

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

**ZOILA MARINA CARBALLO HERNANDEZ, *Applicant***

**vs.**

**SAN FRANCISCO STATE UNIVERSITY;  
legally uninsured, *Defendants***

**Adjudication Number: ADJ13493291, ADJ19093281, ADJ12260890  
San Francisco District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION**

Applicant seeks reconsideration of the January 27, 2026 Findings of Fact, Joint Orders issued by the workers' compensation administrative law judge (WCJ). We have considered the Petition for Reconsideration, the Answer, and the contents of the Report and Recommendation on Petition for Reconsideration (Report), and we have reviewed the record in this matter. Based upon our preliminary review of the 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 Labor Code section 5950 et seq.

**I.**

Preliminarily, we note that former Labor Code.<sup>1</sup> 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:

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<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise noted.

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

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<sup>2</sup> 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.

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.

The WCJ provided the following discussion in the Report:

### II. FACTS

#### *1. Background.*

Cases ADJ12260890 and ADJ13493291 had previously been tried with a decision issued and the WCAB issuing a Decision After Reconsideration. The Appeals Board amended the prior Findings and Order to include that the record needed to be developed regarding the applicant's ulcers and/or hiatal hernia, in addition to her lumbar spine. After the prior trial, the applicant filed another application which was assigned case number ADJ19093281.

Parties stipulated, in part based on the results of the prior trial, that in case number ADJ12260890, the applicant Zoila Hernandez, while employed on November 29, 2017, as a custodian, Occupational Group Number 340, at San Francisco, California, by San Francisco State University, sustained injury arising out of and in the course of employment to her low back. In case number ADJ13493291, the applicant, while employed during the period through August 5, 2020, as a custodian, Occupational Group Number 340, by San Francisco State University, sustained injury arising out of and in the course of employment to her low back. In case number ADJ19093281, the applicant, while employed during the period through January 30, 2024, by San Francisco State University, sustained injury arising out of and in the course of employment to her low back. For all dates of injury, the employer was legally uninsured. The applicant's primary treating physician for all dates of injury is Dr. Toufan Razi.

Some issues for trial were the same for all dates of injury including the parts of body injured, permanent disability, apportionment, future medical care, attorney fees, whether there had been a change in condition warranting further development of the record, and whether the applicant is entitled to a Supplemental Job Displacement Benefit Voucher (SJDBV). In case number ADJ19093281, additional issues include the permanent and stationary date as well as the occupation and group number for the applicant in relation to this injury.

#### *2. Evidence at Trial.*

Evidence is reviewed in full in my January 27, 2026 Opinion on Decision. However, because applicant's contentions focus on the need to develop the

record regarding various medical conditions, I excerpt here from my Opinion the evidence I find relevant to the applicant's 2/23/2026 Petition.

*Defendant's Exhibit KK: AME report of Peter Mandell, M.D., dated May 9, 2024. Joint Exhibit 110: Supplemental AME report of Peter Mandell, M.D., dated January 18, 2025.*

The applicant was re-evaluated by Agreed Medical Evaluator (AME) Peter Mandell, M.D. on May 9, 2024. (Defendant's Exhibit KK, p. 1.) No updated medical records were provided to Dr. Mandell. (*Id.* at p. 6.) In his summary of the interval history from his prior exam, Dr. Mandell notes that the applicant worked until January 2024 when she was taken off work by a doctor due to pain. (*Id.* at p. 2.) The applicant had abdominal hernia repair surgery about one year prior to the re-evaluation. (*Id.* at p. 3.) She had several falls which further injured her back. (*Ibid.*)

In discussing the applicant's complaints at the time of the re-evaluation, Dr. Mandell noted that:

"Her back pain is worse now than when I last saw her. The pain is all the across her lower back now. She has constant pain going down the anterior aspect of her LEFT thigh to about the knee. There is also pain in the back of her LEFT thigh. There is numbness, tingling, and weakness in her LEFT lower limb. She notes no bowel or bladder control problems. Sometimes there is a little bit of pain going down her RIGHT lower limb as well.

Sitting bothers her back. She can do it maybe 15 minutes or so and then she needs to get up and stretch. Standing still bothers her. She can do it maybe 10 minutes or so. Then she needs to sit down and take a break. Walking bothers her. She can do it maybe 15 minutes or so. Then she needs to sit down and rest. She avoids stooping. It hurts, but she can lift maybe 10 pounds at most. She doesn't know if she limps. She uses a cane whenever she walks but not otherwise. She alternates hands. She doesn't think she limps. She has been using a cane for four or five months now. She can't run or dance. She has trouble squatting and especially getting up. She doesn't kneel at all. Stairs bother her, and she has to hold onto the railing. She has trouble getting in and out of vehicles.

She can comb her hair, brush her teeth, drive, dress herself, and write. She doesn't know how to use a computer. She can use a cell phone. Sometimes she has trouble sleeping. She does no yard work. It hurts a lot, but she can do housework if she has to. She does no sports.

She does have pain in both shoulder blade and trapezial areas.

She was asked multiple times. She recalls no other listed above. symptoms except as listed above.” (Defendant’s Ex. KK, p. 3.)

Dr. Mandell found that the applicant’s condition was permanent and stationary, absent surgery, as of May 9, 2024. ((Defendant’s Ex. KK, p. 6.) Following his exam, Dr. Mandell diagnosed the applicant with symptomatic cervical disc disease with upper extremity radiculopathy, and symptomatic lumbar disc disease with lower extremity radiculopathy. (*Id.* at p. 7.)

Dr. Mandell assigned whole person impairments (WPI) based on restrictions in her activities of daily living for the cervical and lumbar spines. (Defendant’s Ex. KK, p. 7.) Regarding the cervical spine, he apportioned 100% of the applicant’s disability to the cumulative trauma through January 2024. (*Ibid.*) For the lumbar spine, Dr. Mandell apportioned 30% to the November 29, 2017 specific injury, 35% to the cumulative trauma through August 5, 2020, and 35% to the cumulative trauma through January of 2024. (Joint Ex. 110, pp. 1-2.) The apportionment decision was based on Dr. Mandell’s “... training, experience, judgment, and skill.” (*Id.* at p. 2.) No medical reports were provided for the January 18, 2025 supplemental report.

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*Defendant’s Exhibit JJ: Panel QME report of Lawrence Richman, M.D., dated May 14, 2024. Defendant’s Exhibit NN: Transcript of the deposition of Lawrence Richman, M.D., dated October 30, 2024.*

The applicant was evaluated by neurology QME Lawrence Richman, M.D. on May 10, 2024, at which time she was holding a cane in her right hand. (Def. Ex. JJ, p. 1.) Dr. Richman’s deposition was taken by the parties on October 10, 2024. (Def. Ex. NN, p. 1.) At the time of the evaluation, the applicant had complaints of anxiety, depression, blurring of vision in both eyes, and dizziness. (Def. Ex. JJ, p. 2.) She also reported constant cervical spine pain, constant pain in the bilateral shoulders, constant pain of the bilateral upper limbs with numbness and tingling, pain in the left lower limb, with weakness of the bilateral lower limbs and left arm. (*Id.* at pp. 2-3.) She additionally had difficulty sleeping due to pain, anxiety, and depression. (*Id.* at p. 3.) The applicant represented that she last worked January 30, 2024 with no treatment since that time. (*Id.* at p. 2.)

In his examination of the applicant, Dr. Richman observed full motor force in, “... the upper and lower limbs without evidence of wasting, weakness or fasciculations.” (Def. Ex. JJ, p. 4.) He observed straightening of the cervical lordosis with spasm and tenderness, bilateral spasm and tenderness in the trapezius muscle, and straightening of the lumbar lordosis with spasm and tenderness. (*Ibid.*) Unlike Dr. Mandell, Dr. Richman was provided medical records for review. (*Id.* at pp. 4-18.)

