

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

**SHAWN RUMENAPP, *Applicant***

**vs.**

**CITY OF LOS ANGELES, permissibly self-insured, administered by INTERCARE,  
*Defendant***

**Adjudication Number: ADJ10534368  
Marina del Rey District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact, Award, and Order issued by the workers' compensation administrative law judge (WCJ) in this matter on July 17, 2024. In that decision, the WCJ found in pertinent part that applicant sustained industrial injury arising out of and in the course of his employment to his cervical spine, elbows, wrists, left knee, ankles hypertensive heart disease, arrhythmia, psyche, and left arm while employed by the defendant, causing permanent total disability of 100%, less reasonable attorney's fees of 18%.

Petitioner contends that the WCJ erred by failing to award defendant third-party credit in the sum of \$3,506,121.21 against compensation and future medical care owed to applicant in his workers compensation case per Labor Code<sup>1</sup> sections 3858 and 3861.

We have received an Answer from applicant.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant defendant'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

---

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

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.

### **PROCEDURAL HISTORY**

As set forth in the Minutes of Hearing and Summary of Evidence (MOH/SOE) dated August 17, 2023, the parties stipulated that the applicant, while employed on July 13, 2016 as a police officer, by the City of Los Angeles, sustained injury arising out of and in the course of employment (AOE/COE) to his cervical spine, elbows, wrists, left knee, ankles, hypertensive heart disease, arrhythmia, psyche, and left arm.

The issues raised at trial included permanent disability, apportionment, need for further medical treatment and attorney's fees.

In addition, applicant contended that the July 13, 2016 injury was a violent act or catastrophic injury. Defendant raised the issues of credit for temporary disability overpayment of \$967.23 against permanent disability, and credit for applicant's net recovery in his third-party case against the defendant's liability for compensation, in the amount of \$3,506,121.21, per their December 21, 2018 petition.

(MOH/SOE, August 17, 2023, p.2-3.)

Trial commenced and was completed on March 28, 2024. Exhibits were received and applicant testified at trial. Trial briefs were due no later than April 29, 2024 and the matter was thereafter deemed submitted. (MOH/SOE, March 28, 2024, p.1.)

On July 17, 2024, the WCJ issued her Findings, Award and Order in which she found that applicant sustained injury AOE/COE causing permanent disability of 100% less attorney fees of 18%, as well as future medical treatment. The parties were ordered to obtain from the Disability Evaluation Unit (DEU) a commutation of the attorney fees.

It is from these Findings, Award and Order that defendant seeks reconsideration.

#### **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 14, 2024 and 60 days from the date of transmission is Sunday, October 13, 2024. The next business day that is 60 days from the date of transmission is Monday, October 14, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on October 14, 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 August 14, 2024, and the case was transmitted to the Appeals Board on August 14, 2024. Service of the Report and transmission

---

<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.

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 14, 2024.

## II.

Preliminarily, we note the following, which may be relevant to our review:

Applicant suffered injury AOE/COE to his cervical spine, elbows, wrists, left knee, ankles, hypertensive heart disease, arrhythmia, psyche, and left arm on July 13, 2016 when he was struck by a motor vehicle operated by a third-party defendant during his employment as a city of Los Angeles police officer.

As a result of this incident, applicant filed both a workers compensation claim as well as a civil lawsuit against Panera Bread Company and the driver of the other vehicle. The civil lawsuit resulted in a monetary settlement of \$7.2 million. (MOH/SOE, March 28, 2024, p. 2:16-20.)

Defendant City of Los Angeles raised the issue of third-party credit in the workers' compensation case, and filed a petition for credit dated December 21, 2018 for the sum of \$,3,506,121.21.

At trial, applicant testified that the third-party settlement included his wife. (MOH/SOE, February 7, 2024, p. 4:3.)

A breakdown of the monies paid to applicant per the disbursement sheet from applicant's personal injury attorneys indicate that he was to receive the net sum of \$,3.506,121.21 from this settlement, payable as \$ 2,506.121.21 in cash, as well as \$ 1,000,000.00 for a structured settlement annuity for the benefit of applicant. (Exh. I.)

Further, per the settlement agreement and general release of all claims, it appears both applicant and his spouse were to receive the monthly sums of \$3,850.00 and \$1,900.00 respectively, payable for life, with a guarantee of 40 years. (Exh. J, p. 3, (b)(1).). These period payments could not be accelerated, deferred increased or decreased, nor be sold, mortgaged, encumbered, or assigned. (*Id.*, p. 3-4, (d).)

The Findings of Fact, Award and Order of the WCJ did not address the issue of the third-party credit when she awarded the applicant disability of 100%, other than to state in her Opinion

on Decision (Opinion) that the City of Los Angeles was negligent with respect to the applicant's injury for failure to provide periodic motorcycle safety courses to applicant. (Opinion, p. 9.)

After the Petition was filed, the WCJ recommended in her Report that defendant's petition be granted, stating that petitioner was not negligent, and should be allowed to assess credit in the amount of \$ 3,506,121.21 as against any compensation due applicant including future medical care and attorney fees.

### III.

When an employer seeks a credit based on a third-party settlement, the Board must determine the appropriate contribution of the employer since the employee's recovery does not represent a judicial determination of tort damages. Specifically, the Board must determine (1) the degree of fault of the employer, and (2) the total damages to which the employee is entitled. The Board must then deny the employer credit until the ratio of his contribution to the employee's damages corresponds to his proportional share of fault. (*Associated Construction & Engineering Co. v. Workers' Comp. Appeals Bd. (Cole)* (1978) 22 Cal.3d 829, 843 [43 Cal.Comp.Cases 1333].)

Defendant has the burden of establishing its right to claim a credit. (*Martinez v. Associated Engineering & Construction Co.* (1979) 44 Cal.Comp.Cases 1012, 1021 (Appeals Board en banc).) This may be done by introducing settlement documents as was done in this case. (Exh. J) This shifted the burden to applicant to show employer negligence. (*Martinez, supra*, at pp. 1021–1022.)

The WCAB will also consider negligence by parties other than the employer, e.g., the applicant and the third-party defendants. The employer bears the burden of proof to show comparative negligence by the applicant or by third parties. (*Martinez, supra*, 44 Cal.Comp.Cases 1012 at 1021- 1022.)

The next task for the WCAB is the determination of the applicant's total damages. In the case of a jury verdict, the total damages has been determined by the verdict. In cases where a settlement has occurred, the employee's settlement does not represent a judicial determination of tort damages. Often an expert opinion is provided to the trier of fact as to the value of applicant's total damages (*Bonner v. WCAB* (1990) 225 Cal. App. 3d 1023, 1033-1034.)

#### IV.

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) “The term ‘substantial evidence’ means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value.” (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) “It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).)

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (§§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [65 Cal. Rptr. 2d 431, 62 Cal.Comp.Cases 924] [“The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims.”]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [72 Cal. Rptr. 2d 898, 63 Cal.Comp.Cases 261];

*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805]; *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

The Appeals Board also has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Here, it is unclear whether the WCJ performed the proper analysis of the issues, as set forth above, and whether the existing record supports such analysis?

## V.

In addition, 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. IndustrialAcci. 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.

## VI.

Accordingly, we grant defendant’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 defendant's Petition for Reconsideration of the Findings, Award and Order issued on July 17, 2024 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/ KATHERINE A. ZALEWSKI, CHAIR

**I CONCUR,**

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



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

**October 14, 2024**

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

**SHAWN RUMENAPP  
BERKOWITZ & COHEN  
LOS ANGELES CITY ATTORNEY**

**LAS/abs**

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