

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

GLORIA DAVIS, *Applicant*

vs.

**KAISER FOUNDATION HOSPITAL; permissibly self-insured, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Numbers: ADJ11369357, ADJ11369329
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant in pro per seeks reconsideration of the Findings and Orders (F&O) issued on February 7, 2025, wherein the workers' compensation administrative law judge (WCJ) found that (1) while employed as a patient care technician by defendant on March 17, 2018, applicant sustained injury arising out of and occurring in the course of employment to her lumbar spine; (2) on January 17, 2020, a Joint Findings, Awards and Order issued in this case and a companion case, ADJ11369329, which found 0% permanent disability and awarded applicant future medical treatment for the injury to the lumbar spine, an award which became final after applicant's petition for reconsideration was denied on March 3, 2020, and no petition to reopen was filed; and (3) applicant failed to establish her Labor Code¹ section 132a prima facie claim and further failed to prove such a violation by the preponderance of the evidence.

The WCJ ordered that applicant's exhibits C, L, R, S, and X be admitted in evidence, that applicant's exhibits D, K, M, and N not be admitted in evidence, that defendant's exhibits 1 and 2 be admitted in evidence, and that applicant take nothing on her section 132a claim.

Applicant contends that the F&O is the result of fraud in the form of altered evidence and bias on the part of the WCJ.

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

We received an Answer from defendant.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report.² Based on our review of the record, and for the reasons stated below, we will deny reconsideration.

FACTUAL BACKGROUND

On December 12 2024, the matter proceeded to trial on applicant's "132a claim and whether she was wrongly terminated by Kaiser Foundation Hospital in violation of Labor Code section 132a." (Minutes of Hearing and Summary of Evidence, December 12, 2024, p. 2:14.) The WCJ noted for the record that "a Joint Findings and Award and Order with Opinion on Decision issued on January 17, 2020, in the underlying claim in this case, which found the Applicant sustained injury AOE/COE to her lumbar spine, and did not sustain injury AOE/COE to her cervical spine, bilateral shoulders, bilateral hips, and/or to the bilateral knees, which resulted in permanent disability of 0% and the need for further medical treatment." (*Id.*, p. 2:8-11.)

In the Opinion on Decision, the WCJ states:

Having reviewed and considering all the evidence, including the admitted exhibits, and the testimony of Ms. Davis and Ms. Dokic, and having assessed their respective credibility pursuant to *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500, 502], I find and conclude that the Applicant has failed to prove either a prima facie case of discrimination in violation of Labor Code section 132a, or an actual violation of that section by the preponderance of the evidence. Specifically, the evidence shows that despite her denials, which are not credible in light of the evidence, she had been disciplined and written up a number of times, before her alleged violation of Kaiser HIPPA policies when on March 17, 2019, she accessed the medical chart of a patient who was no longer in her care. (See testimony of Ms. Dokic and Applicant's Exhibit 1.) These include a written warning issued on October 26, 2018 for a performance issue, and a 3-Day Disciplinary Suspension for insubordination on May 8, 2019 for insubordination and for leaving the room of a patient on suicide precaution after being instructed to return. (Defendant's 1.) On May 13, 2019, she was placed on paid administrative leave pending an investigation into an allegation she inappropriately accessed the chart of a patient on March 17,

² Commissioner Sweeney, who was on the panel that issued a prior decision in this matter is no longer serving at the Appeals Board. Another panelist was assigned in her place.