Following his review of the medical records, and examination of the applicant, Dr. Richman diagnosed cervicogenic headaches, and sleep disturbance on an industrial basis. (Def. Ex. JJ, p. 18.) In his summary, Dr. Richman stated:

“[The applicant] appears to have been subjected to continuous trauma rather than a specific injury predominantly causing lumbar spine complaints, although there is reference to the patient having cervical spine complaints as well. She also developed sleep disturbance due to pain, which is documented in the medical records. She had complaints involving anxiety and depression, which should be addressed by a board-certified psychiatrist of the parties' choosing. She should undergo a polysomnogram to rule out Obstructive Sleep Apnea. She has experienced weight gain, which should be further addressed by the Panel Qualified Medical Evaluator in internal medicine as to whether her weight gain was industrially related or not, which could further aggravate Obstructive Sleep Apnea.” (Def. Ex. JJ, pp. 20-21.)

In his deposition, Dr. Richman affirmed that the applicant's anxiety and depression should be evaluated by a psychiatry QME or AME. (Def. Ex. NN, p. 17, lines 5-19.) In addressing the applicant's complaints of blurred vision and dizziness, Dr. Richman opined that since there was no evidence of a trauma to the head, these complaints may best be evaluated by a psychiatrist or psychologist as they may result from a generalized anxiety disorder. (*Id.* at p. 24, lines 1-23.) Similarly, Dr. Richman opined that the lack of a head injury indicated that the applicant's complaints regarding forgetfulness, hearing, taste, and smell would best be addressed by a psychiatric evaluation. (*Id.* at p. 25, lines 9-25; p. 34, lines 3-7.) Additionally, he confirmed his recommendation for a polysomnogram. (*Id.* at p. 17, lines 20-23; p. 35, lines 11-17.)

Dr. Richman found the applicant's disability to be permanent and stationary for her headache complaints at the time of the evaluation report. (Def. Ex. JJ, p. 21.) Although not explicitly stating what would be a strict rating per the (*AMA Guides to the Evaluation of Permanent Impairment* (5th Edition) (“*AMA Guides*”), Dr. Richman references *Almaraz/Guzman* in assigning a rating. (Def. Ex. JJ, p. 21.) Utilizing Table 13-11 of the *AMA Guides* for the rating of impairment of the trigeminal nerve, he assigns a 5% WPI. (*Ibid.*) Although not specifically stating that the disability for the sleep-related complaints is permanent and stationary, Dr. Richman provides a 6% WPI based on, “... the average hours that she sleeps and her score on the Epworth Sleepiness Scale.” (*Ibid.*) Dr. Richman does not state what area of the *AMA Guides* he is relying on for that rating. He apportions 100% of the applicant's disability for headaches to a “...continuous trauma sustained during her course of employment with San Francisco State University.” (*Ibid.*) He apportions 100% of the applicant's disability for sleep-related complaints “...to her course of employment with San Francisco State University between August 5, 2020 through August 5, 2021, as

pled and likely longer, given the duration of time that she has been employed.”  
(*Ibid.*)

Dr. Richman opines that the applicant may have Obstructive Sleep Apnea, which may or may not be industrial. (Def. Ex. JJ, p. 21.) He required a polysomnogram to provide a more thorough analysis on that question. (*Ibid.*) There was a provision for further medical care in the form of medication, but there were no work restrictions for the headaches or sleep complaints. (*Ibid.*)

In his deposition, Dr. Richman confirmed his diagnosis of cervicogenic headaches and clarified that it was based on the applicant’s subjective complaints. (Def. Ex. NN, p. 7, line 14 – p. 8, line 3.) He noted that the applicant had complained of mood related sleep issues, and that issue would best be evaluated by a psychiatric consult. (*Id.* at p. 11, lines 3-8.) The only diagnosis that Dr. Richman intended to provide was of cervicogenic headaches. (*Id.* at p. 11, lines 15-18.) The doctor also explained that the applicant’s headaches could be caused by factors other than neck pain, such as sleep hygiene, obstructive sleep apnea, emotional stress, or esophagitis. (*Id.* at p. 14, line 17 – p. 15, line 6.) If the applicant’s neck complaints were non-industrial, then her cervicogenic headaches would likewise be non-industrial. (*Id.* at p. 15, lines 20-24.)

Following an extensive discussion of the parameters of diagnosing complex regional pain syndrome (CRPS), and his own expertise in the area, Dr. Richman opined that the applicant did not have CRPS. (Def. Ex. NN, p. 32, lines 19-20.)

