

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

**LARRY TRIPP, *Applicant***

**vs.**

**CALIFORNIA DEPARTMENT OF STATE HOSPITALS/COALINGA, STATE  
COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ13470852; ADJ13962033; ADJ13962032; ADJ13470934  
Fresno District Office**

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

We have considered the allegations of the Petition for Removal and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and based upon the WCJ's analysis of the merits of the petitioner's arguments in the WCJ's report, and for the reasons stated below, we will grant reconsideration, rescind the August 26, 2024 Findings and Order, substitute it with a new Findings and Order that includes the Findings of Facts, based on the parties' stipulations, that the WCJ adopts by reference but failed to explicitly state. We will otherwise restate the WCJ's findings and orders.

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:

- (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.

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

(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 September 10, 2024 and 60 days from the date of transmission is Saturday, November 9, 2024. The next business day that is 60 days from the date of transmission is Monday, November 12, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Monday, November 12, 2024, 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 September 10, 2024, and the case was transmitted to the Appeals Board on September 10, 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 September 10, 2024.

Next, we turn to the type of relief being sought. If a decision includes resolution of a “threshold” issue, then it is a “final” decision, whether or not all issues are resolved or there is an

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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.

ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ's decision includes, if only by adoption, findings regarding threshold issues. The parties stipulated to the threshold issues of employment and injury arising out of and occurring in the course of employment (AOE/COE) as to some body parts. (Minutes of Hearing and Summary of Evidence (MOH/SOE), 6/5/2024, at p. 2:4-9.) Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains findings that are final, the petitioner is only challenging an interlocutory finding/order in the decision. Therefore, we will apply the removal standard to our review. (See *Gaona, supra*.)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).) Here, based upon the WCJ's analysis of

the merits of the petitioner's arguments, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

Nevertheless, we will grant the petition for the sole purpose of rescinding the August 26, 2024 Findings and Order, substituting it with a new Findings and Order that includes the Findings of Facts, based on the parties' stipulations, that the WCJ adopted by reference but failed to explicitly state. Pursuant to section 5313, "[t]he appeals board or the workers' compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties." (Lab. Code, § 5313.)

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the August 26, 2024 Findings and Order is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 26, 2024 Findings and Order is **RESCINDED** and **SUBSTITUTED** with a new Findings and Order, as provided below.

#### **FINDINGS OF FACT**

##### **(Case No. ADJ13470852)**

1. Larry Tripp, born [], while employed during the period of April 9, 2009, through January 7, 2020, as a psychiatric technician, Occupational Group Number 490, at Coalinga, California, Department of State Hospitals, sustained injury to the left shoulder, right hip, bilateral knees, left foot, and left big toe, and claims to have sustained injury in the form of diabetes, hypertension, irritable bowel syndrome, upper GI, erectile dysfunction, and left ankle.
2. No attorney fees have been paid, and no attorney fee 10 arrangements have been made.
3. The record needs further development consisting of further opinion from Dr. Anderson responding to applicant's attorney's inquiry of June 21, 2023, applicant's Exhibit 2.

##### **(Case No. ADJ13962033)**

1. Larry Tripp, born [], while employed during the period of April 9, 2009, through November 30, 2017, as a psychiatric technician, Occupational Group Number

490, at Coalinga, California, Department of State Hospitals, claims to have sustained injury arising out and in the course of employment, to the left foot.

2. No attorney fees have been paid, and no attorney fee arrangements have been made.
3. The record needs further development consisting of further opinion from Dr. Anderson responding to applicant's attorney's inquiry of June 21, 2023, applicant's Exhibit 2

**(Case No. ADJ13470934)**

1. Larry Tripp, born [], while employed on January 7, 2020, as a psychiatric technician, Occupational Group Number 490, in Coalinga, California, by California Department of Hospitals, sustained injury to the right hand, and claims to have sustained injury to the right wrist.
2. No attorney fees have been paid, and no attorney fee arrangements have been made.
3. The record needs further development consisting of further opinion from Dr. Anderson responding to applicant's attorney's inquiry of June 21, 2023, applicant's Exhibit 2.

**(Case No. ADJ13962032)**

1. Larry Tripp, born [], while employed during the period of April 9, 2009, to September 13, 2014, as a psychiatric technician, Occupational Group Number 490, by the Department of State Hospitals, in Coalinga, sustained injury arising out of and in the course of employment, in the form of a hernia.
2. No attorney fees have been paid, and no attorney fee arrangements have been made.
3. The record needs further development consisting of further opinion from Dr. Anderson responding to applicant's attorney's inquiry of June 21, 2023, applicant's Exhibit 2.

**ORDERS**

1. **IT IS ORDERED** that the record be further developed in accordance with Findings of Fact 3.
2. **IT IS FURTHER ORDERED** that the parties meet and conder regarding the method in which the record will be further developed.
3. All other issues are deferred.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

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



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

**November 12, 2024**

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

**LARRY TRIPP  
LAW OFFICE OF DANIEL W. EPPERLY  
STATE COMPENSATION INSURANCE FUND**

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