

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

**CHARLES FRANKLIN, *Applicant***

**vs.**

**COUNTY OF SAN BERNARDINO, Permissibly Self-Insured, *Defendant***

**Adjudication Numbers: ADJ20141320, ADJ20141319  
Van Nuys District Office**

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

We have considered the allegations of the Petition for Reconsideration 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 for the reasons stated in the WCJ's report, which we adopt and incorporate, we will grant reconsideration, amend the WCJ's decision as recommended in the report, and otherwise affirm the decision of March 5, 2025.

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 April 22, 2025, and 60 days from the date of transmission is Saturday, June 21, 2025. The next business day that is 60 days from the date of transmission is Monday, June 23, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>1</sup> This decision is issued by or on Monday, June 23, 2025, 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 April 22, 2025, and the case was transmitted to the Appeals Board on April 22, 2025. 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 April 22, 2025.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the decision of March 5, 2025 is **GRANTED**.

---

<sup>1</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.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of March 5, 2025 is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

We amend the Findings and Order to replace ADJ20141320 with case number ADJ20141319.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSEPH V. CAPURRO, COMMISSIONER

**I CONCUR,**

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER



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

**June 20, 2025**

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

**CHARLES FRANKLIN  
STRAUSNNER, SHERMAN, LONNE, TREGER, HILQUIST & KRUPNIK  
LAUGHLIN, FALBO, LEVY & MORESI**

**JL/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. Applicant's Occupation:   | Fire Captain                      |
| Applicant's Age on Date of Injury:   | 43                                |
| Date of Injury:  | 11/27/2024                        |
| Parts of Body Injured:   | low back                          |
| Manner in Which Injury Occurred:   | moving a patient                  |
| 2. Identity of Petitioner:   | Defendant filed the petition      |
| Timeliness:  | The petition is timely filed      |
| Verification:  | The petition is properly verified |
| 3. Date of Issuance of Findings:   | 3/5/2025                          |
| 4. Petitioner's Contentions:   |                                   |
| A. That by the Order, Decision or Award made and filed by the Appeals Board or a Workers' Compensation Judge, the Appeals Board acted without or in excess of its powers |                                   |
| B. That the Findings of Fact do not support the Order, Decision, or Award.   |                                   |

## **II**

### **FACTS**

Applicant sustained an admitted injury to his low back on 11/27/2024. Applicant currently resides in Lake Havasu City, Arizona. Applicant elected Dr. Nassos in Sherman Oaks, CA as his primary treating physician pursuant to letter dated December 11, 2024 (Joint Exhibit 1). The distance from applicant's residence to the doctor's office is approximately 300 miles.

The court and parties agreed at the time of the hearing that only the 11/7/2024 admitted, specific injury (ADJ20141319) would be heard and that inclusion of the denied continuous trauma claim (ADJ20141320) was in error. The Minutes of Hearing, Findings and Order and Opinion on Decision discuss only the specific injury and the erroneous and inadvertent substitution of ADJ20141320 for ADJ20141319 is a scrivener's error.

## **III**

### **DISCUSSION**

Petitioner's first and second arguments arise from the inadvertent substitution of ADJ20141320 for the correct case number ADJ20141319. As indicated above, the court and parties agreed to go forward with trial only as to the admitted specific injury and the scrivener's error indicating the incorrect case number for that specific injury should be immediately remedied and further discussion appears unnecessary herein.

Petitioner's third and final argument asserts, in essence, that the undersigned has both mistakenly relied on Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd., 34 Cal.3d 159 and failed to consider the decision in Adventist Health v. WCAB (Fletcher) (2012), 211 Cal.App. 4th 376 in finding Dr. Nassos' office located within a reasonable geographic location.

Petitioner asserts that Braewood (supra) is distinguishable from this case and that Adventist (supra) is not and the undersigned finds that the opposite is true.

