

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JASMIN ESCOBEDO FUENTES, *Applicant*

vs.

WSS; SAFETY NATIONAL CASUALTY CORPORATION
administered by CORVEL SACRAMENTO, *Defendants*

Adjudication Number: ADJ18928997
Lodi District Office

OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION AND DECISION
AFTER RECONSIDERATION

Defendant seeks reconsideration or in the alternative removal of the Finding of Fact and Order (F&O) issued on September 15, 2025 by the workers' compensation administrative law judge (WCJ), which found in pertinent part that while employed by defendant as a janitor on December 23, 2023, applicant suffered an injury arising out of and in the course of employment (AOE/COE) to her right knee; apportionment is 100% industrial; applicant's attorney is entitled to a fee of 15% on the eventual finding of permanent disability; and that there is a need for further medical treatment to cure or relieve the effects of the industrial injury. The issues of the temporary disability rate, entitlement to temporary disability, permanent disability, and the value of attorney fees were deferred.

Defendant contends that the WCJ erred in finding there is a need for further medical treatment and that the WCJ should have relied upon the qualified medical evaluator (QME)'s finding of 1% permanent disability rather than deferring the issue.

We have not 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 allegations of the Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record and for the reasons

discussed below, we will grant the Petition as one seeking reconsideration, and affirm the decision, except that we will amend it to defer the issues of apportionment (Finding of Fact 7) and attorney fees (Finding of Fact 9).

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 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 23, 2025 and 60 days from the date of transmission is December 22, 2025. This decision was issued by or on December 22, 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

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

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 October 23, 2025, and the case was transmitted to the Appeals Board on October 23, 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 23, 2025.

II.

BACKGROUND

Applicant alleged injury to the right knee while employed by defendant on December 23, 2023.

On December 26, 2023, applicant sought treatment and was diagnosed with a right knee strain. An x-ray was taken to rule out fracture, a knee brace was ordered, and prescription medication was indicated. (Exhibit A, at pp. 4-6.) After effusion was seen on the right knee x-ray, applicant was referred for a right knee MRI. (*Id.* at pp. 7-12.)

On January 11, 2024, a Doctor's First Report of Occupational Injury or Illness was filed. Applicant was referred to physical therapy, and was released to modified duty with restrictions of using a leg brace, sitting 50% of the time, no squatting or kneeling, no walking on uneven terrain, and no climbing ladders or stairs. (Jt. Exhibit 1, Report of Hunter Vincent, D.O., 3/24/25, at p. 6.)

On March 5, 2024, applicant had completed physical therapy, was declared to have reached maximum medical improvement (MMI), released from care, and returned to full duty by Jaishri Ramesh, M.D., and Janz-Navarro, NP. (*Id.* at p. 7.)

On March 6, 2024, applicant was evaluated by Jonathan Pettegrew, D.O., who ordered an MRI due to complaints of pain and occasional instability. (*Id.* at pp. 7-8.)

On March 13, 2024, Dr. Pettegrew reviewed applicant's MRI, noted bony edema consistent with her injury pattern, and advised applicant to start physical therapy, with a follow-up appointment in six weeks. (*Id.* at p. 8.)

On April 24, 2024, Dr. Pettegrew reevaluated applicant and indicated more physical therapy was necessary; physical therapy continued through June 4, 2024. (*Id.*)

On August 1, 2024, applicant was evaluated by QME Hunter Vincent, D.O. (Jt. Exhibit 1, Report of Hunter Vincent, D.O., 8/2/24.) Applicant reported the following right knee complaints to Dr. Vincent:

...Sporadic pain in her right knee, with pain radiating to her right thigh. She has popping and locking in her right knee. She indicates her current pain level from 0-10 scale is: 1. Her highest pain level over the last 7 days from 0-10 scale is: 2. Her lowest pain level over the last 7 days from 0-10 scale is: 0. She has difficulty standing and walking for a prolonged period of time. She has difficulty kneeling, squatting, and ascending or descending stairs. Her pain level varies throughout the day. *Ice, rest, and medications help to alleviate the pain.*

(*Id.* at p. 6, emphasis added.)