*Defendant’s Exhibit LL: Panel QME report of Andrew McClintock Greenberg, M.D., dated May 17, 2024. Defendant’s Exhibit MM: Panel QME report of Andrew McClintock Greenberg, M.D., dated December 13, 2024.*

The applicant was seen by QME Andrew McClintock Greenberg, M.D. for an internal medicine re-evaluation on May 17, 2024, at which time no updated medical reports were provided. (Def. Ex. LL, pp. 1, 9.) Although the applicant’s chief complaint was pain in the low back and neck with weakness in the legs, Dr. Greenberg listed a total of 49 separate complaints. (*Id.* at pp. 2-6.) Dr. Greenberg noted that the applicant had a history of migraine headaches, gastroesophageal reflux disease (GERD), and dyslipidemia. (*Id.* at p. 6.) In his review of symptoms, the applicant denied shortness of breath. (*Id.* at p. 7.) The applicant’s disability was not permanent and stationary at the time of the May 17, 2024 re-evaluation because of the need to review medical records. (*Id.* at pp. 9-10.)

Another re-evaluation occurred on December 13, 2024 at which time medical records were provided and reviewed. (Def. Ex. MM, pp. 1, 9-15.) At the time of the re-evaluation, Dr. Greenberg stated that the applicant had shortness of breath when speaking. (*Id.* at p. 8.) Dr. Greenberg diagnosed the applicant with GERD and a hiatal hernia. (*Id.* at p. 16.) He explained that a hiatal hernia is:

“[A]n anatomic defect where part of the stomach is in the chest (instead of below the diaphragm); as part of the stomach is within the chest, this promotes the formation of GERD due to mechanical factors. GERD (when due to a hiatal hernia) does not respond completely to medications, as there is reflux of stomach contents into the esophagus due to the anatomical defect.” (Def. Ex. MM, pp. 16-17.)

Dr. Greenberg stated that there was no evidence to support industrial causation of the applicant’s GERD and found it to be a non-industrial condition. (Def. Ex. MM, p. 17.) He also opined that the hiatal hernia was non-industrial as there was no causal link to the lumbar spine injury. (*Ibid.*) Dr. Greenberg further opined that the applicant’s shortness of breath, although unrelated to her hiatal hernia repair, was a non-industrial causation. (*Ibid.*)

*Defendant’s Exhibit GGG: Subpoenaed records of Kaiser hospital and PMG Walnut Creek, Bates stamped pages 174-302.*

The applicant was seen in the emergency department of Kaiser Permanente Richmond on the evening of August 2, 2025 for a primary complaint of abdominal pain that started the same day. (Def. Ex. GGG, p. 174.) The applicant denied nausea and vomiting. (*Ibid.*) She reported to recently having been fine but stated that she recently fell onto her left knee and bruised and abraded it. (*Id.* at p. 177.) The applicant, who was walking with a cane at the emergency department, said that her left leg was not working properly, and she fell. (*Ibid.*) On August 2, 2025 the applicant had no neurological symptoms or disorganized thinking. (*Id.* at pp. 185-186.)

On August 5, 2025 the applicant returned to the Kaiser Emergency Department for her fall on July 31, 2025. (Def. Ex. GGG, p. 243.) It is noted that August 5, 2025 was a trial date in this matter when the applicant’s attorney represented that his client had a fall on July 30, 2025, was knocked unconscious, and felt the need to be seen by doctors at Kaiser. (8/5/2025 MOH, p. 2, EAMS Doc ID 79492755.) The history of the illness in the Kaiser record was that the applicant:

“[P]resents c/o headache, dizziness, nausea/vomiting, persistent right knee pain and some numbness of the left leg since GLF trip and fall 5 days ago. She reports that she tripped and fell forward onto her forehead and bilateral knees 5 days ago. Since then she has had a headache, nausea/vomiting, abdominal discomfort, left knee pain, and intermittent confusion. She doesn't feel like herself and notes that her symptoms are progressively worsening prompting ED presentation. Of note she was seen in the ED 3 days ago with abdominal pain. She had a reassuring CT abdomen/pelvis at that time. She notes that since the fall she has been getting a lot of abdominal bloating and pain with eating as well. She has vomited. She notes some depression, anxiety, and not feeling herself. She

has been able to ambulate with a cane but her left knee is very painful and swollen still.” (Def. Ex. GGG, p. 243.)

