-4). Austin Evenson, Brandy's Eskra's son, had graduated high school and joined the military, but still maintained a room at Scott and Brandy's home. (See MOH dated 7/21/2025, page 11, lines 21-24)
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> Ariana Eskra filed an Application for Adjudication of Claim for death benefits on 2/2/2023, nearly five years after Scott's death. This matter proceeded to trial initially on 6/20/2024 on the issues of whether Ariana Eskra's claim was timely filed and whether Brandy Eskra was barred by the statute of limitations from petitioning for death benefits. Defendant argued that the appointment of a guardian ad litem in the civil probate case concerning Scott's estate served to start the statute of limitations in the workers' compensation case pursuant to Labor Code §5408.
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> This judge issued a decision on 7/18/2024 finding that Ariana Eskra's claim was not barred by the statute of limitations as the guardian ad litem in the probate case was limited to that suit and did not serve as appointment of a guardian ad litem in the workers' compensation case to start the statute of limitations. This judge vacated the issue of whether Brandy Eskra's right to death benefits was barred by the statute of limitations as Brandy Eskra was not a party to the case nor had she been put on notice of her potential rights to death benefits as required by CCR §9812(f)(3) and (4). No petition for reconsideration of this decision was filed by either party.
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> Defendant petitioned to join Brandy Eskra as an applicant on 8/27/2024 and she was ordered joined on 9/16/2024. Brandy Eskra then retained counsel. Ariana Eskra sought to depose Brandy Eskra and a discovery dispute arose regarding the scope and location of the deposition of Brandy Eskra. A protective order was issued on a 12/17/2024.
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> Austin Evenson and Jovie Fischer were joined as applicants in March 2025.
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> This matter proceeded to another trial on 7/21/2025 on the issues of Scott Eskra's employment (employee v. independent contractor), a legal

determination of dependency of Brandy Eskra, Austin Evenson and Jovie Fischer and reimbursement of funeral expenses to Brandy Eskra.

At that trial, Ariana Eskra introduced one page of tax return documents for Scott and Brandy Eskra, Exhibit A7, U.S. 1040 three-year tax summary dated 2015-2017. This one page appears to combine both Scott and Brandy Eskra's income and compare three consecutive years of taxes. Ariana Eskra also introduced a premarital agreement signed by Scott and Brandy Eskra on 5/1/2015, Exhibit A4.

Brandy Eskra introduced tax return documents from her part ownership in Berolina Salon of Design, various receipts and a letter from Umpqua Bank stating that statements from 2017 were no longer available due to a record retention schedule. The receipts were for clothes and what appears to be military clothing. Some receipts from funeral expenses were also submitted. Copies of two checks issued in January 2017 were submitted. Additionally, a 2017 ledger from Berolina Salon of Design and a 2017 Form 1099-K were submitted.

Brandy Eskra testified that she did not know that she might be entitled to death benefits and did not intend to give up her entitlement to death benefits through the premarital agreement. (See MOH dated 7/21/2025, page 8, lines 22-24) She also testified that during the period 3/7/2017-3/7/2018 she worked two to two-and one-half days per week as a hairdresser in Eureka, CA (See MOH dated 7/21/2025, page 7, line 25) and she earned around $14,000. (See MOH dated 7/21/2025, page 7, line 25-page 8 line 2) She denied ever earning $30,000 per year during the period 2016-2018. (See MOH dated 7/21/2025, page 8, lines 4-5) She became co-owner in Berolina Salon of Design in August 2016. (See MOH dated 7/21/2025, page 9, line 15) She knew the salon did not make money (See MOH dated 7/21/2025, page 11, lines 13-14) but it provided space for the stylists rather than close the salon down. (See MOH dated 7/21/2025, page 9, lines 17-18) She did not pay anything for her part-ownership in the salon. (See MOH dated 7/21/2025, page 9, line 18)

At the time of Scott Eskra's death, Brandy Eskra lived in his house and Scott paid for the housing, food, PG&E, internet and wood for the stove. Brandy Eskra also bought groceries. No specific dollar amounts were given for these expenses paid by Scott. (See MOH dated 7/21/2025, page 8, lines 6-8)

