

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

MARC LAFLEUR, *Applicant*

vs.

MILHOUSE CHILDREN'S SERVICES, through NON-PROFITS UNITED, as a self-insured group, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INCORPORATED, *Defendants*

**Adjudication Number: ADJ10423250
Redding District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the April 18, 2025 Findings and Award issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant's case settled by Stipulated Award¹ approved on May 23, 2028, that applicant filed a timely Petition to Reopen claiming new and further disability, and that applicant "did not submit any actual evidence of new and further disability within five years from the date of his initial injury." Based on these findings, the WCJ issued an order that the Petition to Reopen "fails because there was no evidence of new and further disability within five years of his initial injury."

Applicant contends the WCJ erred in failing to grant the Petition to Reopen arguing that the WCJ should have relied on the opinion of agreed medical evaluator (AME) Thomas Pattison, M.D., to find new and further disability. Applicant further contends that the WCJ erred in finding applicant was a driver arguing that the parties stipulated that applicant's occupation was "driver, teacher evaluations, mental health."

We received an Answer. The WCJ issued a Report and Recommendation on Reconsideration recommending that we deny reconsideration.

¹ The parties stipulated that applicant sustained admitted industrial injury to his left ankle and back while employed as a "DRIVER/TEACHER EVALUATIONS/MENTAL HEALTH" on June 11, 2015 causing 38% permanent disability.

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

I.

Preliminarily, we note that former Labor Code² 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 May 21, 2025 and 60 days from the date of transmission is Sunday, July 20, 2025. The next business day that is 60 days from the date of transmission is Monday, July 21, 2025 (See Cal. Code Regs., tit. 8, §

² All further statutory references are to the Labor Code, unless otherwise noted.

10600(b).)³ This decision is issued by or on Monday, July 21, 2025, so that we have timely acted on the petition as required by Labor Code 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 May 21, 2025, and the case was transmitted to the Appeals Board on May 21, 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 May 21, 2025.

II.

The WCJ's Report states as follows:

II. BACKGROUND

Mark Lafleur, while employed in his usual and customary occupation as Driver, did suffer industrial injury to his left ankle and back on 6/11/2015. The case was settled by Stipulated Award with an Award signed on 5/24/2018 at 38% permanent disability.

On 6/09/2020, Applicant Lafleur filed a timely Petition to Re-Open his case alleging new and further disability. Following the Petition to Re-Open his case, Applicant Lafleur continued in treatment, with a total ankle arthroplasty in 2019. Following the surgery, he developed further issues requiring continued treatment urgent irrigation, debridement of the wound, and removal of the hardware previously placed in the ankle. During the continued treatment, it was determined that Applicant had a peripheral vascular disease which then required further surgeries, two by Michael Palmer, M.D., then two further surgeries by Yuhwan Hong, M.D., who initially

³ 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.

removed the left ankle replacement, then further surgery to install a antibiotic spacer, a deep implant and ankle arthrodesis. This further treatment, following the original settlement, took over four years.

On 5/02/2023, (after issuing a 3/08/2023 report only indicating a missed appointment, along with a request for additional records), AME Thomas S. Pattison, M.D. issued an Agreed Medical-Legal Qualified Evaluation which found Applicant had reached permanent and stationary status with additional permanent disability.

On 1/28/2025, the parties appeared for Mandatory Settlement Conference and completed a Pre-Trial Conference Statement which includes the following issues:

- Permanent and stationary date
- Permanent disability
- Apportionment
- Occupation and group number
- Need for further medical treatment
- Attorney fees
- Whether Applicant suffered new and further disability
- Applicant's petition for Labor Code §5814 penalties
- Whether Applicant has proven new and further disability arose from his original injury within five years within years per Rodriguez
- Whether Applicant's new and further PD was quantifiable (P&S) before 5 years elapsed from the original DOI per 8CCR §10152.

The undersigned issued an Opinion on Decision and Findings and Award on 4/18/2025. That decision found that because there was no actual evidence of new and further permanent disability within five years from the original date of injury, the Petition for New and Further failed.

Thereafter Applicant submitted a timely Petition For Reconsideration on 5/08/2025.

(Report, at pp. 2-3.)

III.

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

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d

274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Based on our review, we are not persuaded that there is substantial evidence to support the WCJ's decision without additional development of the record.

Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. 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 applicant'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 WCABmediation@dir.ca.gov.*

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration 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/ JOSE H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 21, 2025

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

**MARC LAFLEUR
GOLD COUNTRY COMP
LAW OFFICES OF CRYSTAL CUNNINGHAM**

PAG/bp

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