2019, of a patient who was no longer in her care, in violation of Kaiser HIPPA/PHI policies. (*Id.*)

That same exhibit documents that during the investigation of that claim the Applicant “self-disclosed that she intentionally accessed Kaiser Permanente Health Connect (KPHC) for a patient no longer in her care, in violation of KP policies and HIPPA.” (*Id.*) It further indicates that following a meeting/investigation with respect to that allegation lead by Compliance Officer Millicent Brown-Hunter on May 15, 2019, Ms. Davis “self-disclosed intentional access of KPHC to retrieve information to prove a Physician lied about her continuous presence during a Rapid Response.” (*Id.*) It also indicates that in the course of the investigation/meeting the Applicant was “argumentative, disruptive, and in possession of PHI that she had printed direction from KPHC.” (*Id.*) That document concludes that the Applicant should be terminated immediately because “She is unwilling to take simple instruction, places patients in jeopardy, and refused to receive feedback regarding her responsibilities as a PCT.” (*Id.*) It also indicates that in the course of the investigation of the reported HIPPA violation that “she showed no remorse or awareness that her actions were in violation of either the law or KP Policy. She cannot be reasoned with. She cannot behave in a manner that reflects the quality of care our members and management deserve.” (*Id.*) In the face of this evidence and Ms. Dokic’s credible testimony regarding the same, Applicant’s denial of wrongdoing and/or violations of HIPPA and KP policies are not credible.

It is clear from Ms. Dokic’s testimony that Kaiser Foundation Hospital views violations of HIPPA and related Kaiser policies regarding PHI as grave and deadly serious employee misconduct, which can on its own warrant termination. In my view, it is also clear that Ms. Davis had a checked disciplinary history over her last few years at Kaiser, even though she implausibly denied and/or attempted to minimize those facts in the course of her trial testimony. In short, the evidence supports the conclusion that Kaiser Foundation Hospital’s termination of the Applicant for violation of its HIPPA policies on top of recent behavioral and performance problems that were the subject of prior discipline, was based on compelling evidence and warranted and legally valid and had nothing to do with the fact that she had filed workers’ compensation claims for industrial injuries at Kaiser Foundation Hospital on January 29, 2016 and March 17, 2018. There is no evidence presented by the Applicant that Kaiser improperly discriminated against her in the form of her termination, much less even a *prima facie* showing that there was such discrimination.

(Opinion on Decision, pp. 13-15.)

In the Report, the WCJ states:

Applicant was a long-time employee of Kaiser Foundation Hospital (KFH) and worked as patient care technician/nurse's aide. After sustaining partially accepted industrial injuries on January 20, 2016, and March 17, 2018, she was terminated for cause by KFH on or about June 3, 2019, for alleged violation of Kaiser's HIPPA policies, which followed a series of earlier and lesser discipline for various reasons. Following this termination the Applicant filed a timely Petition for Benefits pursuant to Labor Code section 132a, on October 18, 2019, which alleged improper discrimination in the form of her termination. That claim was deferred as an issue at the earlier trial in the two underlying workers' comp. claims.

The underlying workers' compensation claims in ADJ11369357, and the companion case of ADJ11369329, were previously resolved after a 2-day trial before the undersigned, via a Joint Findings, Awards, and Order, with Opinion on Decision (Joint F&A) dated January 17, 2020. The pro per Applicant filed a Petition for Reconsideration from that Joint F&A, and reconsideration was denied by the WCAB in an Opinion and Order dated March 13, 2020. At the time of that initial trial, the 132a claim was deferred, and was not an issue for determination. Thereafter, there was no activity with respect to Applicant's 132a claim until she filed a DOR in this case on May 28, 2024. The trial on the 132a claim was eventually set for December 12, 2024, before me, at an MSC held on September 25, 2024 before Judge Therese DaSilva.

...

[Applicant] testified the allegations that led to her termination are false. (MOH/SOE at p. 6, line 20.5.) At the time of those allegations, she was desperate and in pain from work related injuries. (*Id.*) Her manager was Jane Seidl and Jonna-Lynn [Taylor] was never her manager or supervisor. (*Id.* at p. 7, lines 3.5, 6.5.) While Kaiser conducted an investigation into possible violations of policy by her, she was put on administrative leave. (*Id.* at p. 7, lines 11 to 11.5.) She was first injured on January 29, 2016, ADJ11369329, as a result of a motor vehicle accident in the Kaiser parking garage, when another car struck hers in a low speed collision.[fn] (*Id.* at p. 7.) She treated with Kaiser doctor, Christine Gjerde, D.O., for that injury, and a number of her treatment reports are in evidence as Applicant's Exhibit J. (*Id.* at p. 8.) That initial injury was aggravated in a later injury dating from March 17, 2018, when she tried to prevent a patient from falling. (*Id.*) She subsequently was off on FMLA leave from December 18, 2018 through June 14, 2019. (*Id.*)