In order to support a finding that the applicant's geographic location for medical treatment is unreasonable, the employer must present evidence demonstrating the availability of a similar, or equally effective program in a more limited geographic area closer to applicant's domicile. While section 4600 requires that the applicant's medical treatment choice be located within a reasonable geographic area ... in the present case, the employer has produced no comparative evidence contradicting applicant's claim that Clinic's location is geographically reasonable. Braewood (supra).

Petitioner argues that Braewood is distinguishable from the instant case because the weight loss clinic at issue in Braewood was described as "unique" and Orthopedic treatment for applicant's back injury is not. Petitioner's focus on the apparently "unique" nature of the weight loss clinic at issue in Braewood is misplaced as the holding in Braewood is clearly applicable in cases such as this where the nature of the treatment sought is not unique.

The Board noted the following in Washington v. Davis Cos., 2010 Cal. Wrk. Comp. P.D. LEXIS 79:

"Reasonable geographic area' within the context of Labor Code section 4600 shall be determined by giving consideration to: (1) The employee's domicile, place of employment and place where the injury occurred; (2) The availability [locally] of physicians in the fields practice, and facilities offering treatment reasonably required to cure or relieve the employee from the effects of the injury; and (3) The employee's medical history.'

Given that applicant's residence is in Lake Havasu, Arizona and that he has elected to treat with an Orthopedist in Sherman Oaks, California, it was defendant's burden to present evidence demonstrating the availability of a similar, or equally effective treatment closer to applicant's residence. However, defendant has failed to carry its burden as it did not present any such evidence.

It is defendant's burden to establish that a geographic location for medical treatment is unreasonable by presenting evidence that similar treatment is available closer to applicant's home. Any finding that similar treatment is available closer to applicant's home must include a finding that a specific doctor is willing to adhere to the California reporting requirements and fee schedule. A doctor unwilling to adhere to the California reporting requirements and fee schedule cannot be deemed "available" to provide treatment for this or any industrial injury.

Where the defendant has not furnished or offered effective medical treatment, it relinquishes some of the control it would otherwise have over the cost of that treatment. And treatment includes travel to and from medical providers. Kwah v. San Mateo County Transit Dist., 2024 Cal. Wrk. Comp. P.D. LEXIS 32.

Petitioner's reliance on Adventist (supra) is misplaced as the applicant in that case returned to the medical office where one of the doctors had been administratively removed. The court indicated "The question thus presented is whether she is entitled to reimbursement for the treatment

she received from doctors who were not her primary treating physician, had not been approved by Adventist, did not provide any treatment plan or medical reports ... "

Conversely, applicant in this case requests treatment with an MPN doctor well versed in California Workers' Compensation reporting requirements and fee schedule and the sole issue is the whether the doctor's office is within a geographically reasonable location.

Petitioner failed to produce evidence establishing that they were able to locate an alternative physician willing to adhere to the California reporting requirements and fee schedule. Petitioner appears to believe that it is applicant's burden to locate an out of state physician willing to do so as it argues in its post-trial brief that it has not denied treatment with a doctor who applicant attempted to select as his primary treating physician in Lake Havasu City and blithely indicates: "Defendants are eager to authorize such a doctor".

Where the defendant has neither furnished nor offered effective medical treatment, it relinquishes some of the control it would otherwise have over the cost of that treatment. And treatment includes travel to and from medical providers. Kwah v. San Mateo County Transit Dist., 2024 Cal. Wrk. Comp. P.D. LEXIS 32.

Based on the foregoing, it is found that Dr. Nassos' office is within a reasonable geographic distance pursuant to Labor Code §4600 ( c ).

#### IV

#### RECOMMENDATION

It is respectfully recommended that the defendant's Petition for Reconsideration dated 3/21/2025 be Granted in part to amend the Findings and Order, Opinion on Decision and Minutes of Hearing to replace ADJ20141320 with the correct case number ADJ20141319 and that the Petition for Reconsideration be denied as to all substantive issues raised therein.

DATE: April 22, 2025

RUSSEL SHUBEN  
Workers 'Compensation Judge

This Report and Recommendation was transmitted to the Appeals Board on 4/22/2025.