

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

COVIE HALCOMB, *Applicant*

vs.

**J FOUR ENTERPRISES; EVEREST NATIONAL INSURANCE COMPANY,
Administered By GALLAGHER BASSETT SERVICES, *Defendants***

**Adjudication Number: ADJ10342642
Sacramento District Office**

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

Applicant and defendant have filed separate petitions for reconsideration with regard to a workers' compensation administrative law judge's (WCJ) Findings and Award and Order of August 6, 2024, wherein it was found that while employed on May 13, 2015 as a foreman, applicant sustained industrial injury to the head, eyes, vision, face, jaw, chin and mouth causing permanent disability of 70%. It was also found that "the violent act exception [to not including psychiatric permanent disability as a compensable consequence to a physical injury] applies pursuant to Labor Code section 4660.1(c)(2)(A)." Although there was no finding of psychiatric injury, psychiatric permanent disability was included in the calculation of overall permanent disability.

Applicant contends that the WCJ erred in finding only 70% arguing that applicant's permanent disability should have been calculated by adding applicant's neurological impairment to the ophthalmological, dental, and psychiatric impairments rather than by using the combined values table. Defendant contends in its Petition that the WCJ erred in including psychiatric permanent disability, arguing that the August 19, 2022 report of psychologist Dennis Gardner, PhD was not listed on the pretrial conference statement, and thus should not have been admitted into the evidentiary record, and an improper impairment code was utilized in calculating applicant's migraine permanent disability. Defendant also contends that "psych is not an issued listed on the Pre-Trial Conference Statement." Defendant has filed an Answer to Applicant's Petition and the WCJ has filed a Report and Recommendation on Petition for Reconsideration

addressing the applicant's Petition. Perhaps because defendant's Petition is contained in the response to applicant's Petition, the WCJ has not filed a report addressing defendant's contentions.

We will grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further development of the record, proceedings, and decision.

Preliminarily, we note that 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 27, 2024, and 60 days from the date of transmission is Saturday, October 26, 2024. The next business day that is 60 days from the date of transmission is Monday, October 28, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Monday, October 28, 2024, so 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

¹ 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 workers' compensation administrative law judge, the Report was served on August 27, 2024, and the case was transmitted to the Appeals Board on August 27, 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 27, 2024.

Turning to the merits, in the Report, the WCJ recommends that we grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level so that the record may be further developed, and the issues in this case be reanalyzed in light of our recent en banc decision in *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 (Appeals Bd. en banc). Although *Vigil* had already been issued by the time of the WCJ's decision, discovery in this case had ended prior to the issuance of *Vigil*. We agree with the WCJ's recommendation to allow the parties to develop the record and reanalyze this case in light of *Vigil*. Since we rescind on this basis, we need not reach the defendant's contentions. The WCJ may raise these issues in the further proceedings at the trial level.

For the foregoing reasons,

IT IS ORDERED that Applicant's and Defendant's respective petitions for reconsideration of the Findings and Award and Order of August 6, 2024 are **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award and Order of August 6, 2024 **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

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

I CONCUR,

/s/ **JOSEPH V. CAPURRO, COMMISSIONER**

/s/ **JOSÉ H. RAZO, COMMISSIONER**



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 28, 2024

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

**COVIE HALCOMB
RATTO LAW FIRM
LLARENA, MURDOCK, LOPEZ & AZIZAD
SACRAMENTO COUNTY DCSS**

DW/oo

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