With respect to the claim that she violated Kaiser's HIPPA policies, which was the primary basis of her termination, she testified that she did nothing wrong to warrant termination. (*Id.*) She denies abandoning a patient to go to the bathroom. (*Id.*) She asserts the patient in question was not alone, and that someone was there with him and called a code blue when she was away.

It was not true that she returned to find an unconscious patient. (*Id.*) She denies breaking any rules regarding chart access or the claim she went into access the medical chart of a patient who was no longer in her care. (*Id.*) It does not make sense that she would check the chart unnecessarily; she would have nothing to gain. She was on light duty at the time and was terminated while on light duty. (*Id.*) The state requires that you document a patient's chart, and she did nothing wrong. (*Id.*)

She grieved her termination through her union, UHW/SEIU, but is still waiting on a decision with respect to that grievance. (*Id.* at p. 9.) At the meeting that led to her termination, Jonna, and Kelda Davies were present, along with the 10th floor manager. (*Id.*) She did not have care of the patient the next day. The alleged improper medical chart access was on March 15, 2019, but a claim that she violated the policy was not made until May 15, 2019, and the dates do not add up. (*Id.*)

On cross-examination, with respect to the alleged abandonment of a patient on suicide watch she had assigned to, she denies being told by a manager not to leave. (*Id.*) She denies being written up for allegedly leaving that patient, but acknowledges prior write-ups before the alleged HIPPA violation. (*Id.*) She denies ever being disciplined for performance issues. (*Id.*) When questioned about the termination notice dated June 3, 2019 related to her alleged violation of HIPPA policies (Applicant's B), she denies its statements that she was argumentative, disruptive, and without remorse for the alleged violation, although she concedes that she is "talkative." (*Id.* at p. 10.) She first became aware of the alleged HIPPA violation at the investigatory meeting held on May 8, 2019, which also addressed alleged unexcused absences. (*Id.*) She is asked about references in Applicant's B, where it indicates she was warned on October 26, 2018, and later suspended for 3 days on May 8, 2019 for insubordination and refusal of a reasonable work order. (*Id.*) She claims she was on either FMLA and/or paid administrative leave at the time, which is why she never completed the training referenced therein. (*Id.*) However, she is familiar with Kaiser's principles of responsibility and knows her job like a book. (*Id.*)

She denies that she violated HIPPA and/or accessed the chart in an effort to defend the claim she had improperly abandoned a patient on suicide watch that she was supposed to be monitoring. (*Id.*) She went into the chart to document it. (*Id.*) She acknowledges she gave [patient] papers at the meeting to the compliance officer as requested but it was for the purpose of rebutting the lies against her. (*Id.* at pp. 10-11.) She denies ever being disciplined for using a work computer for personal use. (*Id.* at p. 11.) She acknowledges being sent home on paid administrative leave three times, which were unrelated to work injuries. (*Id.*) She denies being disciplined

for personnel actions before 2018 but acknowledges being sent home pending investigations. (*Id.*) When questioned about Applicant's B where it indicates at the May 15, 2019 meeting she admitted to access the patient's chart to obtain information from a physician's note. (*Id.*) She explains she went back into the chart the next day to document it, but once there saw it was complete and that nothing needed to be done, because she had done such a good job in the first place. (*Id.*)

On redirect, the Applicant asserted that all of the allegations of prior discipline and being sent home are hearsay and cannot be relied upon. (*Id.*) She claims the defendant failed to produce her personnel file or provide evidence of wrongdoing. (*Id.*) She was a dedicated employee who treasured her work. (*Id.*) When they claimed she failed to answer her phone, she was attending to a homeless patient with lice and scabies, and was wearing protective equipment, including a hat, gloves and gown. (*Id.* at p. 12.) She could not answer her phone in the middle of that, because she would have had a handful of lice. (*Id.*) There is no proof she fell asleep in the ICU, and there are always nurses there. (*Id.*)