Brandy Eskra further testified that in 2017, she received regular child support payments for Jovie Fischer until October or November. (See MOH dated 7/21/2025, page 8, lines 10-11) Scott paid for living and travel expenses for medical appointments for Jovie in 2017. (See MOH dated 7/21/2025, page 8, lines 16-17) Brandy Eskra testified that Jovie stayed primarily with her up to Scott's death, approximately 20-23 days per month. (See MOH dated 7/21/2025, page 9, lines 3-4)

Austin Evenson testified that after graduating high school in 2017, he joined the Marine Corp but still kept a room at Scott's house. (See MOH dated 7/21/2025, page 11, lines 21-24) While he was in high school, Scott gave him money for gas and paid for his housing, water and power. (See MOH dated

7/21/2025, page 11, line 25) Scott also paid for hunting trips which he estimated cost a couple hundred dollars.(See MOH dated 7/21/2025, page 12, lines 1-2) He also estimated that Scott gave him $100-$150 per month for gas money.(See MOH dated 7/21/2025, page 12, line 5) He received about $800 every two weeks since being in the Marine Corp. (See MOH dated 7/21/2025, page 12, line 11) Scott also bought a plane ticket for Austin to come visit which he estimated to cost around $850-$1,000. (See MOH dated 7/21/2025, page 12, lines 7-8)

This judge issued a decision on 9/8/2025 denying admission of the premarital agreement and vacating the issue of dependency of Brandy Eskra, Jovie Fischer and Austin Evenson to develop the record, specifically including the full 2017 tax return, not just the one page offered by Ariana Eskra. This judge found that if Brandy Eskra, Austin Evenson and Jovie Fischer were all found to be partial dependents, specific dollar amounts of annual support provided by Scott Eskra were needed to calculate the partial dependency benefits.

No party petitioned for reconsideration or removal of the 9/8/2025 Findings and Award and Order.

This case proceeded to a third trial on 1/6/2026 on the issue of dependency of Brandy Eskra, Austin Evenson and Jovie Fischer. Brandy Eskra offered the full 2017 U.S. Individual Income Tax Return as requested by this judge. The tax return lists Brandy Eskra's 2017 gross income as $20,695.00. In a pre-trial brief, counsel for Brandy Eskra explained that he normally does not offer actual tax returns as exhibits as they are protected documents, but because this judge requested the full document and to clarify her income, Brandy Eskra was willing to offer the full tax return as an exhibit. Additional exhibits included more specific itemized expenses with dollar amounts, including mortgage and doctor bills. Ariana Eskra objected to the admission of all of the additional exhibits offered by Brandy Eskra, including the 2017 U.S. Individual Income Tax Return.

A third decision was issued on 2/13/2026 admitting Exhibits B17-B22 and finding that Brandy Eskra was a presumed total dependent pursuant to Labor Code §3501(b) and finding Austin Evenson and Jovie Fischer partial dependents.

Following this decision, Ariana Eskra filed a Petition for Reconsideration on 2/25/2026, contending that the premarital agreement should have been admitted and that the issue of dependency should not have been vacated for development of the record and the six additional exhibits should not have been admitted.

Brandy Eskra, on behalf of herself and as guardian ad litem for Jovie Fischer filed a Petition for Reconsideration on 3/3/2026 arguing that Jovie Fischer was a total dependent and that counsel for Ariana Eskra should have been sanctioned.

(Report, at pages 2-5.)

DISCUSSION

I

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 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.
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> (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.
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> (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 March 10, 2026 and 60 days from the date of transmission is Saturday, April 9, 2026. The next business day that is 60 days from the date of transmission is Monday, April 11, 2026 (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, April 11, 2026 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

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[1] Any further section references are to the California 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.

act on a petition. Section 5909(b)(2) provides that service of the WCJ's report and recommendation shall be notice of transmission.

