

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

**GLADYS MANRIQUES<sup>1</sup>, *Applicant***

**vs.**

**BIG LOTS;  
STARR INDEMNITY C/O SEDGWICK CLAIMS MANAGEMENT SERVICES,  
*Defendants***

**Adjudication Numbers: ADJ12256911; ADJ12546447; ADJ12546465  
Los Angeles 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, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision consistent with this opinion.

**I.**

Former Labor Code section 5909<sup>2</sup> 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:

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<sup>1</sup> According to our review in the Electronic Adjudication Management System (EAMS), applicant is identified as "Gladys Manriques" on the Official Address Record (OAR). (See Cal. Code Regs., tit. 8, § 10205.5.) However, in pleadings, she has been referred to as "Gladys Manriquez." If applicant is not correctly identified, any award to applicant may potentially be unenforceable. (See Lab. Code, §§ 5806, 5807.) Upon return of this matter, the parties should make all efforts to correct the OAR forthwith.

<sup>2</sup> All statutory references are to the Labor Code unless otherwise stated.

(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 November 5, 2024 and 60 days from the date of transmission is Saturday, January 4, 2025. The next business day that is 60 days from the date of transmission Monday, January 6, 2025. (See Cal. Code Regs., tit. 8, § 10600(b)).<sup>3</sup> This decision is issued by or on Monday, January 6, 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 November 5, 2024, and the case was transmitted to the Appeals Board on November 5, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that

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<sup>3</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.

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 November 5, 2024.

## II.

We add here that after return, the parties can agree upon an Agreed Medical Evaluator (AME). As discussed in the WCJ's Report, *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 142 (Appeals Board en banc), the preferred procedure for developing a deficient record is to first allow supplementation of the medical record by the physicians who have already reported in the case. The *McDuffie* decision went on to state that "[i]f the use of physicians new to the case becomes necessary, the selection of an AME by the parties should be considered at this stage in the proceedings." (*Id.*) Thereafter, "if none of the procedures outlined above is possible, the WCJ may resort to the appointment of a regular physician, as authorized by Labor Code section 5701." (*Id.* at pp. 142-143.) Thus, we emphasize that the parties may agree to an AME before they proceed with the appointment of a regular physician pursuant to section 5701.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the decision of September 30, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeal Board, that the Findings and Order of September 30, 2024 is **RESCINDED** and the matter is **RETURNED** to the WCJ to conduct further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

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

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



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

**JANUARY 6, 2025**

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

**GLADYS MANRIQUES  
PRINDLE GOETZ  
SOLOV TEITELL**

**LN/md**

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

**REPORT AND RECOMMENDATION ON PETITION FOR  
RECONSIDERATION**

**PROCEDURAL HISTORY**

This case was originally submitted for determination on July 26, 2023 after review of medical record exhibits in conjunction with the testimony of the Applicant. Per *Mc Duffie*, the Court ordered the medical record to be developed further per an Order to Vacate with appointment of a Regular Doctor on September 7, 2023.

A Petition for Removal was filed by Defense on September 2, 2023 with the Petition granted on November 20, 2023. This matter was resubmitted for determination on March 21, 2024 without further development of the medical record, thus, the finding is based on the most recent comprehensive reporting.

To this end, a Finding and Order was issued on April 20, 2024. It was discovered there was an outstanding lien from Orange County Child Support Services which was not addressed in the April 20, 2024 determination, thus, matter was vacated on May 29, 2024 to insure the Applicant had notice of the lien and to address the lien accordingly in the decision.

Subsequently, this matter was resubmitted per this issue on September 26, 2024.

This determination was per the directive of the Appeals Board regarding Applicant's Permanent Disability is not reflective of the Opinion of this Judge.

Applicant attorney filed a verified timely Petition for Reconsideration on October 21, 2024.

**MCDUFFIE V. L.A. COUNTY METROPOLITAN TRANSIT  
AUTHORITY (2002)**

In the case of *McDuffie v. L.A. County Metropolitan Transit Authority* (2002) 67 Cal. Comp. Cases 138, 141 (lexis.com), 67 Cal. Comp. Cases 138 (Lexis Advance) (Appeals Board en banc); see Lab. Code, §§ 5701, 5906.) The WCAB stated:

“The *McDuffie* case describes the procedure for developing the record. Generally, parties are directed to acquire supplementary reports from physicians who have already written reports. (*Id.* at p. 142.) “[I]f the supplemental opinions of the previously reporting physicians do not or cannot cure the need for development of the medical record,” the parties should consider an agreed medical evaluator (AME). (*Ibid.*) If the parties are unable to select an AME, then the WCJ may appoint a regular physician pursuant to Labor Code section 5701. (*Id.* at 142- 143.)

In the Noteworthy Panel Decision of *Huerta v. Higgins & Lovett Construction*, 2013 Cal. Wrk. Comp. P.D. LEXIS 311 (lexis.com), 2013 Cal. Wrk. Comp. P.D. LEXIS 311 (Lexis Advance). When the Panel QME issued a med-legal report that did not constitute substantial evidence with regard to the whole person impairment rating, the WCAB vacated the WCJ's decision and returned the matter to the trial level. Rather than replace the Panel QME, the parties were ordered to develop the record pursuant to the WCAB en banc decision of *McDuffie v. L.A. County Metropolitan Transit Authority* (2002) 67 Cal. Comp. Cases 138 (lexis.com), 67 Cal. Comp. Cases 138 (Lexis Advance).

### **CONCLUSION**

In this matter, the Applicant's credible testimony regarding her allegations of injury were not reflected in the medical reporting provided by the Panel QME. To this end, it is the duty of the Court to clarify the allegations through an additional medical examination. The Court has a duty to develop the record further. This Judge agrees with the Applicant in the Petition for Reconsideration, that this medical record needs to be developed further.

It is recommended that the Petition for Reconsideration be GRANTED and the record to be developed further with the use of a Regular Doctor appointed by this Court pursuant to *McDuffie*.

DATED: November 5, 2024

Jay W. Downey  
Workers' Compensation  
Administrative Law Judge