WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

VIRGINIA GUTIERREZ ALVARADO, *Applicant*

vs.

ROSS STORES, INC.;
ARCH INSURANCE COMPANY, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants*

Adjudication Numbers: ADJ12333976; ADJ12812012
Riverside District Office

OPINION AND ORDERS DISMISSING PETITION FOR RECONSIDERATION AND DENYING PETITION FOR RECONSIDERATION

Defendant filed two separate Petitions for Reconsideration (Petitions) seeking reconsideration. In the first Petition, defendant seeks reconsideration and/or to set aside of the February 1, 2021 Findings of Fact (Findings) issued by the workers' compensation administrative law judge (WCJ). In the second Petition, defendant seeks reconsideration of our March 19, 2026 Opinion and Decision After Reconsideration (Decision).

In the February 1, 2021 Findings, the WCJ found that applicant sustained injury arising out of and occurring the course of employment (AOE/COE) from June 6, 2018 through June 6, 2019 to the head, brain, eye, psyche, digestive system, and internal system (ADJ12812012) and from June 6, 2018 through June 6, 2019 to the cervical spine, thoracic spine, lumbar spine, right arm, right elbow, right wrist/hand, fingers, right hip, right leg, right foot, and digestive system (ADJ12333976); and that applicant was not entitled to an additional qualified medical evaluator (QME) panel in internal medicine.

Our March 19, 2026 Decision was in response to applicant's petition for reconsideration of the August 16, 2021 Findings and Order (F&O) issued by the WCJ. In the Decision, we rescinded the F&O and substituted a new F&O which held that applicant sustained injury AOE/COE from June 6, 2018 through June 6, 2019 to the head, brain, eye, psyche, digestive system, and internal system (ADJ12812012) and from June 6, 2018 through June 6, 2019 to the

cervical spine, thoracic spine, lumbar spine, right arm, right elbow, right wrist/hand, fingers, right hip, right leg, right foot, and digestive system (ADJ12333976); that defendant was insured by Arch Insurance Company during the periods of injury; and that applicant was entitled to an additional panel in internal medicine.

Defendant contends in the first Petition that the February 1, 2021 decision should be set aside because the findings of injury AOE/COE were "an obvious clerical error." Defendant contends that the WCJ and the Appeals Board should exercise their authority to correct the clerical errors despite the lapse of the statutory period for filing a petition for reconsideration because failure to do so would deprive defendant of due process on the issue of injury AOE/COE; that the Appeals Board's decision in *Clark v. City of Vallejo* (May 20, 2024, ADJ12000811) confirms its authority to correct material errors notwithstanding finality and the lapse of the reconsideration period; and that the evidence in the record does not support the February 1, 2021 Findings.

Defendant contends in the second Petition as to our March 19, 2026 Decision that the Appeals Board erred in relying on the WCJ's clerical error in the February 1, 2021 decision to make a finding of injury AOE/COE that is not supported by the record or substantial medical evidence and that the August 16, 2021 F&O by the WCJ finding no injury AOE/COE and that the psych injury was barred by good faith personnel action defense is supported by substantial medical evidence and should be reinstated; that the Appeals Board erred by treating a clerical error as a binding finding of injury AOE/COE and denying defendant due process regarding that issue; that the Appeals Board erred as no good cause has been established to warrant setting aside the parties' stipulations as set forth in the pre-trial conference statement and in the Minutes of Hearing and Summary of Evidence (MOH/SOE) from trial on May 4, 2021 and July 13, 2021; that the appeals board improperly disregarded the statutory limitations on discovery under Labor Code section 5502; and that the Appeals Board erred in finding good cause to award an additional panel in internal medicine.

An Answer was not filed by applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition as to the February 1, 2021 Findings be dismissed as untimely. As to the Petition regarding our March 19, 2026 Decision, the WCJ deferred to the Appeals Board.

We have considered the contents of the Petitions and the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will dismiss as untimely defendant's

Petition as to the February 1, 2021 Findings and deny defendant's Petition as to our March 19, 2026 Decision.

FACTS

Applicant alleged that while employed by defendant as a tilt tray operator, she sustained injury AOE/COE from June 6, 2018 through June 6, 2019 to the head, brain, eye, psyche, digestive system, and internal system (ADJ12812012) and from June 6, 2018 through June 6, 2019 to the cervical spine, thoracic spine, lumbar spine, right arm, right elbow, right wrist/hand, fingers, right hip, right leg, right foot, and digestive system (ADJ12333976).