An employer HR representative, Marija Dokic, also testified at trial. In contrast to the Applicant's testimony, I found her testimony to be clear, focused, and consistently credible. She testified in relevant part as follows. Her job title is Assistant Director of Human Resources at Kaiser Permanente East Bay. (*Id.* at p. 12.) She will have been there two years as of February 2025, and did not previously work at Kaiser, but has worked in HR for 10 years. (*Id.*) Having reviewed the Applicant's HR file and documents related to prior discipline and her eventual termination in preparation for trial, she is familiar with the Applicant and her HR issues, even though she had never met her before today. (*Id.*) She is asked about Defendant's Exhibit 2, her letter to defense counsel dated September 23, 2024, advising the reason for Applicant's termination was her accessing the medical record of a patient no longer in her care, in violation of KPH policies. (*Id.*) She based that letter and opinion on her review of the file, and not on any first-hand knowledge of the Applicant. (*Id.*)

At Kaiser, HIPPA policies and compliance with such privacy policies are very important, and their violation are viewed as "egregious" offenses, and potential violations of such policies are monitored by the Compliance Department, and its computers. (*Id.* at p. 13.) Since January 1, 2024, through November 2024, 24 different Kaiser East Bay Employees have been terminated following a finding and determination they violated Kaiser's HIPPA policies. (*Id.*) Accessing medical charts without a medical need is violation of such policies. (*Id.*) She is questioned about the Kaiser termination notice addressed to Gloria Davis dated June 3, 2019, (Applicants' B), which indicates she was terminated due to violation of KP

PHI/HIPPA policies after it was determined that she accessed the medical record of a chart of a patient who was no longer in her care, and that she in fact admitted that she had accessed the chart and printed out PHI related to that patient “to obtain information from the Physician’s note.” (*Id.*) The Kaiser computer system tracks access to patient data/charts and has an algorithm, that indicates when a chart is accessed and/or updated and by whom. It is programmed to flag potential violations of PHI/HIPPA policies and if the computer identifies such an instance, someone from the Compliance Department will investigate. (*Id.*) If after the human review, compliance suspects a violation, a referral is made to the HR department to conduct a more detailed investigation. (*Id.*) The goal in the HR department is to complete such an investigation within 90 days of such a referral, and these are known as privacy cases. (*Id.*)

With respect to employee discipline, Kaiser HR generally follows a policy and protocol of progressive discipline, but the specifics can vary, based on each union and their respective collectively bargained contract terms. (*Id.*) Usually, there is progression through all steps before termination, but that is not always true. (*Id.*) In Ms. Davis’s case, there was progressive discipline, including a written warning in 2018, and a 3-day suspension without pay in 2019 for sleeping on the job and performance issues including refusing a reasonable work order and leaving a suicide patient she was watching over. (*Id.* at p. 14.) She knows this from personal review of the Applicant’s file. (*Id.*) PHI means Protected Health Information. At the time the Applicant was terminated, she was within a year of a prior disciplinary suspension. To her knowledge, the Applicant was never written up or disciplined for anything having to do with her workers compensation claim. (*Id.*) She knows Millicent Brown-Hunter to be a compliance officer, and to her knowledge Ms. Davis provided Ms. Brown-Hunter with PHI she had improperly printed out from a patient’s chart. (*Id.*) This is reflected in Applicant’s Exhibit B. (*Id.*)

On cross-examination, she admits she is not familiar with operational and staffing needs in the hospital as she is not clinical staff. (*Id.* at p. 15.) Her review of the Applicant’s personnel file documented behavioral issues and/or investigations in 2005, multiple complaints in 2010, and investigations in 2015, 2017, and 2019. (*Id.*) . . . Millicent Brown-Hunter worked in the compliance department and deals with suspected HIPPA and PHI violations. (*Id.* at p. 16.) The alleged HIPPA violations in this case occurred on March 17 and March 19, 2019 and appear to have been flagged by the computer. (*Id.*)

...