Here, according to the proof of service of the WCJ's report and recommendation, the report was served on March 10, 2026 and the case was transmitted to the Appeals Board on March 10, 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 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 March 10, 2026.

II

Section 5904 dictates that a petitioner seeking reconsideration "shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the petition for reconsideration." Accordingly, our review of the Findings is focused solely upon the grounds stated by petitioners in their respective petitions.

A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) 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. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].)

Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian*, *supra*, at p. 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"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

Non-final orders may be challenged by way of a petition for removal. WCAB Rule 10955 (a) sets forth the grounds for removal: "(1) The order, decision or action will result in significant prejudice; and (2) The order, decision or action will result in irreparable harm. The petitioner must also demonstrate that reconsideration will not be an adequate remedy after the issuance of a final order, decision or award." (Cal. Code Regs., tit. 8, § 10955(a).)

If a decision includes resolution of a threshold issue, then it is treated by the Appeals Board as a final decision subject to a petition for reconsideration, even when all issues are not resolved or where an ultimate decision on the amount of benefits is deferred. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) 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.)

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.

In sum, the threshold findings are final and the law of the case, but a person does not waive their subsequent ability to challenge non-final orders by not seeking removal and may challenge those non-final orders at the time that a final decision is made. In the present case, the WCJ has now issued final findings on the issue of dependency.

Ariana Eskra's petition expressly challenges a threshold determination of dependency in the February 13, 2026 Findings, which found that Brandy Eskra is a presumptive total dependent and that Jovie Fischer and Austin Evenson are partial dependents. Past evidentiary rulings do not negate Ariana Eskra's right to question whether the evidence justified the February 13, 2026 Findings, nor whether the WCJ acted without or in excess of her authority by reaching her decision based on the evidentiary record. Ariana Eskra is newly aggrieved by the determination of total and partial dependency. The WCJ's prior decision whether to admit exhibits is an interlocutory decision and can still be challenged now that a final decision has been made. That is, the time to challenge the final findings has elapsed, but the non-final orders may be challenged up to the time

that a final decision issues. Thus, Ariana Eskra did not waive her ability to challenge the interlocutory orders now, by not seeking removal or reconsideration then.

In its argument, Adriana Eskra's petition challenges interlocutory decisions by the WCJ regarding the admission or exclusion of evidence.

First, the petition asserts that the WCJ erred in excluding a premarital agreement between Brandy Eskra and the decedent, Scott Eskra. The agreement, dated May 1, 2015, was marked for identification at a previous trial on July 21, 2025 as Applicant Ariana Eskra Exhibit A4 then denied admission into evidence under the F&A dated September 8, 2025. However, the premarital agreement serves no purpose because it cannot legally extinguish Brandy Eskra's claim for death benefits. As correctly pointed out by the WCJ, the death claim did not exist at the time of the agreement, was and is not decedent's property, and in any event cannot be disposed of or released without a WCJ's order approving and finding adequacy. In this case, there is no basis to find that applicant Brandy Eskra or her children received adequate consideration for such a release prior to the accrual of the death claim.

Ariana Eskra's petition further contends that the WCJ erred by admitting six exhibits. The six exhibits are not identified in the Petition, but it is clear from the record that petitioner is referring to the six additional exhibits added and admitted at the trial of January 5, 2026. Ariana Eskra asserts that these exhibits were not disclosed on the Pre-Trial Conference Statement and were not shown to have been unavailable at the time of trial setting, nor was it shown that they could not have been discovered by the exercise of due diligence prior to the settlement conference. However, the WCJ's F&A of September 8, 2025 indicated as part of the decision that the record would be developed, and the F&A was not timely challenged as to any of its components, final or non-final. Further, the WCJ did not act without or in excess of her authority to take in additional evidence at later proceedings consistent with the September 8, 2025 decision after it was no longer subject to challenge by reconsideration or removal.