The parties proceeded with discovery and retained Keola Chun, M.D., as the orthopedic PQME and Khaled Anees, M.D., as the neurological PQME.

On September 8, 2020, Dr. Anees was deposed by the parties regarding the causal nexus between applicant's prediabetes and work-related stress and whether applicant's prediabetes could have led to a 2016 transient ischemic attack (TIA)[1]. Dr. Anees testified, in relevant part, as follows:

> Q: Could stress, whether it is derived from work or nonwork-related activities, be a contributing factor for prediabetes?
>
> A: That would be outside of my area of expertise. Causation of diabetes or prediabetes, that's more for—an internal medicine-specialist type question.
>
> Q: I think you can tell where I am going with this. Would you defer to an internal medicine specialist to see if they could establish a causal nexus between work-related stress, prediabetes, and then, ultimately if there is a causal nexus, then you could comment potentially on the prediabetes leading to the TIA?
>
> A: Yes.

(Exhibit F, pp. 7:16-8:4.)

On December 9, 2019, defendant filed a Declaration of Readiness to Proceed in ADJ12333976 on the issue of injury AOE/COE. A status conference was then held on March 12, 2020, and the two cases were ordered consolidated.

[1] While applicant's cumulative injury claim was only pled for the one-year period from June 6, 2018 through June 6, 2019, applicant testified at trial that she commenced employment with defendant on June 2003, and that in 2016, she had a stroke at work. (Minutes of Hearing and Summary of Evidence (MOH and SOE), May 4, 2012, pp. 5:5-6, 6:3-4.)

On January 7, 2021, the cases proceeded to trial on the issue of applicant's entitlement to an additional panel in internal medicine. Medical reports from multiple physicians, including Drs. Chun and Anees were offered and entered into evidence. The parties also stipulated that the employer's insurance carrier at the time of the injuries was Arch Insurance Company.

On February 1, 2021, the WCJ issued Findings indicating that no good cause had been shown for an additional panel in internal medicine. The WCJ further held that applicant sustained injury AOE/COE while employed by defendant during the period June 6, 2018 through June 6, 2019 to the head, brain, eye, psyche, digestive system, and internal system (ADJ12812012) and during the period June 6, 2018 through June 6, 2019 to the cervical spine, thoracic spine, lumbar spine, right arm, right elbow, right wrist/hand, fingers, right hip, right leg, right foot, and digestive system (ADJ12333976).

Neither party sought reconsideration of the February 1, 2021 Findings.

Thereafter, the parties proceeded to a further trial on May 4, 2021. Issues set for determination included injury AOE/COE; parts of body injured; temporary disability; permanent disability; apportionment; need for further medical treatment; attorney fees; post-termination filing; and the good faith personnel action defense. Applicant provided testimony but additional medical evidence was neither offered nor entered into evidence.

On August 16, 2021, the WCJ issued an F&O which held that applicant, while employed by defendant as a tilt tray operator during the period from June 6, 2018 through June 6, 2019, did *not* sustain injury AOE/COE in ADJ12812012 or ADJ12333976. The WCJ further held that applicant was not entitled to an additional panel in internal medicine.

Applicant sought reconsideration of the August 16, 2021 F&O and on March 19, 2026, we granted reconsideration and issued a Decision wherein we held that applicant was entitled to an additional panel in internal medicine, rescinded the August 16, 2021 F&O, and substituted it with a new F&O which included injury findings from the February 1, 2021 Findings and an additional finding confirming coverage by Arch Insurance Company during both injury dates, as previously stipulated by the parties.

Defendant now seeks reconsideration of the February 1, 2021 Findings and our March 19, 2026 Decision.

DISCUSSION

I.

Preliminarily, former Labor Code section 5909[2] 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 under the Events tab 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 8, 2026, and 60 days from the date of transmission is June 7, 2026, which is a Sunday. The next business day that is 60 days from the date of transmission is June 8, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision was issued by or on June 8, 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

[2] Unless otherwise stated, all further statutory references are to the Labor Code.

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall constitute notice of transmission.

Here, according to the proof of service for the Report, the Report was served on April 8, 2026 and the case was transmitted to the Appeals Board on April 8, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on April 8, 2026.

II.

