

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

**BIANNKA SOSA, *Applicant***

**vs.**

**REACH RESOURCE FOR EDUCATION; YORK RISK SERVICES GROUP, INC.,  
A SEDGWICK COMPANY, *Defendants***

**Adjudication Numbers: ADJ12553507, ADJ12552470  
Pomona District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Applicant seeks reconsideration of the Joint Findings of Fact issued by the workers' compensation administrative law judge (WCJ) on June 26, 2024, wherein the WCJ found in relevant part that there was no evidence of a plainly erroneous mistake of fact in the May 17, 2024 Independent Medical Review (IMR) Final Determination Letter; and that applicant's May 27, 2024 appeal from the IMR Determination of the Administrative Director (A.D.) does not show evidence of any plainly erroneous findings of fact nor that the A.D. acted in excess of his powers; and denied applicant's appeal from the IMR Determination.

In the Petition for Reconsideration (Petition), applicant contends that under Labor Code section 4610.6, the IMR determination should be set aside. Applicant requests that the WCJ's Joint Findings of Fact be nullified, and that we issue an order directing the A.D. to conduct a new IMR, with a different reviewer.

The WCJ issued a Report and Recommendation (Report) recommending that the Petition be granted. Defendant did not file an answer.

We have considered the allegations of the Petition and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, we will grant reconsideration, rescind the WCJ's decision, and

return this matter to the WCJ for further proceedings and decision. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

I.

Former Labor Code 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, Labor Code 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 Labor Code 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 August 7, 2024, and 60 days from the date of transmission is Sunday, October 6, 2024. The next business day that is 60 days from the date of transmission is Monday, October 7, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>1</sup> This decision is issued by or on Monday, October 7, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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

---

<sup>1</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.

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. Labor Code 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 WCJ, the Report was served on August 7, 2024, and the case was transmitted to the Appeals Board on August 7, 2024. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 7, 2024.

## II.

Thus, as set forth in the Report, we rescind the Joint Findings of Fact issued by the WCJ on June 26, 2024, and return the matter to the trial level for further proceedings.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the decision of June 26, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of June 26, 2024 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

I CONCUR,

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**October 1, 2024**

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

**BIANNKA SOSA  
MOORE & ASSOCIATES  
D'ANDRE LAW LLP**

**MB/ara**

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

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

**INTRODUCTION**

Petitioner:	Applicant
Timeliness of Petition:	Timely
Verification:	Verified
Issue:	Appeal of IMR Final Determination

Applicant, Biannka Sosa, while employed on July 28, 2019 as a home attendant, sustained injury arising out of and occurring in the course of employment to the left thumb (ADJ12553507).

Applicant, Biannka Sosa, while employed on August 29, 2019, as a home attendant, sustained injury arising out of and in the course of employment to the right thumb (ADJ12552470).

The trial in these cases on June 18, 2024 was limited to the following issue: Whether the A.D. acted in excess of her powers and made a final determination based on a plainly erroneous mistake of fact in the final IME Determination dated May 17, 2024.

The Joint Findings of Fact issued June 25, 2024, from which applicant seeks Reconsideration, concluded there was no evidence of a plainly erroneous mistake of fact shown in the Independent Medical Review Final Determination Letter dated May 17, 2024 (exhibit “C”). Therefore, the applicant’s Appeal from the Medical Review Determination of the Administrative Director (exhibit “1”) was denied.

Applicant claims to have been aggrieved by this decision and filed a Petition for Reconsideration on the following grounds:

1. The evidence does not justify the findings of fact.

**DISCUSSION**

The statement of facts submitted in applicant’s Petition for Reconsideration documented the treatment with Jared Myers, D.O., when that treatment began after applicant underwent surgery to the left thumb and after that surgery failed to cure her symptoms. The treatment with Jared Myers, D.O., addressed both thumb injuries. The medical reports of Jared Myers, D.O., reported on the applicant continuing to complain of significant pain, measuring 10/10. Those reports are noted to show complaints of constant dull ache for a period of two years. The reports of Jared Myers, D.O., after providing continuing treatment for the applicant, provided diagnosis listed as Myofascial pain syndrome, sprain of the right thumb, wrist tendonitis, chronic hand pain, De Quervain thyroiditis and tenosynovitis. Additionally treatment had been provided in the form of physical therapy, multiple medications and home exercise program.

It was the finding of the treating physician Jared Myers, D.O., a treatment plan to include Lyrica 25 mg oral capsule and intravenous 4 session of Ketamine IV infusions was necessary and critical for the applicant's current complaints.

Upon further review of the record and the applicant's Petition for Reconsideration it is concluded the requested relief is appropriate and should be granted.

**RECOMMENDATION**

It is recommended the Petition for Reconsideration be granted.

Upon further review and reconsideration of the facts submitted as to the limited issue set for trial, it is now concluded that further review of the Independent Medical Review Final Determination Letter dated May 17, 2024 (exhibit "C") is needed. That the previously denied Appeal from the Medical Review Determination of the Administrative Director (exhibit "1") should be reviewed and reconsidered.

DATE: August 6, 2024

**Sharon Bernal**  
WORKERS' COMPENSATION JUDGE