

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

EDELMIN ENRIQUEZ ESQUIVEL, *Applicant*

vs.

**SEC WHEEL GROUP;
EMPLOYERS PREFERRED INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ10310043
Long Beach District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Lien claimant Monrovia Memorial Hospital (MMH) seeks reconsideration of the September 23, 2025 Findings and Order (Lien Trial) issued by the workers' compensation administrative law judge (WCJ) in which it was found, in pertinent part, that applicant, while employed on February 10, 2019 as a delivery driver by defendant, SEC Wheel Group, sustained injury arising out of and in the course of employment which was settled by Compromise and Release on April 3, 2024. The WCJ further found that applicant underwent an authorized cervical spine fusion surgery on March 26, 2019, at MMH, a Long-Term Care Hospital, and that the reasonable value of services provided by MMH is \$31,442.51, less amounts previously paid.

Lien claimant contends that the WCJ's findings are not supported by the evidence presented at trial to the extent that unlike other hospitals in the geographical area which may use the DWC Official Medical Fee Schedule (OMFS) to determine the value of their services, lien claimant is exempt from such fee schedule. Petition further asserts the WCJ failed to consider lien claimant's evidence and *Kunz* study as to its usual and customary reimbursement for similar services.

We received an Answer from defendant. The WCJ issued a Report and Recommendation by Workers' Compensation Judge on Petition for Reconsideration (Report) recommending that we deny lien claimant's Petition for Reconsideration.

We have considered the Petition for Reconsideration, the Answer, the contents of the Report, and have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant the 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 Code¹ section 5950 et seq.

I.

Preliminarily, we note that former 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 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 October 30, 2025, and 60 days from the date of transmission is Monday, December 29, 2025. This decision is issued by or on Monday, December 29, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

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

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 October 30, 2025, and the case was transmitted to the Appeals Board on October 30, 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 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 October 30, 2025.

II.

Lien claimant MMH is a fully accredited and licensed Long-Term Acute Care Hospital who provided services to applicant. At the lien trial held on July 9, 2025, the parties stipulated that lien claimant, MMH, is exempt from the Official Medical Fee Schedule. (Minutes of Hearing and Summary of Evidence (MOH/SOE), July 9, 2025, p 2.)

Per the Report of the WCJ, on March 26 to March 27, 2019, applicant underwent an authorized spinal fusion surgery with overnight hospitalization, Diagnostic Related Group (DRG) code 473. Lien claimant billed \$94,529.47 for applicant's surgery and defendant's insurance company, Employers Preferred insurance Company (EPIC), remitted payment of \$24,836,67. (Report, p. 2.)

The WCJ stated that the finding as to the reasonable value of lien claimant's services was \$31,442.51, based upon the testimony of defendant's witness Donald Hodge, who the WCJ found provided a "more credible analysis" as to the value of such services. (Report, p. 4.)

According to California Evidence Code, section 720:

(a) A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.

(b) A witness' special knowledge, skill, experience, training, or education may be shown by any otherwise admissible evidence, including his own testimony.

(Evid. Code, § 720.)

In our preliminary review, we note that the record contains no information or stipulation as to the expert status of any witness in this case. The record also appears to be lacking information about Mr. Hodge's knowledge, skill experience, training, or education to establish him as an expert witness.

In addition, defendant offered no documentary evidence, and none was admitted.

According to the Summary of Evidence by the WCJ:

Mr. Heard [lien claimant's hearing representative] objected to reference to Mr. Hodge's bill review because it was not in evidence. The witness may testify to his personal knowledge in rebuttal including Medicare utilization and pricing reasonable cost basis.

...

If Mr. Hodge used a fee schedule approach, he looks at hospitals within the geographical area. In this case, he used Long Beach Memorial, Providence St. John's, and Torrance Memorial and came out with a fee schedule average of \$31,442.51. This was a planned surgery with no comorbidities DRG 473. If it was more complicated, it would be a DRG 472 or 471. **This fee would be based on fee schedule which does not apply.**

(I(MOH/SOE, p. 6:11-13, 20-23, emphasis added.)