We also find it relevant to discuss the distinction between a petition for reconsideration and a petition for removal. A petition for reconsideration is taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order is defined as one that determines "any substantive right or liability of those involved in the case" or a "threshold" issue fundamental to a claim for benefits. (*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 [43Cal.Comp.Cases 661]; *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold issues include, but are not limited to, injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of limitations. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian*, *supra*, at 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, and other similar issues.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr,*

McClellan, Ingersoll, Thompson & Horn (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Bd. en banc).) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the Appeals Board or Court of Appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

Here, the WCJ's February 1, 2021 Findings and our March 19, 2026 Decision involved threshold findings regarding injury AOE/COE as well as the interlocutory or intermediate evidentiary issue of applicant's entitlement to an additional panel in internal medicine.

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.

Here, defendant challenges threshold findings and interlocutory issues. Accordingly, the decisions are final orders subject to reconsideration rather than removal.

III.

Turning now to the merits of the Petitions, we remind the parties that there are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address in 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 considered 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).) This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd*. (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

Here, the Findings were issued and served on February 1, 2021, and our Decision was issued and served on March 16, 2026. Defendant's Petitions were filed on April 7, 2026. Although the Petition as to our March 16, 2026 Decision is timely, the Petition as to the February 1, 2021 Findings was filed in excess of 25 days after the service of the decision, and beyond whatever extension of time, if any, defendant might have been entitled to under WCAB Rule 10600. We therefore dismiss as untimely defendant's Petition as to the February 1, 2021 Findings.

With respect to our decision in *Clark v. City of Vallejo* (May 20, 2024, ADJ12000811), as raised by defendant in the first Petition, the issue before the Appeals Board there concerned our ability to correct our own legal error regarding the rate of compensation to be paid to applicant. We stated that:

> For injuries sustained after January 1, 1990, section 4453 disability indemnity benefits are calculated "according to the limits in this section in effect on the date of injury." (Lab. Code, § 4453(d); see *Baker v. Workers' Comp. Appeals Bd.* (2011) 52 Cal.4th 434, 4446-447 [76 Cal.Comp.Cases 701].) Where there is concurrence of compensable disability and the employee's knowledge that the disability was caused by employment, the date of injury is pursuant to section 5412. (*Chevron U.S.A. v. Workers' Comp. Appeals Bd.* (*Steele*) (1990) 219 Cal.App.3d 1265, 1270-1271 [55 Cal.Comp.Cases 107].) Consequently, the applicable permanent disability indemnity amount and rate provided in section 4453 is based on the date of injury and not the date of compensable disability or permanent and stationary status. (*Steele, supra,* 219 Cal.App.3d at pp. 1270-1271.) Thus, here we should have found that the rate was based on the section 5412 date of injury of September 5, 2018, and it was a legal error to find that the rate was $1,066.72.

(*Id.* at p. 7.)

There, we issued a notice of intention pursuant to section 5803 that we intended to correct the legal error, and *we received no objection* to our doing so. Thus, on the basis that the statutory framework dictated the proper rate of compensation, we found that good cause existed to correct the error.

Here, in a well-written and well-argued Petition, defendant now challenges the WCJ's February 1, 2021 Findings. The WCJ admits that the findings as to injury AOE/COE were clerical errors. However, defendant did not raise the issue of the WCJ's errors until after we issued our Decision. While we acknowledge that the Appeals Board has continuing jurisdiction over its decisions under sections 5803 and 5804, and that a legal error by the Appeals Board in incorrectly analyzing and applying the statutory provisions in the Labor Code may be good cause to alter a decision, we do not believe that our jurisdiction extends to correction of substantive errors by a

WCJ where there is a failure to timely challenge those errors. Thus, we have no choice but to dismiss the Petition.

IV.

Turning to defendant's remaining Petition, defendant contends that there is no good cause for an additional panel in internal medicine and that they would suffer "irreparable harm" in the "reopening of litigation [and] nullif[ication of] statutory limitations on discovery" thus "stripping [d]efendant of the finality to which it is entitled[.]" (*Id*. at p. 23.) Given that this is an interlocutory or intermediate evidentiary issue, we will apply the removal standard for our review. (See *Gaona, supra*.)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd*. (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) The petitioner must also demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

We are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy. As discussed in our March 19, 2026 Decision, based upon the totality of the evidence, including the opinion of neurological PQME Dr. Anees, good cause exists for a panel in internal medicine.

V.

Defendant further contends that the findings regarding injury AOE/COE outlined in the February 1, 2021 decision are clerical errors "not supported by the record nor by substantial evidence." (Petition, p. 4.) Defendant therefore requests that our March 19, 2026 Decision be rescinded and the August 16, 2021 F&O be reinstated. A reinstatement of the August 16, 2021 F&O, however, conflicts with the standing February 1, 2021 Findings, and, as noted above, reconsideration of the February 1, 2021 Findings is now untimely.