Finally, Ariana Eskra's petition alleges that the evidence does not justify the finding that widow Brandy Eskra was a total dependent because the 2017 tax return should not have been admitted and "was unquestionably fraudulent" (referring to petitioner's 1/6/2026 Supplemental Trial Brief, which points out that the return improperly took expense deductions from decedent's employment earnings). It appears that the WCJ relied upon both the tax return and testimony from multiple witnesses at trial that justifies her part of the 2017 joint tax return. Lynn Niekerasz, a

hairdresser at the same salon as Brandy Eskra in 2017, testified that Brandy worked two days per week on average. Lynn Niekerasz was confident that Brandy Eskra did not earn $30,000 per year. (MOH/SOE July 21, 2025, page 5, lines 16-24.) Melissa Turner, another cosmetologist working at the same salon, testified that her net income was only $18,000 to $22,000 per year while she was working five to six days per week in 2017. Melissa Turner confirmed that Brandy Eskra worked only two days per week at that time. Like Lynn Niekerasz, Melissa Turner was confident that Brandy Eskra did not earn $30,000 per year. (*Id*., page 6, lines 11-21.) Brandy Eskra's own testimony confirmed that in 2017, she earned around $14,000, and a little bit more after Scott Eskra's death, but never $30,000 per year during the period from 2016 to 2018. (*Id*., page 8, lines 2-6.)

Petitioner has adduced no evidence to disprove the evidence of Brandy Eskra's income and expenses as a hairdresser in her tax returns and testimony, and accordingly she is conclusively presumed to be a total dependent under section 3501(b). Section 3501 reads as follows:

> (a) A child under the age of 18 years, or a child of any age found by any trier of fact, whether contractual, administrative, regulatory, or judicial, to be physically or mentally incapacitated from earning, shall be conclusively presumed to be wholly dependent for support upon a deceased employee-parent with whom that child is living at the time of injury resulting in death of the parent or for whose maintenance the parent was legally liable at the time of injury resulting in death of the parent.
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> (b) A spouse to whom a deceased employee is married at the time of death shall be conclusively presumed to be wholly dependent for support upon the deceased employee if the surviving spouse earned thirty thousand dollars ($30,000) or less in the twelve months immediately preceding the death.

(Lab. Code, § 3501.)

Turning to the contentions of the petition for reconsideration filed by Brandy Eskra, for herself and as guardian ad litem for her children, Jovie Fischer and Austin Evenson, we agree that the WCJ should have found that Jovie Fischer was a total dependent under section 3501(a). We have previously read the term "child" in section 3501(a) to include stepchildren. As explained in the panel decision[3] in *Franco, dec'd v. Orange County Plastering Co., Inc.*, 2025 Cal. Wrk. Comp. P.D. LEXIS 258, *6-9 (Appeals Board Panel Decision, July 14, 2025):

> Although Labor Code section 3501 does not include the word "stepchild" it is subject to the provisions of section 3503, which dictates in relevant part that

[3] Panel decisions are not binding precedent on other Appeals Board panels and WCJs. However, panel decisions are citable and are considered to the extent that their reasoning is persuasive.