The examining physician did note left knee swelling on August 5, 2025. (Def. Ex. GGG, p. 244.) An MRI and a CT of the cervical spine were done on August 5, 2025. (*Id.* at pp. 246-247.) The treating physician suspected post-concussion syndrome. (*Id.* at p. 247.)

### *3. Findings of Fact and Joint Orders – January 27, 2026.*

After consideration of all the evidence I concluded that the applicant failed to meet her burden to prove injury in the form of the form of ulcers or hiatal hernia in ADJ12260890 and ADJ13493291. (1/27/2026 Finding of Fact no. 9.) I found that there was a need to develop the record regarding the applicant’s orthopedic body parts and headaches in all three cases. (1/27/2026 Finding of Fact no. 7.) I additionally found that the injury in ADJ19093281 did not cause injury to vision, hearing, the respiratory system in the form of breathing difficulty, esophageal hernia, prediabetes, ulcer, migraines, cognitive impairment, and gastrointestinal injury. (1/27/2026 Finding of Fact no. 10.) I also found that there was not good cause to develop the record regarding those body parts. (1/27/2026 Finding of Fact no. 11.)

My Findings of Fact were silent on the need to develop the record regarding the applicant’s sleep complaints. This was an inadvertent omission from the Findings of Fact. The need to develop the record on that issue was discussed in the January 27, 2026 Opinion on Decision. (1/27/2029 Opinion, pp. 11-12.) Since the January 27, 2026 Findings of Fact was silent on developing the record on sleep, but deferred all other issues, with jurisdiction reserved, I do not feel that reconsideration needs to be granted in order to develop the record regarding the sleep condition.

### *4. Contentions on Reconsideration.*

The applicant contends that the evidence does not justify the findings of fact, the findings of fact do not support the award, and that by the findings of fact and orders, I acted without or in excess of my authority. (2/23/2026 Petition, p. 7.)

The applicant contends I erred in finding there was not a need to develop the record regarding the claims of injury to vision, hearing, cognitive impairment, and gastrointestinal injury. (2/23/2026 Petition, p. 2.) It is my finding that there is not a need to develop the record on those body parts that is the focus of the 2/23/2026 Petition, however, the petition also disputes my opinion that the applicant’s testimony was not credible. (2/23/2026 Petition, pp. 2, 5-6.) The applicant does not dispute the closure of discovery regarding the respiratory system, hernia, prediabetes, or ulcer. It therefore appears that the applicant is not contesting any of the findings related to ADJ12260890 and ADJ13493291 since

the body parts of vision, hearing, cognitive impairment, and gastrointestinal injury were only claimed in case number ADJ19093281 at the time of this trial.

(Report at pp. 2-11, footnotes omitted.)

### III.

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

The employee bears the initial burden of proving injury arising out of and in the course of employment (AOE/COE) by a preponderance of the evidence. (Lab. Code, § 5705; *South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3202.5, 3600(a).) Moreover, it is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) “The term ‘substantial evidence’ means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value.” (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) To constitute substantial evidence “... a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions.” (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Medical evidence is required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c)(d), 4061(i), 4062.3(l).) “Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board’s findings if it is based on surmise, speculation, conjecture or guess.” (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Here, it is unclear from our preliminary review that there is substantial medical evidence to support the WCJ's decision on the issue of industrial causation. Where the medical evidence or opinion on an issue is incomplete, stale, and no longer germane, or is based on an inaccurate history, or speculation, it does not constitute substantial evidence. (*Place v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Based on our review, we are not persuaded that the record is properly developed. 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.

#### IV.

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.

## V.

Accordingly, we grant applicant’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](mailto:WCABmediation@dir.ca.gov).*

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration 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/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY 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.**

**ZOILA MARINA CARBALLO HERNANDEZ  
LAW OFFICE OF KENNETH MARTINSON  
MULLEN & FILIPPI, LLP**

**PAG/bp**

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