Further, section 5804 provides that "[n]o award of compensation shall be rescinded, altered, or amended after five years from the date of the injury." Our Supreme Court has also expressed in the case of *Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288, 297 [56 Cal.Comp.Cases 476], that the Appeals Board "is empowered with continuing jurisdictional authority over all of its orders, decisions and awards … However, this power is not unlimited … The WCAB's authority under section 5803 to enforce its awards, including ancillary proceedings involving commutation, penalty assessment and the like, is not to be confused with its limited jurisdiction to alter prior awards by benefit augmentation at a later date. The latter action is subject to the provisions of sections 5410 and 5804." More recently, in the case of *Barnes v. Workers' Comp. Appeals Bd.* (2000) 23 Cal.4th 679 [65 Cal.Comp.Cases 780], the Supreme Court recognized "the difference between a petition to rescind an award and one simply to enforce an award" and expressed that section 5804 prohibits recission, alteration, or amendment of an award after five years from the date of injury whereas section 5803 allows continuing jurisdiction over disputes pertaining to ongoing awards (i.e. enforcement). (*Id*. at pp. 785-786.) The Supreme Court noted that any attempts to rescind, amend, or alter an award under the cover of "enforcement" would continue to be subject to section 5804 as "[t]his conclusion is consistent with the purpose of the limitation period to foster both certainty and finality in the law." (*Id*. at p. 785.) In our recent significant panel decision of *Radar v. Ticketmaster Corp.* (2026) [90 Cal.Comp.Cases 11], we further explained that "the WCAB's jurisdiction to enforce an award extends beyond section 5804's five-year limitations period because an order ascertaining and fixing the exact amount of liability does not rescind, alter or amend any prior award in violation of section 5804."

Defendant refers to the case of *Toccalino v. Workers' Comp. Appeals Bd*. (1982) 128 Cal.App.3d 543 [47 Cal.Comp.Cases 145, 154–155]. In *Toccalino*, the Court of Appeal held the Appeals Board may correct clerical errors at any time without the need for further hearings. In the case of *In re Candelario* (1970) 3 Cal.3d 702, 705, 91, the term "clerical error" was defined as all errors, mistakes, or omissions which are not the result of the exercise of the judicial function.

In the case of *Nestle Ice Cream Co., LLC v. Workers' Comp. Appeals Bd.* (*Ryerson*) (2007) 146 Cal.App.4th 1104 [72 Cal.Comp.Cases 13], the Court of Appeal held that pursuant to former WCAB Rule 10858 (now WCAB Rule 10966), before a petition for reconsideration is filed, a workers' compensation judge may correct a decision for clerical, mathematical or procedural error or amend the decision for good cause under the authority and subject to the limitations set out in

sections 5803 and 5804. (*Id*. at p. 16.; Cal. Code Regs., tit. 8, § 10966.) Further, pursuant to former WCAB Rule 10859 (now WCAB Rule 10961), after the timely filing of a petition for reconsideration, a WCJ may, within the period of 15 days following the date of filing of that petition for reconsideration, amend or modify the order, decision or award or rescind the order, decision or award and conduct further proceedings, but the time for filing a petition for reconsideration pursuant to section 5903, runs from the filing date of the new, amended or modified order. (*Ibid*.; Cal. Code Regs., tit. 8, § 10961.) The Court of Appeal in *Ryerson* noted that an amended decision making a substantive correction to an original decision triggered a new 20-day filing period because the substantive change involved a judicial function rather than a clerical one.

Here, the substantive change defendant requests similarly involves a judicial function rather than a clerical one. Further, as outlined above, the time limits for making amendments have now passed.

Accordingly, we dismiss defendant's Petition for Reconsideration of the February 1, 2021 Findings, and we deny defendant's Petition for Reconsideration of our March 19, 2026 Decision.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the WCJ's February 1, 2021 Findings of Fact is **DISMISSED**.

IT IS ORDERED that defendant's Petition for Reconsideration of the March 19, 2026 Opinion and Decision After Reconsideration by the Workers' Compensation Appeals Board is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 8, 2026

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

VIRGINIA GUTIERREZ ALVARADO
MULLEN & FILIPPI, LLP
GLAUBER BERENSON VEGO

RL/*cs*

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