

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

ANITA L. MCBRIDE, *Applicant*

vs.

**AUTO CLUB OF SOUTHERN CALIFORNIA;
OLD REPUBLIC INSURANCE COMPANY, adjusted by CCMSI, *Defendants***

**Adjudication Number: ADJ10149894
Marina del Rey District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact and Award and Order issued on April 21, 2025 by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found in part that applicant was temporarily totally disabled from April 9, 2012 through April 7, 2014, and is entitled to temporary disability pursuant to Labor Code Section 4656 (c)(2) for 104 compensable weeks, at the temporary disability rate of \$674.71, as stipulated between the parties, in the amount of \$70,169.84, less 15% attorney's fees, totaling \$10,525.47, to be adjusted between the parties, less credits to defendants for any sums paid; that defendants are entitled to a credit right against the applicant's temporary disability benefits for any sums paid to the Employment Development Department (EDD); that applicant is entitled to a penalties under Labor Code Section 4650(a) and (d) and Labor Code Section 5814(a).

Defendant contends, in pertinent part, there is no substantial medical evidence that applicant was temporarily totally disabled for 104 weeks from April 9, 2012 through April 7, 2014. Defendant further contends that as applicant received EDD benefits from April 9, 2012 through March 13, 2013, and the record indicates she was maximum medically improved within twelve months of her injury, she is not owed any additional temporary disability and defendant is not a penalty position.

We have received an Answer from applicant. The WCJ filed a Report and Recommendation (Report) on the Petition for Reconsideration recommending that we deny reconsideration.

We have considered the Petition for Reconsideration and the Answer and the contents of the Report, and we have reviewed the record in this matter. Based on 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 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.

I.

Preliminarily, 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:

- (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

¹ All further references are to the Labor Code unless otherwise noted.

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 May 20, 2025 and 60 days from the date of transmission is Saturday, July 19, 2025, a weekend. The next business day that is 60 days from the date of transmission is Monday, July 21, 2025. (See Cal. Code Regs., tit. 8 § 10600(b).)² This decision was issued by or on July 21, 2025, 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 WCJ, the Report was served on May 19, 2025, and the case was transmitted to the Appeals Board on May 20, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on May 20, 2025.

II.

The WCJ’s Report states as follows:

This matter again proceeded to Trial on January 7, 2025, on the issues of temporary disability, with the applicant claiming from March 23, 2013 through February 14, 2024, subject to *Labor Code Section 4656 (c) (2)*, attorney’s fees of 15 per cent, that the defendant was not entitled to credit for paying the Employment Development Department (hereinafter EDD) lien on August 29, 2024, in the amount of \$28,206.13, pursuant to *Richter (Mark) v. Frontier Communications 2024 Cal. Work. Comp. PD Lexis 20, 89 California*

² 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.

Compensation Cases 391, that the applicant claimed penalties and attorney's fees owed for non-payment of temporary total disability payments pursuant to *Labor Code Sections 4650 and 5814*, and that defendant claimed a replacement panel in the field of Neurology was necessary due to PQME Dr. Abbott Krieger being unavailable pursuant to *Title 8, California Code of Regulations 31.5 (a) (5) et. seq.* Minutes of Hearing (Further) and Summary of Evidence, dated January 7, 2024 (sic) 2025, page 2,3 lines 15-25, 1-3, EAMS DOC. ID NO.: 78771990.

With respect to temporary disability, this WCJ found that the applicant was temporarily totally disabled from April 9, 2012 through April 7, 2014, and was entitled to temporary disability pursuant to *Labor Code Section 4656 (c) (2)* for 104 compensable weeks, at her temporary disability rate of \$674.71, as stipulated between the parties, in the amount of \$70,169.84, less 15% attorney fees totaling \$10,525.47. to be adjusted between the parties, less credits to defendants for any sums paid.

Further, this WCJ found that the defendant was entitled to a credit right against the applicant's temporary disability benefits for any sums paid, to be adjusted between the parties, for Ashraf Gorgi vs. Kolah Farangi Restaurant WCAB Case No. ADJ11016330 Page 3 of 12 paying the EDD lien on August 29, 2024 in the amount stated above, pursuant to Richter, since said lien was paid before this trial date. It was also found that the defendant was entitled to a replacement panel in the field of Neurology, since good cause was shown that Dr. Krieger was unavailable for an additional supplemental report and could not evaluate the applicant due to his medical condition.

Additionally, this WCJ found that the applicant was entitled to a penalty of 10 per cent for the late payment of temporary disability by defendant, pursuant to *Labor Code Section 4650 (a) and (d)*, in the amount of \$7,016.98 which was 10 per cent of the applicant's awarded temporary disability. It was also found that the applicant was entitled to a 25 per cent penalty for the late payment of temporary disability by defendants pursuant to *Labor Code Section 5814 (a)* in the maximum amount of \$10,000.00, less attorney's fees of 15%, totaling \$1,500.00 No attorney's fees were awarded to applicant's counsel pursuant to *Labor Code Section 5814.5*. Findings of Fact and Award And Order, dated April 16, 2025, EAMS DOC. ID Number: 79089011.

The issues presented by petitioner defendant raised in their Petition for Reconsideration are whether this WCJ erred in his Findings of Fact and Award and Order by not complying with Labor Code Section 5313, whether the applicant was entitled to temporary disability from April 9, 2012 through April 7, 2014, pursuant to *Labor Code Section 4656 (c) (2)*, and penalties pursuant to *Labor Code Sections 4650 (a) and (d) and 5814 (a)*, and erred in relying on the totality of the medical evidence presented before this Court, which constituted substantial medical evidence as noted in in this WCJ's Opinion on Decision

dated April 16, 2025, and Findings of Fact and Award and Order dated April 16, 2025, EAMS DOC. ID NO.: 79089011.

Testimony was taken at both trials wherein only the applicant testified; the defendant did not present any witnesses. Evidence was provided by both parties. Petitioner defendant's Petition for Reconsideration addresses the validity of the Findings of Fact and Award and Order issued by this WCJ as stated above. Findings of Fact And Award dated April 16, 2025, EAMS DOC. ID NO.:79089011.

III.

We highlight the following legal principles that may be relevant to our review of this matter:

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.)

Based on our review, we are not persuaded that there is substantial evidence to support the WCJ's decision without additional development of the record.

Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

IV.

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. Industrial Acci. 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”].)

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 sections 5950 et seq.

V.

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.***

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration 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/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 21, 2025

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

**ANITA L. MCBRIDE
HINDEN & BRESLAVSKY
PREETI G. SHAW LAW**

SL/abs

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