

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

JOSEPH RYAN, *Applicant*

vs.

**CALIFORNIA DEPARTMENT OF CORRECTIONS,
legally uninsured, adjusted by
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ10256108, ADJ10255968,
ADJ10256212, ADJ10256223, ADJ10489875
Van Nuys District Office**

**OPINION AND ORDERS DISMISSING PETITION FOR
REMOVAL/RECONSIDERATION,
GRANTING PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

On July 15, 2024, applicant filed a Petition for Removal and/or Reconsideration regarding the May 8, 2024 Minute Order issued by the workers' compensation administrative law judge (WCJ). On August 26, 2024, applicant also filed a Petition for Reconsideration from the August 8, 2024 Amended Findings and Award Post Reconsideration. We have considered the allegations of the petitions and the contents of the WCJ's Reports with respect thereto. Based on our review of the record, we dismiss the July 15, 2024 Petition for Removal and/or Reconsideration as moot. For the reasons stated in the WCJ's report, which we adopt and incorporate, we will grant reconsideration, rescind the August 8, 2024 Amended Findings and Award Post Reconsideration, and return this matter to the Presiding Judge for reassignment to a different WCJ, due to the WCJ's apparent request for recusal.

In addition, we note that former Labor Code¹ 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:

¹ 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 July 25, 2024, and 60 days from the date of transmission is Monday, September 23, 2024. This decision is issued by or on September 23, 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 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 July 25, 2024, and the case was transmitted to the Appeals Board on July 25, 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 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 July 25, 2024.

For the foregoing reasons,

IT IS ORDERED that removal/reconsideration of the May 8, 2024 Minute Order is **DISMISSED**.

IT IS FURTHER ORDERED that reconsideration of the August 8, 2024 Amended Findings and Award Post Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the August 8, 2024 Amended Findings and Award Post Reconsideration is **RESCINDED** and that the matter is **RETURNED** to the Presiding Judge for reassignment to a different WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 23, 2024

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

**JOSEPH RYAN
METZINGER & ASSOCIATES
STATE COMPENSATION INSURANCE FUND**

PAG/abs

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

**I.
INTRODUCTION**

- | | |
|--|--------------------|
| 1. Finding & Award | 08-08-2024 |
| 2. Identity of Petitioner | Applicant |
| 3. Verification | Yes |
| 4. Timeliness | Petition is timely |
| 5. Petition for Removal Filed | 08-26-2024 |
| 6. The petitioner states that the apportionment is not substantial evidence. | |

**II.
FACTS**

The facts of this case have been reiterated in several reports to the Appeals Board and will not be set forth again in this report.

**III.
DISCUSSION**

In the original decision the undersigned believes this case reflects the applicant to be 100% disabled.

The Appeals Board disagreed and directed apportionment be applied to the disability in this case. The directed changes also require a new decision, and ratings must issue in the companion cases that were previous subsumed with the 100% award. Currently, the award under appeal addresses the Findings as set forth below.

At the direction of the Appeals Board the parties have entered additional evidence in this matter in clarification of the Orders of the Appeals Board issued 09-23-2022 after remand dealing with the issue of Labor Code §4663 apportionment on the spinal disability pronounced by Dr. Hasday in this matter referential to the Findings in ADJ10256108 (MF) and ADJ10255968.

Labor Code §4663 sets forth:

- (a) Apportionment of permanent disability shall be based on causation.
- (b) A physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall address in that report the issue of causation of the permanent disability.
- (c) In order for a physician's report to be considered complete on the issue of permanent disability, the report must include an apportionment determination. A physician shall make

an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

In order to better address the issue Dr. Chester Hasday authored a report dated 01-19-2023 entered into evidence as Exhibit PP as well as Exhibit 9 identified as Fourth Supplemental Vocational Opinion by Frank Diaz dated 07-28-2023.

In the AME Hasday, report dated 01-19-2023 in which he reiterates his apportionment findings in his earlier reporting dated 02-04-2020 Exhibit MM. This Opinion reflects the directed changes made by the Appeals Board and issued on 08-08-2024.

Petitioner filed a timely Petition for Reconsideration. Defendant has not filed an answer.

IV.
RECOMMENDATION

I do not disagree with petitioner's complaints and suggests that the petitioners request be granted including other relief not limited to reassignment to another judge.

DATE: 09-11-2024

Respectfully submitted.

Lynn Devine

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE