

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

VERONICA HERRERA, *Applicant*

vs.

**BREAD AND CIE WHOLESALE, LLC, permissibly self-insured,
administered by PACIFIC CLAIMS MANAGEMENT, *Defendants***

**Adjudication Number: ADJ15756130
San Diego District Office**

**OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of the March 4, 2026 Order, wherein the workers' compensation administrative law judge (WCJ) rescinded a prior order vacating submission and reinstated a Findings and Award (F&A) issued on December 11, 2025. Therein, the WCJ determined that applicant, while employed as a cleaner from June 21, 2021 to January 11, 2022, sustained industrial injury to her neck, lumber spine, and bilateral knees but did not sustain injury to her trunk, legs, ankles, feet, all fingers and psyche. The WCJ determined that compensation is not barred by Labor Code¹ section 3600(a)(10) as a result of a post-termination claim filing.

Defendant contends that applicant is not a credible witness based on material misrepresentations as set forth in the evidentiary record. Defendant also asserts the reporting of applicant's treating physicians are not substantial evidence and that the opinions expressed therein evince bias. Defendant asserts the reporting of the Qualified Medical Evaluator (QME) is the better reasoned and more persuasive reporting in evidence.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the

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

record, we will grant applicant'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 section 5950 et seq.

I.

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 April 16, 2026, and 60 days from the date of transmission is June 15, 2026. This decision is issued by or on June 15, 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

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 April 16, 2026, and the case was transmitted to the Appeals Board on April 16, 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 April 16, 2026.

II.

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

Applicant alleges industrial injury to her back, neck, trunk, legs, knees, ankles, feet, all fingers, and stress (psyche), while employed by defendant Bread and Cie Wholesale, LLC, as a cleaner, from June 21, 2021 to January 11, 2022. Defendant disputes injury arising out and in the course of employment (AOE/COE).

The parties have selected Kevin Metros, M.D., as the Qualified Medical Evaluator (QME) in orthopedic medicine. Applicant has selected Alexander Caligiuri, D.C., as her primary treating physician.

On August 27, 2025, the parties proceeded to trial and framed for decision issues of injury AOE/COE, and whether compensation is barred by operation of section 3600(a)(10). Defendant further asserted that applicant violated section 5803 and sections 3820 through 3823 due to material misrepresentations made under oath and at medical evaluations, and that applicant's claim is "not compensable by law." (Minutes of Hearing and Summary of Evidence, dated August 27, 2025, at p. 2:12.) The WCJ heard applicant's testimony, and ordered the matter submitted for decision as of September 15, 2025.

On December 11, 2025, the WCJ issued the F&A, determining in relevant part that applicant resigned her employment, thus obviating the affirmative defense of a post-termination claim filing. (Finding of Fact No. 4.) Based on the totality of the medical evidence in the record, the WCJ determined that applicant had sustained injury AOE/COE to her neck, lumber spine, and

bilateral knees, but not to the trunk, legs, ankles, feet, all fingers and psyche. (Findings of Fact Nos. 1 & 2.) The WCJ also determined that applicant had violated neither section 5813 nor sections 3820 to 3823.

On January 5, 2026, defendant sought reconsideration of the F&A, averring in relevant part that applicant was not a credible witness because she had made multiple material misrepresentations evidenced in the record that materially impaired the reliability of her testimony and the history provided to evaluating physicians. (Petition for Reconsideration, dated January 5, 2026, at p. 4:16.) Defendant asserted applicant's testimony was incompatible with surveillance video, and that the reporting of PTP Dr. Caliguiri was not substantial evidence. Defendant urged reliance on the reporting of QME Dr. Metros. (*Id.* at p. 15:17.)

On January 6, 2026, the WCJ issued an order vacating her F&A and setting the matter for hearing "so that the parties can discuss how to develop the record, including, but not limited to, an Agreed Medical Evaluator or appointment of a 'Regular Physician' by the court, and/or testimony of the employer or provision of a job description." (Order Vacating Finding of Award (sic) and Orders Dated December 11, 2025 and Setting Hearing, dated January 6, 2026.)

On January 28, 2026, the WCJ conducted an additional hearing with the parties and ordered the parties to brief additional issues relevant to the sufficiency of the medical reporting by March 1, 2026.

On March 4, 2026, the WCJ conducted an additional hearing at which time defendant declined to use an Agreed Medical Evaluator (AME) or to accede to the appointment of a regular physician pursuant to section 5701. (Report, at p. 3.) The WCJ issued an Order rescinding her prior Order Vacating the December 11, 2025 F&A. The WCJ then "reinstated" the December 11, 2025 F&A but also ordered the case "submitted as of today." (Minutes of Hearing, dated March 4, 2026.)

