WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

TODD PERRUCIO, *Applicant*

vs.

ALLIED UNIVERSAL;
ALLIED UNIVERSAL, permissibly self-insured c/o ESIS, *Defendants*

Adjudication Number: ADJ16164777
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Lien claimant Premier Psychological Services seeks reconsideration of the Findings and Order issued by the workers' compensation arbitrator (WCA) on June 20, 2025. Therein, the WCA found that lien claimant is not entitled to reimbursement on its lien.

Lien claimant contends that the WCA erred in failing to find its lien reimbursable. Lien claimant argues that the purpose of a medical legal report is to prove or disprove a contested claim, that this case became a contented claim when defendant rejected liability, and that service of lien claimant's report 10 days after approval of the Compromise and Release is not dispositive of entitlement to reimbursement.

In its Answer, defendant asserts that the Petition for Reconsideration should be dismissed as untimely or denied on the merits. The WCA issued a Report and Recommendation on the Lien Claimant's Petition for Reconsideration (Report) recommending that we deny reconsideration. On May 4, 2026, lien claimant filed a Motion to File Supplemental Petition for Reconsideration; Supplemental Petition for Reconsideration (supplemental pleading). Pursuant to WCAB Rule 10964, we accept lien claimant's supplemental pleading, and have considered it herein. (Cal. Code Regs., tit. 8, § 10964.)

We have considered the Petition for Reconsideration, the Answer, lien claimant's supplemental pleading, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we find the Petition for Reconsideration

timely as discussed more fully below and will grant 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 section 5950 et seq.

I.

Preliminarily, we note that former Labor Code[1] section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days 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.
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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 May 8, 2026 and 60 days from the date of transmission is Tuesday, July 7, 2026. This decision is issued by or on July 7, 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

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

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 WCA, the Report was served on July 9, 2025 and the case was transmitted to the Appeals Board on May 8, 2026. 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 the commencement of the 60-day period on May 8, 2026.

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 Labor Code 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 May 8, 2026.

II.

Next, we address the timeliness of lien claimant's Petition for Reconsideration. There are 30 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address outside California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

Here, the WCA's decision issued on June 20, 2025. While lien claimant received service of the decision within California, defendant was served at an address outside of California. Accordingly, and to observe due process for all parties, we interpret Appeals Board Rule 10605 as extending the time to file for all parties being served. Thus, based on the authority cited above, lien claimant had until Monday, July 21, 2025 to seek reconsideration.

Pursuant to its supplemental pleading, lien claimant mailed and emailed its Petition for Reconsideration to defendant, the Workers' Compensation Appeals Board (WCAB), and other interested parties on July 7, 2025. The email address used for the WCAB,

ControlUnit@dir.ca.gov, is a working email address and lien claimant's email was received. Therefore, pursuant to WCAB Rules 10617[2] and 10940[3], we issue an order accepting it as timely filed.[4,5] While not dispositive here, we note that we also received defendant's Answer via email to the same email address on July 9, 2025.

III.

The WCA provided the following discussion in the Report:

> **Facts**
>
> The applicant, Todd Perrucio, born [], alleged to have sustained a cumulative trauma from September 1, 2013 to November 1, 2020, while working as a Director of Operations for Allied Universal. He claimed that during this period of time he sustained a psychiatric injury.
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> On January 26, 2023, the Defense issued a Denial Order based on the lack of any medical evidence to support a cumulative trauma at work.
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> On November 9, 2023, the applicant's counsel designated Dr. Mark Mathews as the primary treating physician.

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[2] WCAB Rule 10617 states, in relevant part, that "(a) An Application for Adjudication of Claim, a petition for reconsideration, a petition to reopen or any other petition or other document that is subject to a statute of limitations or a jurisdictional time limitation ***shall not be rejected for filing solely on the basis that*** … (1) ***The document is not filed in the proper office of the Workers' Compensation Appeals Board*** …." (Cal. Code Regs., tit. 8, § 10617(a)(1).)

[3] WCAB Rule 10940 states, in relevant part, that "(a) Petitions for reconsideration, removal, or disqualification and answers shall be filed in EAMS or with the district office having venue in accordance with Labor Code section 5501.5 unless otherwise provided. Petitions for reconsideration of decisions after reconsideration of the Appeals Board shall be filed with the office of the Appeals Board. Petitions filed in EAMS pursuant to this rule must comply with rules 10205.10-10205.14. (b) No duplicate copies shall be filed with any district office or with the Appeals Board. No documents sent directly to the Appeals Board by fax or e-mail will be accepted for filing, ***unless otherwise ordered by the Appeals Board***." (Cal. Code Regs., tit. 8, § 10940(a)-(b) emphasis added.)

[4] WCAB Rule 10305 states, in relevant part, that "(m) 'Filing' a document means receipt and acceptance by the Workers' Compensation Appeals Board of the document for the purpose of having it included in the adjudication file." (Cal. Code Regs., tit. 8, § 10305(m).)

