

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

**FELIPE MARTINEZ, *Applicant***

**vs.**

**COUNTY OF ORANGE, permissibly self-insured  
administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ11411398  
Santa Ana District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION**

Applicant seeks reconsideration of the January 9, 2024 Findings and Order wherein the workers' compensation administrative law judge (WCJ) found that applicant claims to have sustained industrial injury to his head, brain, eyes, multiple parts, and nervous system while employed during the period from January 1, 2005 to August 21, 2017 as an investigator. The WCJ further found that applicant did not show a sufficient basis to prove that Dr. Michael Muhonen engaged in impermissible ex parte contact with a party to warrant a replacement of the IME under the applicable Alternative Dispute Resolution process.

Applicant contends that the WCJ erred in failing to disqualify Dr. Muhonen for ex parte contact with applicant's wife and applicant's attorney.

Defendant filed an Answer. The WCJ prepared a Report and Recommendation of Workers' Compensation Judge on Petition for Reconsideration (Report), recommending that the Petition be denied.

In the Report, the WCJ stated:

The Applicant, Felipe Martinez, claims he sustained an injury to his head, brain, eyes, and nervous system from January 1, 2005, to August 21, 2017, during his employment with the County of Orange as an investigator. The matter proceeded to trial on the sole issue of whether the Independent Medical Examiner (IME), Michael Muhonen, M.D., should be disqualified for allegedly attempting to engage in ex parte contact with the Applicant's wife and the Applicant's Attorney

via email and voicemail respectively. The trial court issued a Findings and Order on January 9, 2024, finding insufficient grounds to disqualify the IME.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter.<sup>1</sup> 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.

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

Labor Code<sup>2</sup> section 3201.5 authorizes certain employers and unions to negotiate an "alternative dispute resolution [ADR] system" that "supplements or replaces" the statutory process for resolving workers' compensation disputes. However, the Appeals Board retains the jurisdiction to review final orders, decisions, or awards in the same manner as provided for reconsideration. (Lab. Code, § 3201.5(a).) On September 27, 2022, we issued an Opinion and Order Dismissing Petition for Reconsideration noting that the WCJ's July 13, 2022 Findings and Order was a non-final order and subject to dismissal. The case returns to us now in essentially the same posture. We note, however, that the parties have not stipulated that this claim is subject to an ADR agreement, while exhibit 1 contains what appears to be portions of an ADR agreement. We further note that the parties have not raised the issue of jurisdiction or presented any evidence as to whether a possible ADR agreement provides for submission of the current issue to the Workers' Compensation Appeals Board. Due to the lack of clarity in the record, we will grant reconsideration to further study the factual and legal issues in this case.

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<sup>1</sup> Commissioner Sweeney, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

<sup>2</sup> All further statutory references are to the Labor Code, unless otherwise noted.

## II.

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.

### III.

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/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**March 22, 2024**

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

**FELIPE MARTINEZ  
CHRISLIP & HERVATIN  
THOMAS KINSEY**

**PAG/abs**

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