Defendant's Petition contends that applicant is not a credible witness based on inconsistencies in the evidentiary record and that any finding of injury AOE/COE is based on material misrepresentations. (Petition, at p. 4:15.) Defendant asserts applicant misrepresented the timing of the filing of the claim, and that her statements to reviewing medical evaluators are inconsistent with surveillance video. Defendant asserts applicant has a history of "questionable" claims. (*Id.* at p. 10:10.) Defendant contends the reporting of Dr. Caliguiri is not substantial medical evidence, while the reporting of QME Dr. Metros is substantial evidence and should be relied upon herein. (*Id.* at p. 14:6; 16:25.)

Applicant's Answer responds that per the WCJ's F&A and supporting Opinion, defendant did not meet its evidentiary burden of establishing a post-termination filing because applicant resigned her employment. (Answer, at p. 3:7.) Applicant also observes that the WCJ's determination as to the basis for injury AOE/COE was a review of the entire body of medical evidence, rather than isolated evidence. (*Id.* at p. 2:23.)

The WCJ's Report makes it clear, however, "applicant's credibility was NOT used to support the finding AOE/COE," and that the WCJ relied on objective diagnostic and other evidence to reach the conclusion that applicant had sustained injury AOE/COE. The WCJ observes that finding applicant "to be not credible would not defeat the finding [AOE/COE]." (Report, at p. 5.) With respect to the sufficiency of the medical reporting, the WCJ observes that the reporting of PTP Dr. Caligiuri found causation only to the body parts of neck, back and bilateral knees. (*Id.* at p. 6.) The WCJ also observed that the reporting of the QME was not substantial evidence because the reporting did not "discuss the question of 'injury' to the correct legal standard." (*Ibid.*) Accordingly, the WCJ recommends that we deny reconsideration.

We note initially our concerns with the procedural posture in this matter. Defendant seeks reconsideration of a minute order issued by the WCJ from trial proceedings held on March 4, 2026. Therein, the WCJ issued an order which purported to reinstate the December 11, 2025 F&A, notwithstanding the fact that the WCJ had ordered the F&A vacated on January 6, 2026.

Workers' Compensation Appeals Board (WCAB) Rule 10961 (Cal. Code Regs., tit. 8, § 10961), provides that within 15 days of the timely filing of a petition for reconsideration, a WCJ may take specified actions, including "[r]escind[ing] the entire order, decision or award and initiat[ing] further proceedings within 30 days." The effect of such a rescission is to render the underlying decision a nullity, and it is unclear whether or how such a decision is thereafter subject to "reinstatement" as is indicated in the March 4, 2026 Order. We also observe that the same Order indicates the matter is being resubmitted for decision, but that the statutory period for filing for reconsideration commenced on the same day the Order issued. (Lab. Code, § 5901.) We will thus need to consider the procedural posture of this matter with respect to defendant's Petition, and the import of the March 4, 2026 Order as it pertains to the underlying F&A.

In addition, we observe that section 5701 provides as follows:

The appeals board may, with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be made, or the timebooks and payroll of the employer to be examined by any member of the board or a workers' compensation judge appointed by the appeals board. The appeals board may also from time to time direct any employee claiming compensation to be examined by a regular physician. The testimony so taken and the results of any inspection or examination shall be reported to the appeals board for its consideration.

(Lab. Code, § 5701.)

The Appeals Board has the discretionary authority under section 5701 to develop the record when the medical record is not substantial evidence. (See also Lab. Code, § 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that “[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record ... the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete.” (*McDuffie, supra*, at p. 141.) We must therefore evaluate in this instance whether the record before us establishes that the existing medical reporting constitutes substantial medical evidence upon which we may rely in issuing a final determination, or in the alternative, whether the record must be developed pursuant to *McDuffie, supra*, and *Tyler, supra*.

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (Lab. Code, § 5313.) “It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ’s decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board

if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Id.* at p. 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

Additionally, the WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune, supra*, 62 Cal.App.4th at pp. 1121-1122.) The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) Here, based on our preliminary review, it appears that further development of the record may be appropriate.

III

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

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

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (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”].)

Labor Code 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.

IV

Accordingly, we grant defendant’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.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Order issued by a workers' compensation administrative law judge on March 4, 2026 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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 15, 2026

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

**VERONICA HERRERA
CAMPOS LAW
COLEMAN CHAVEZ & ASSOCIATES**

SAR/abs

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