[Applicant] argues the evidence in Defendant Exhibits 1 & 2 . . . was tampered with by the judge and/or by I&A and additionally tampered with her medical record. There is no evidence of this assertion, nor is it explained

how the evidence was changed and, if so, how it worked to her detriment. As seen in EAMS/Filenet and as summarized in the MOH/SOE at page 5, Exhibit 1, consists of a 3-page Kaiser HR memo dated May 27, 2019, recommending termination of the Applicant and the reasons why.[fn] Defendant's Exhibit 2, is a letter dated September 23, 2024, from the defense trial witness Marija Dokic, to defense counsel Christine Putman dated September 23, 2024, advising the Applicant was terminated on June 4, 2019, for "repeatedly accessing the medical record of a patient who was no longer in her care, which is in violation of KP policy."

That same page of the Petition also alleges that the judge "is in favor of the two [Kaiser] lawyers" and that I intentionally delayed her case, causing her to not be compensated. This claim is not explained and no evidence is presented or cited to in an effort to support it. I deny any bias against the Applicant.

...

There is no evidence Ms. Dokic was not familiar with HIPPA and related Kaiser policies, and as I noted in the Opinion on Decision, I found Ms. Dokic's testimony to be knowledgeable, well explained, and credible on page 7. On the other hand, I found large portions of the Applicant's testimony to not be credible and to be contradicted by the admitted evidence and/or the testimony of Ms. Dokic, particularly with respect to the Applicant's history of discipline, most of which she denied, and with respect to the unauthorized medical chart access of a patient no longer in her care, which was the essential basis and ground for her termination. (See Defendant's Exhibit A.)

...

Applicant seems to claim she was somehow prevented from "presenting my three recording" [sic], at trial, although how or why is not at all explained. As noted above, the Applicant never listed any such evidence on the Pretrial Conference Statement at the time of the MSC as required by Labor Code section 5502(d)(3), and did not offer or even mention these recording as evidence on her own behalf. To seemingly attempt to do so now, after trial and after the filing of the Petition for Reconsideration . . . is improper.

...

[T]here was compelling evidence that the Applicant violated Kaiser's HIPPA policies by repeatedly accessing the medical chart of a patient no longer in her care, and that such violations treated with upmost seriousness by Kaiser and on their own, and not withstanding Applicant's earlier history of minor discipline, constituted an established and legally valid basis on which to terminate her employment, as explained by the credible testimony of Ms. Dokic. There is no evidence whatsoever in the record in this case, that the Applicant was improperly discriminated against by the employer with respect to her termination and/or that such termination has anything to do with the two workers' comp. claims that were the subject of my prior

Joint F&A, and/or any time she missed from work related to those two claims.
(Report, pp. 5-15.)

DISCUSSION

I.

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. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part:

(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 March 24, 2025 and 60 days from the date of transmission is May 23, 2025. This decision is issued by or on May 23, 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 workers' compensation administrative law judge, the Report was served on March 24, 2025, and the case was transmitted to the Appeals Board on March 24, 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 March 24, 2025.

II.

Under section 132a, "[i]t is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment." Section 132a protects an employee from retaliation or discrimination by an employer because of an exercise of workers' compensation rights. (*City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143 [63 Cal.Comp.Cases 944] (*Moorpark*); *Judson Steel Corp. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 658 [43 Cal.Comp.Cases 1205]; *Department of Rehabilitation v. Workers' Comp. Appeals Bd. (Lauher)* (2003) 30 Cal.4th 1281, 1298-1299 [68 Cal.Comp.Cases 831]; *Franco v. MV Transportation, Inc.* (2019) 84 Cal.Comp.Cases 666, 678.) Section 132a has been "interpreted liberally to achieve the goal of preventing discrimination against workers injured on the job," while not compelling an employer to "ignore the realities of doing business by 'reemploying' unqualified employees or employees for whom positions are no longer available." (*Lauher, supra*, at 1298–1299 [citations omitted].)