"[n]o person is a dependent of any deceased employee unless in good faith a member of the family or household of the employee, or unless the person bears to the employee the relation of spouse, child, posthumous child, adopted child or …" (Lab. Code., § 3503.) The close proximity of this provision equating children with adopted children and stepchildren for purposes of death benefits suggests that the word "child" in section 3501, which includes no definition of its own, should include different kinds of children. "Statutory language should not be interpreted in isolation, but must be construed in the context of the entire statute of which it is a part, in order to achieve harmony among the parts." (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 903 [135 Cal. Rptr. 2d 30, 69 P.3d 951].) The fundamental purpose of statutory interpretation is to ascertain the legislature's intent in order to effectuate the law's purpose. (*People v. Murphy* (2001) 25 Cal.4th 136, 142 [105 Cal. Rptr. 2d 387, 19 P.3d 1129].) Statutory language should be interpreted "consistently with its intended purpose and harmonized within the statutory framework as a whole." (*Alvarez v. Workers' Comp. Appeals Bd*. (2010) 187 Cal.App.4th 575, 585 [114 Cal. Rptr. 3d 429, 75 Cal. Comp. Cases 817].) Thus, in the case of *State Compensation Ins. Fund v. Workers' Comp. Appeals Bd*. (*Asher*) (1993) 19 Cal.App.4th 1645 [24 Cal. Rptr. 2d 67, 58 Cal.Comp.Cases 760], the court followed this same line of reasoning to conclude that minor grandchildren are entitled to extended death benefits until age 18 because of the related statute identifying grandchildren (and stepchildren) as potential dependents. The reasoning in *Asher* has been followed in several more recent panel decisions. (*Wirt v. California*, 2005 Cal. Wrk. Comp. P.D. LEXIS 5; *Jefferson v. Performance Excavators*, 2009 Cal. Wrk. Comp. P.D. LEXIS 526; *O'Quinn v. City of San Diego*, 2013 Cal. Wrk. Comp. P.D. LEXIS 118; *Skubitz v. Hanford Community Hosp.*, 2016 Cal. Wrk. Comp. P.D. LEXIS 168.) One writ denied case distinguished *Asher* because the deceased grandparent in that case was not acting as a parent of the grandchild, finding that section 3501 applies to any minor for whom a deceased worker was acting as a parent. (*Riley v. Workers' Compensation Appeals Bd.*, SOS Steel Fabrications, 71 Cal. Comp. Cases 1340, 1342 ("For other minors to be found to be 'children' within the meaning of the statute, a finding must be made essentially that the deceased is the acting parent.").) In the present case, the decedent was indisputably acting as a parent, even though he was not the biological parent.

Further, it is established to the point of being axiomatic that statutory interpretation begins "with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent." (*People v. Watson* (2007) 42 Cal.4th 822, 828, 68 Cal. Rptr. 3d 769, 171 P.3d 1101.) The operative word chosen by the legislature in section 3501 is "child." While it is true that the legislature could have included the additional word "stepchildren" in section 3501 as it did in section 3503, it could also have clearly restricted the definition of "child" by expressly excluding stepchildren, or by using more precise legal terms such as "offspring," "issue," or "progeny."

> The plain and ordinary meaning of "child" includes stepchildren. The first definition for the word "child" in the American Heritage Dictionary is "[a] person between birth and puberty" or "[a] person who has not attained maturity or the age of legal majority"…
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> …An inclusive, plain-meaning construction of the word "child" to include stepchildren is furthermore consistent with section 3202, which mandates that Division 4 of the Labor Code "shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment." (Lab. Code § 3202.) Speculatively assuming that the word "child" must be read restrictively to exclude stepchildren living with an employee acting as their parent at the time of a fatal work injury would be contrary to the mandate of section 3202, and contrary to the apparent purpose of section 4703.5 and California State Constitution, Article XIV, section 4 to protect such children who live with and depend on such an employee. Accordingly, we decline to read sections 4703.5 and 3501 in such a restrictive manner.
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> If a statute is amenable to more than one interpretation, the interpretation that leads to a more reasonable result should be followed. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, 248 Cal. Rptr. 115, 755 P.2d 299.) In the present case, our interpretation of sections 4703.5 and 3501 prevents the unreasonable result of providing different treatment to three minor dependent household members, all of whom knew Antonio Franco as their father, solely on the basis of their genetic origin.

(*Id.* at pp. 6-9.)

Here, as in *Franco*, a minor non-biological child, Jovie Fischer, lived in the decedent's household. According to unrebutted testimony, Jovie was living primarily with her mother, who was living with the decedent at the time of his fatal injury. (See MOH/SOE dated July 21, 2025, page 8, lines 6-7; page 9, lines 3-4). Section 3501 applies to any child who is living with a deceased employee, without any modifying adverb such as "primarily" or "exclusively," so Jovie would have met the threshold requirements for a conclusive presumption of total dependency under section 3501 even if she had been living with the decedent less than half the time. However, the testimony established that she was living with her mother "approximately 20-23 days per month" (*Id*., page 9, lines 3-4) and at the actual time of the decedent's death, she was living with her mother, who lived at that time with the decedent. (*Id*., page 8, lines 6-7; page 9, lines 1-2.) The fact that Jovie sometimes visited her biological father, who paid child support to her mother, likewise does not alter the operation of section 3501, which creates a conclusive presumption of total dependency according to its plain meaning. The use of the word "or" in section 3501(a) makes

it clear that as long as Jovie lived with the decedent at the time of his death, it is irrelevant for purposes of the conclusive presumption whether he was also legally liable for Jovie's support.