Nevertheless, in his decision, the WCJ found that the reasonable value of lien claimant's services was \$31,442.51 and awarded the same.

Lien claimant contends that the WCJ failed to consider its Exhibit 4 entitled "Kunz Study and Declaration, dated August 14, 2017," a 1,051-page compilation of billings and summaries of 121 claims of which many may not be relevant to this claim. The seminal case *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588 (Appeals Board *en banc*) (*Kunz*), pertained to an outpatient surgery lien for which there was no OMFS. The Appeals Board *en banc* held that the lien claimant must present evidence of the reasonable value of services provided in order to support recovery. Here, lien claimant's witness testified that he "participated in preparing Exhibit 4, but it was some time ago and he does not recall everything." (MOH/SOE, p. 5: 14-17.)

The defense witness did not testify to the relevance or applicability of Exhibit 4. In addition, the WCJ's decision does not address lien claimant's *Kunz* study. Finally, we are unable to locate lien claimant's Exhibit 2, identified as a UB-92 form, dated March 27, 2019.

III.

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

Pursuant to section 5705, “The burden of proof rests upon the party or lien claimant holding the affirmative of the issue.” (Lab. Code, § 5705.) A lien claimant has the burden of proving all elements necessary to establish the validity of its lien. Section 3202.5 states that, “All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence.” (Lab. Code, § 3202.5; *Boehm & Associates v. Workers' Comp. Appeals Bd. (Brower)* (2003) 68 Cal.Comp.Cases 548, 557.)

When the value of the services that were provided is not established by a fee schedule the lien claimant must present evidence of the reasonable value of those services in order to support recovery. (*Kunz, supra*, 67 Cal.Comp.Cases 1588; *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113 (Appeals Board *en banc*); *Tapia v. Skill Masters Staffing* (2008) 73 Cal.Comp.Cases 1338 (Appeals Board *en banc*).) If the parties do not agree on what constitutes a “reasonable” outpatient surgery center fee, the WCAB may take into consideration a number of factors in addressing the issue. (*Kunz, supra*, 67 Cal.Comp.Cases 1588, 1598.) These include, but are not limited to, the provider’s usual fee and the usual fee of other providers in the geographical area in which the services were rendered. (*Id; see also, Gould v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1059, 1071 [57 Cal. Comp. Cases 157, 165].) Rebuttal evidence may be presented on the question of the reasonableness of a lien claimant’s billing, including but not limited to evidence: (1) that the outpatient surgery center actually accepts less for the same or similar services; (2) that other outpatient surgery centers in the same geographical area accept less for the same or similar services; or (3) that inpatient hospitals or surgery centers in the same geographical area accept less for the same or similar services. (*Kunz, supra*, 67 Cal.Comp.Cases 1588, 1599.)

All decisions by a WCJ must be supported by substantial evidence. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246 [54 Cal.Comp.Cases 349].) Substantial evidence has been described as such relevant evidence as a reasonable mind might accept as adequate to support a

conclusion and must be more than a mere scintilla. (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159 [48 Cal.Comp.Cases 566].)

Here, it is unclear from our preliminary review whether the existing record is sufficient to support the decision, order, award, and legal conclusions of the WCJ, as well as whether further development of the record may be necessary with respect to the issues noted above. 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 Labor Code sections 5950 et seq.

V.

Accordingly, we grant lien claimant’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 WCAmediation@dir.ca.gov.

For the foregoing reasons,

IT IS ORDERED that lien claimant’s Petition for Reconsideration of the Findings and Order issued on September 23, 2025 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 WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 29, 2025

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

**EMPLOYERS COMPENSATION GLENDALE
EMPLOYERS COMPENSATION INSURANCE COMPANY
INNOVATIVE MEDICAL MANAGEMENT
MONROVIA MEMORIAL HOSPITAL
MULLEN FILIPPI**

TD/bp

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