Pursuant to section 132a, "[a]ny employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim ... or an application for adjudication, or because the employee has received a rating, award, or settlement, ... testified or made known his or her intention to testify in another employee's case ..." may be guilty of a misdemeanor and responsible for the payment of increased compensation, costs, lost wages, and work benefits to the injured employee. (Lab. Code, § 132a; *Franco, supra*, at 678.) However, an employer "does not necessarily engage in 'discrimination' prohibited by section 132a merely because it requires an employee to shoulder some of the disadvantages of his industrial injury." (*Lauher, supra*, at 1300; *Franco, supra*, at 679.)

Thus, "[t]o meet the burden of presenting a prima facie claim of unlawful discrimination in violation of section 132a, it is insufficient that the industrially injured worker show only that ... he or she suffered some adverse result as a consequence of some action or inaction by the employer that was triggered by the industrial injury. The claimant must also show that he or she had a legal right to receive or retain the deprived benefit or status, and the employer had a corresponding legal duty to provide or refrain from taking away that benefit or status." (*Lauher, supra*, at 1300; *Franco, supra*, at 679.) Stated another way, an injured worker must show they were subject to "disadvantages not visited on other employees because they were injured." (*Id.*)

Applicant alleges that defendant terminated her on or about June 3, 2019 because she sustained injuries on January 20, 2016 and March 17, 2018. At trial, applicant testified that (1) defendant never disciplined her for performance issues prior to her alleged HIPPA violations of March 17 and 19, 2019; and (2) she did nothing improper in accessing the medical chart of a patient formerly in her care on March 17 or 19, 2019 because she was attempting to refute disciplinary charges that she had abandoned the patient, who was on suicide precaution. (Report, pp. 5-15.)

On the other hand, defendant's witness, Marija Dokic, testified that defendant disciplined applicant for several performance issues in 2018 and 2019, and terminated her within one year of a prior disciplinary suspension when it was found that she repeatedly violated HIPPA requirements. (*Id.*) Such testimony supports the finding of the WCJ, as stated in his opinion, that applicant failed to prove either a prima facie case of discrimination in violation of section 132a, or an actual violation of that section by a preponderance of the evidence with respect to her termination.

The WCJ weighed the witnesses' testimony and found Ms. Dokic's testimony to be the more credible. (Opinion on Decision, pp. 13-15.) We accord this credibility determination great weight because the WCJ had the opportunity to observe the witnesses' demeanor while testifying at trial. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].)

Although we may reject the WCJ's credibility determination where we discern contrary evidence of considerable substantiality, our review of the record does not reveal evidence suggesting that defendant terminated applicant because of her industrial injuries. (*Id.*) To the contrary, as the WCJ states in the Report, the Petition fails to cite evidence that defendant

terminated applicant because of her injuries and relies instead on vague new allegations that documentary evidence was “tampered with” and that the WCJ declined to admit unspecified audio recordings into evidence out of bias. (Report, pp. 12-14.) Since these issues were not raised before trial, they were waived and are not properly subject to reconsideration. (*Id.*; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (1978) 82 Cal.App.3d 39 [43 Cal.Comp.Cases 661]; *U.S. Auto Stores v. Workmen's Comp. Appeals Bd. (Brenner)* (1971) 4 Cal.3d 469 [36 Cal.Comp.Cases 173]; *Cuevas v. Workers' Comp. Appeals Bd.* (2005) 70 Cal.Comp.Cases 479 (writ den.); § 5904.) Accordingly, we are unable to discern merit to the Petition.

Accordingly, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings and Orders issued on February 7, 2025 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSE H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 21, 2025

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

**GLORIA DAVIS
MICHAEL SULLIVAN & ASSOCIATES**

SRO/bp

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