Jovie Fischer was an unadopted, non-biological child, but that does not make her any less a "child" within the plain meaning of that word. Because she was a child living with the decedent at the time of his injury, she is conclusively presumed to be a total dependent under section 3501, subsection (a). Any narrower reading of the words "child" or "living" in section 3501(a) would be contrary to the mandate of section 3202, and contrary to the apparent purpose of section 4703.5 and California State Constitution, Article XIV, section 4 to protect such children who live with and depend on such an employee.

Accordingly, as in the *Franco* case, we decline to impose such unstated restrictions on section 3501, and we conclude that Jovie Fischer must be conclusively presumed to be a total dependent of the decedent under section 3501(a).

Jovie's older brother, Austin Evenson, was correctly found to be a partial dependent. He testified that after graduating high school in 2017, he joined the Marine Corps but still kept a room at the decedent's house. (MOH/SOE dated July 21, 2025, page 11, lines 21-24). While he was in high school, the decedent gave him money for gas and paid for his housing, water and power. (*Id*., page 11, line 25). The decedent also paid for hunting trips which he estimated cost a couple hundred dollars. (*Id*., page 12, lines 1-2.) He also estimated that the decedent gave him $100-$150 per month for gas money. (*Id*., page 12, line 5.) He received about $800 every two weeks since being in the Marine Corps. (*Id*., page 12, line 11.) The decedent also bought a plane ticket for Austin to come visit, which he estimated to cost around $850-$1,000. (See MOH dated 7/21/2025, page 12, lines 7-8.) Although Austin was over the age of 18, and therefore not entitled to a conclusive presumption of total dependency like his younger sister, he is "in good faith a member of the family or household" as he kept a room at the decedent's house. (Lab. Code, § 3503.) He did receive some amount of support from the decedent. Accordingly, Austin is entitled to have the exact extent of his dependency determined "in accordance with the facts." (Lab. Code, § 3502.) Based on the evidence presented, we agree with the WCJ that Austin was a partial dependent of the decedent, with the issue of the amount of dependency deferred.

We disagree with the contention of the petition for reconsideration filed by Brandy Eskra, for herself and as guardian ad litem for her children, Jovie Fischer and Austin Evenson, that Ariana Eskra's counsel should have been sanctioned for repeatedly fraudulently misrepresenting Brandy's

income. The WCJ was within her discretion not to award sanctions under section 5813, and Ariana's counsel was justified in attempting to raise doubts about the veracity of the evidence of Brandy's income including the tax return, even though those arguments ultimately did not prevail. We note the precaution regarding sanctions provided under WCAB Rule 10421: "This subdivision is specifically intended not to have a 'chilling effect' on a party's ability to raise and pursue legal arguments that reasonably can be regarded as not settled." (Cal. Code Regs, tit. 8, § 10421.)

Accordingly, we deny applicant Ariana Eskra's petition for reconsideration and grant applicant Brandy Eskra's petition for reconsideration. We affirm the February 13, 2026 Findings of Fact, except that we amend the decision to find that Jovie Fischer was a presumptive total dependent of decedent Scott Eskra at the time of his death (Finding of Fact 3).

For the foregoing reasons,

IT IS ORDERED that applicant Ariana Eskra's petition for reconsideration of the January 16, 2026 Findings of Fact is **DENIED**.