[5] WCAB Rule 10305 states that "(a) All documents required or permitted to be filed under the rules of the Workers' Compensation Appeals Board shall be filed in EAMS or with the district office having venue, except as otherwise provided by these rules or ordered or allowed by the Workers' Compensation Appeals Board. (b) A document is deemed filed on the date it is received, if received prior to 5:00 p.m on a court day. A document received after 5:00 p.m. on a court day shall be deemed filed as of the next court day. (c) When a paper document is filed, the Workers' Compensation Appeals Board shall affix on it an appropriate endorsement as evidence of receipt. The endorsement may be made by handwriting, hand-stamp, electronic date stamp or by other means. The endorsement shall serve as confirmation of successful filing unless otherwise notified by the Workers' Compensation Appeals Board or the Administrative Director. (d) ***When a document is filed electronically, it shall be deemed to have been received by the Workers' Compensation Appeals Board when transmission of the document is complete***. Receipt shall constitute confirmation of successful filing unless otherwise notified by the Workers' Compensation Appeals Board or the Administrative Director. Confirmation of successful filing in EAMS shall be made in the manner described by rule 10206.3." (Cal. Code Regs., tit. 8, § 10305, emphasis added.)

Dr. Michaels wrote a medical report dated January 24, 2024.

A Compromise and Release Agreement was submitted by the parties and approved by the Arbitrator on June 20, 2024. At the time of the submission of the settlement, both parties advised the Arbitrator that there were no medical reports to substantiate an industrial psychiatric injury and therefore based on these statements, the settlement was approved.

The medical report of Dr. Michaels, substantiating a psychiatric industrial injury, was served on the parties, with a proof of service, on June 30, 2024, ten days after the Compromise and Release was approved.

Issue

Is a medical report a proper medical legal report when it is served after a Compromise an Release Agreement has been approved

The Petitioner is correct that a medical report is a medical legal report when it is presented to prove or disprove a disputed claim.

In this case the medical report was served after the Compromise and Release Agreement had been approved, so that at the time of service, there was not any issues to prove or disprove.

Therefore the medical report does not qualify as a proper medical legal report.

(Report, at pp. 1-3.)

IV.

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

Section 4060(b) allows a medical-legal evaluation by the treating physician. Section 4620(a) defines medical-legal expense as "any costs and expenses … for the purpose of proving or disproving a contested claim." Section 4064(a) provides that the employer is liable for the cost of a comprehensive medical evaluation that is authorized by section 4060.

The regulations provide that the "primary treating physician shall render opinions on all medical issues necessary to determine the employee's eligibility for compensation …" (Cal. Code Regs., tit. 8, § 9785(d).)

Administrative Director (AD) Rule 9793(h) states:

> (h) "Medical-legal expense" means any costs or expenses incurred by or on behalf of any party or parties, the administrative director, or the appeals board for X-rays, laboratory fees, other diagnostic tests, medical reports, medical records, medical testimony, and as needed, interpreter's fees, for the purpose of proving or disproving a contested claim. The cost of medical evaluations, diagnostic tests, and interpreters is not a medical-legal expense unless it is incidental to the production of a comprehensive medical-legal evaluation report, follow-up medical-legal evaluation report, or a supplemental medical-legal evaluation report and all of the following conditions exist:
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> (1) The report is prepared by a physician, as defined in Section 3209.3 of the Labor Code.
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> (2) The report is obtained at the request of a party or parties, the administrative director, or the appeals board for the purpose of proving or disproving a contested claim and addresses the disputed medical fact or facts specified by the party, or parties or other person who requested the comprehensive medical-legal evaluation report. Nothing in this paragraph shall be construed to prohibit a physician from addressing additional related medical issues.
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> (3) The report is capable of proving or disproving a disputed medical fact essential to the resolution of a contested claim, considering the substance as well as the form of the report, as required by applicable statutes, regulations, and case law.
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> (4) The medical-legal examination is performed prior to receipt of notice by the physician, the employee, or the employee's attorney, that the disputed medical fact or facts for which the report was requested have been resolved.
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> (5) In the event the comprehensive medical-legal evaluation is served on the claims administrator after the disputed medical fact or facts for which the report was requested have been resolved, the report is served within the time frame specified in Section 139.2(j)(1) of the Labor Code.
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> (Cal. Code Regs., tit. 8, § 9793(h).)

Read together, these sections provide that a medical-legal evaluation performed by an employee's treating physician is a medical-legal evaluation obtained pursuant to section 4060 and that an employer is liable for the cost of reasonable and necessary medical-legal reports that are performed by the treating physician. The Appeals Board has previously held that there was no legal authority to support the proposition that an injured worker is not entitled to request a medical-legal report from their PTP, and in turn, the report from that PTP is a medical-legal expense for

which the defendant is liable. (*Warren Brower v. David Jones Construction* (2014) 79 Cal.Comp.Cases 550, 556 (Appeals Board en banc).) Moreover, a medical-legal expense is ordinarily allowable if it is capable of proving or disproving a contested claim, if the expense was reasonably necessary ***at the time incurred***, and if the cost incurred was reasonable. (Lab. Code, §§ 4620 et seq., 5307.6.)

Here, it does not appear that the WCA followed the proper analysis or that there is a legal basis for denying reimbursement based on the timing of the service of lien claimant's report. Additional development of the record may be necessary. Therefore, 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.

V.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com*. (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an

opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd*. (1992) 7 Cal.App.4th 372, 374 [57 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.

VI.

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 the Petition for Reconsideration filed by Premier Psychological Services by email to ControlUnit@dir.ca.gov on July 7, 2025 is **ACCEPTED** as timely filed.

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/ KATHERINE WILLIAMS DODD, COMMISSIONER

PAUL F. KELLY, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 7, 2026

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

BARBARA SHOGREN LIES, OMBUDSPERSON
LEONARD SILBERMAN, ARBITRATOR
MCNAMARA & DRASS, LLP
PAPERWORK & MORE
PREMIER PSYCHOLOGICAL SERVICES

PAG/cm

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