Dr. Vincent found that based upon applicant's ability to perform kneeling, standing, walking, climbing, and sleep and taking into consideration the severity by which her ADLs were compromised, applicant had a 1% whole person impairment (WPI), and she was returned to full duty without work restrictions. With respect to future medical care, Dr. Vincent stated:

It is more likely than not that the applicant has reached maximum medical improvement/permanent and stationary at this time and no additional orthopedic care is indicated. *She can continue over-the-counter NSAIDs and pain medication, conservative home care for ongoing management.*

(*Id.* at p. 11, emphasis added.)

Dr. Vincent subsequently reviewed medical records, and on March 24, 2025, he issued a supplemental medical report. He updated applicant's diagnosis to "a right knee contusion, as well as mild boney [sic] edema and minimal degenerative changes." (Jt. Exhibit 1, Report of Hunter Vincent, D.O., 3/24/25, at p. 9.) She was declared to be MMI and found to have sustained permanent disability of 1%, based upon ADLs. (*Id.* at p. 11.) He noted that applicant received additional sessions of physical therapy for the right knee from March 28, 2024 through April 11, 2024. (*Id.* at pp. 10-11.) Dr. Vincent made no other changes to his opinion, and he stated that if applicant had a significant change in clinical presentation or significant worsening of pain he would be happy to reevaluate her and reconsider the impairment rating. (*Id.* at pp. 10; 13.)

On July 30, 2025, the matter proceeded to trial and applicant offered the following testimony about her current complaints:

She still has trouble with her right knee when walking. It starts to hurt if she moves a lot, where she goes up and down the ladder a lot, or moves to a cool area period now, it's mostly just pain. She feels that she still needs medical treatment for her right knee because she used to be really active prior to this, and now she can't do anything. She can't run. She used to run a lot.

(MOH/SOE, at p. 6:12-17.)

The WCJ found that based on applicant's credible testimony as well as the documentary evidence, applicant suffered an industrial right knee injury, and that there was a need for further medical care to cure or relieve the effect of the industrial injury. (Opinion on Decision, at p. 2.) However, the WCJ deferred all other issues, including applicant's temporary disability rate, entitlement to temporary disability, permanent disability, and attorney fees.

Defendant seeks reconsideration as to the deferral of permanent disability and applicant's award of future medical treatment.

III.

A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) 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. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].)

Conversely, interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Id.* at p. 1075 ["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"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues and are subject to the removal standard. Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th

274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ's decision includes findings on the threshold issues of employment, injury AOE/COE, and the award of further medical treatment. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal and we treat the petition as one seeking reconsideration. Nevertheless, to the extent that defendant challenges the interlocutory deferral of issues we also find no significant prejudice or irreparable harm and will not disturb the WCJ's decision in that regard.

IV.

With respect to the WCJ's findings of injury AOE/COE and the need for further medical treatment, these findings were based upon the opinion of QME Dr. Vincent as well as applicant's credible testimony.

In her Opinion on Decision, the WCJ stated:

The applicant's credible and unrebutted testimony regarding the event is consistent with the medical record reporting. Specifically, the applicant was behind the cashiers, leaning with one hand on the counter. The shelf making up the counter broke and the applicant fell to the floor hitting her knee. The applicant fell to the floor in front of customers and at least two managers working the registers (Marisa and Frankie). The applicant was taken by her mother to the doctor for her knee⁴ on 26 December 2023. The applicant was not provided with a claim form at the time of the incident. After she went to the doctor and was given a brace, she told the store manager, Kelly, that she wanted to see a doctor for the fall by the register. Kelly told her to do her best but was laughing a bit at the applicant. Based upon the applicant's credible testimony and the supporting documentary evidence the applicant has satisfied her burden

of proof by a preponderance and thus, has suffered an injury arising out of and in the course of employment to the right knee.

(Opinion on Decision, at pp. 2-3, footnotes omitted.)

We have given the WCJ's credibility determination(s) great weight because the WCJ had the opportunity to observe the demeanor of the witness(es). (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination(s). (*Id.*)

Dr. Vincent also found applicant credible. In his August 2, 2024 report and under the heading of "CAUSATION OF INJURY," he states:

The applicant presents in a direct and straightforward fashion. The applicant does not display any inconsistencies, discrepancies, pain behaviors, or any other feature that would lead me to doubt the claims. The applicant comes across as a credible individual with focal complaints. There were no non-physiological findings present on examination.