IT IS FURTHER ORDERED that the petition for reconsideration of applicant Brandy Eskra, filed on behalf of herself and also as guardian ad litem of Jovie Fischer, and of Austin Evanson, is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 16, 2026 Findings of Fact is **AFFIRMED** except that it is **AMENDED** as follows:

> 3. Jovie Fischer was a presumptive total dependent based upon Labor Code section 3501(a). Austin Evenson was a partial dependent pursuant to Labor Code sections 3502 and 3503.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I DISSENT (see attached dissenting opinion),

/s/ JOSÉ H. RAZO, 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.

STEPHANIE ESKRA. Guardian ad Litem for ARIANA ESKRA
BRANDY ESKRA, for herself and as Guardian ad Litem of JOVIE FISCHER and AUSTIN EVENSON
LAW OFFICES OF LARRY S. BUCKLEY
LAW OFFICE OF DAVID L. HART
STATE COMPENSATION INSURANCE FUND

CWF/*cs*

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

DISSENTING OPINION OF COMMISSIONER RAZO

I dissent. I would deny the Petition for Reconsideration, adopting and incorporating the Report of the WCJ, who was correct in her conclusions.

With respect to the WCJ's determination that Jovie Fischer was a partial dependent of decedent Scott Eskra, the Report adequately explains and justifies the WCJ's finding as follows:

> Jovie Fischer argues that being a good faith member of Scott Eskra's household and being 9 years old at the time of his death qualified her as a total dependent. This judge found Jovie Fischer was a partial dependent of Scott Eskra.
>
> Jovie Fischer was a minor living with Brandy and Scott Eskra a majority of the time at the time of Scott Eskra's death. She had not been adopted by Scott Eskra at the time of his death. (See MOH dated 7/21/2025, page 8, line 17) Such a child may be a dependent of the decedent, even though he or she has another parent who is legally liable for support. (*Federal Mutual Liability Insurance Co. v. IAC (Gnash)* (1921) 187 Cal. 469; *Associated Indemnity Corp. v. IAC (Pollinger)* (1955) 20 CCC 87). While Jovie does not qualify for the presumption of total dependency pursuant to Labor Code §3501(a) as the child of an employee-parent, she would qualify as a dependent pursuant to Labor Code §3503 as a good faith member of the household and as a stepchild. This qualification does not automatically make her a presumed total dependent.
>
> Brandy Eskra testified that she received regular child support payments for Jovie until October or November of 2017. Furthermore, Brandy Eskra testified that Jovie lived with her 20-23 days out of the month, not full time. In addition, Jovie's father was subject to a court order to pay child support (See Exhibit A4, State of California Child Support Services Case Balance History and Order After Hearing).
>
> A total dependent is one who relies on the deceased employee for all or substantially all of his or her support. A partial dependent is one who at the time of injury has means of support other than the decedent's contributions. (*De Mendoza v. WCAB* (1976) 41 CCC 71, 73; Chevron U.S.A., Inc. v. WCAB (Steele) (1999) 64 CCC 1)
>
> Whether a dependent received "substantially all of his or her support" from the decedent is not based on any bright line rule. Instead, the issue of whether the dependent's support from other sources is substantial or inconsequential is primarily for the appeals board to determine based on the facts of each particular case. The appeals board's decision on the issue will stand if it is supported by substantial evidence. (*Coborn v. IAC* (1948) 13 CCC 89)
>
> Jovie was not living with Scott Eskra full time at the time of his death. Brandy Eskra received child support for Jovie regularly until October or November of 2017. In December 2017 a child support order was issued against Jovie's father for child support. Further, Brandy Eskra had earnings during the one year prior to Scott's death which also contributed to the support of Jovie. This was not

insubstantial support. Jovie Fischer had other means of support and was properly found to be a partial, not total, dependent.

(Report, page 10, paragraphs 2-7.)

I find no error in the WCJ's reasoning and note as the WCJ did that Jovie Fischer was not living on a full-time basis with the decedent at the time of his death, and that her father was paying child support. Under those circumstances, a finding of total dependency does not make sense.

Accordingly, I dissent.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 11, 2026

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