Absent any medical records, exam today was relatively benign. Her right knee shows no effusion or mechanical symptoms, but she does have mild joint line tenderness, which is consistent with the mechanism of injury from falling and impacting the right knee. There were no mechanical symptoms that would suggest a meniscal injury. As such, considering her improving symptoms and lack of mechanical symptoms, additional imaging is not recommended at this time. It is more likely than not that the applicant has reached maximum medical improvement/permanent and stationary at this time and no additional orthopedic care is indicated. She can continue over-the counter NSAIDs and pain medication, conservative home care for ongoing management.

If there are records available that would tend to indicate that there is some other causation for this injury, I would be glad to revisit this entire issue and amend my conclusions accordingly.

I am aware that causation of injury deals with whether the injury arose out of employment and occurred in the course of employment (AOE/COE) and triggers the right to medical treatment if the cause is industrial. Please note that all of the analysis and medical-legal opinions regarding causation of injury are explicitly offered to a reasonable degree of medical probability. I affirm that I have not engaged in guessing, speculation, or surmise in the process of formulating my analysis and medical-legal conclusions regarding causation of injury. I have considered industrial and non-industrial factors, which are potentially relevant to causation of injury.

(Jt. Exhibit 1, Report of Hunter Vincent, D.O., 8/2/24, at pp. 10-11.)

In his March 24, 2025 report, Dr. Vincent states that “Per my initial evaluation, she did have tenderness in the medial and lateral portions of the knee, which is consistent with her mechanism of injury and the boney edema identified on the Knee MRI 3/8/24. Her orthopedic provider Jonathan Pettegrew MD of Valley Orthopedic Bone and Joint also commented on 3/13/24 that the boney edema on right knee MRI was consistent with a right knee contusion...” (Jt. Exhibit 1, Report of Hunter Vincent, D.O., 3/24/25, at p. 11.)

On reconsideration, defendant does not challenge the WCJ’s finding of injury AOE/COE to the right knee. Upon the finding of industrial causation, an award of possible future medical treatment is appropriate and no specific modalities of treatment are being awarded. Although treaters, Dr. Ramesh and NP Janz-Navarro, discharged applicant from care on March 5, 2024, Dr. Pettegrew subsequently indicated on April 24, 2024 that applicant should continue physical therapy and therapy sessions for group strength would also be appropriate, thereafter applicant could “follow up as needed.” (*Id.* at p. 8.) This is a treater’s indication for future medical treatment. Additionally, Dr. Vincent indicated over-the-counter NSAIDs and pain medication, conservative home care for ongoing management can continue; this is the medical-legal expert’s indication for future medical treatment. Again, no specific modalities of treatment have been awarded here, but the medical record does support a finding that applicant is entitled to future treatment. The specifics of that treatment need not be determined now. Based on this record, we will not disturb the WCJ’s findings on injury AOE/COE or the finding of further medical treatment. We also observe that QME Dr. Vincent documented applicant’s continuing need for medication in his reporting, and as set forth in section 4600, defendant must provide this medical treatment.

Lastly, we note that the WCJ found a need to develop the record on the issue of permanent disability. Therefore, and as stated above, we do not find significant prejudice or irreparable harm as to the deferral of permanent disability and will not disturb that finding. However, because apportionment is a sub issue of permanent disability, which is being deferred, we will defer the issue of apportionment so that apportionment can be addressed concurrently with the issue of permanent disability. For the same reason, we will also defer the issue of attorney fees.

Accordingly, we grant the Petition for Reconsideration, affirm the WCJ’s September 15, 2025 decision, except that we amend it to defer the issues of apportionment and attorney fees.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings, Award, and Order of September 15, 2025, is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

7. The issue of apportionment is deferred.

9. The issue of attorney fees is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 22, 2025

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

**JASMIN ESCOBEDO FUENTES
OCCUPATIONAL INJURY
LAW OFFICE OF COX & ASSOCIATES**

SL/abs

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