WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARIBEL LARA, *Applicant*

vs.

GOODWILL INDUSTRIES, permissibly self-insured, administered by ADMINSURE, *Defendants*

Adjudication Number: ADJ10981243
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact and Order issued by the workers' compensation administrative law judge (WCJ) in this matter on October 4, 2024, in which the WCJ found, in pertinent part, that applicant sustained injury arising out of and in the course of employment to her left knee, right knee, lumbar spine, dental, and causing and/or exacerbating hypertension. The WCJ further found that applicant is entitled an unapportioned award as it relates to hypertension.

Petitioner contends that the WCJ erred in finding that applicant sustained industrial injury in the form of hypertension and/or exacerbation of such condition. Petitioner further asserts that if industrial injury in the form of hypertension is found, the medical evidence supports apportionment of any permanent disability.

We have not received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration and 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 defendant'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.

Former Labor Code section 5909[1] 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 November 12, 2024 and 60 days from the date of transmission is Saturday, January 11, 2025. The next business day that is 60 days from the date of transmission is Monday, January 13, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, January 13, 2025, so that we have timely acted on the petition as required by section 5909(a).

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[1] Unless otherwise stated, all further statutory references are to the Labor Code.

[2] 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.

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 November 12, 2024, and the case was transmitted to the Appeals Board on November 12, 2024. 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 November 12, 2024.

II.

RELEVANT PROCEDURAL HISTORY

Applicant filed an Application for Adjudication of Claim (Application) for benefits on August 15, 2017, claiming that while employed by defendant Goodwill Industries on June 6, 2017, she sustained industrial injury arising out of and in the course of her employment (AOE/COE) to both arms, left hand and fingers, lumbar spine, both hips, legs, and knees, high blood pressure aggravation of diabletes and dental. (Application, 8/15/17, p. 9.)

The injury occurred when applicant slipped and fell while moving clothes from one rack to another. She fell forward onto her knees (breaking her fall with her arms). As a result of this incident, applicant sought medical care at an industrial clinic and received medications, physical therapy, and referral to other physicians. (Ex. X1, report of Jeffrey Hirsch, M.D., p. 3.)

She was evaluated by Agreed Medical Evaluator (AME) Neil Halbridge, M.D., for her orthopedic complaints on June 2, 2018. (Ex. X1, p. 11.)

She was also evaluated by Jeffrey Hirsch, M.D., on April 30, 2019 as an AME for her claim of hypertension on April 30, 2019. Dr. Hirsch issued several reports and was deposed on two occasions.

On July 2, 2024, the parties appeared for trial. The parties stipulated to injury AOE/COE to applicant's left and right knee, lumbar spine, and dental, as well as to a permanent disability rate

of $232 per week, and a permanent disability rating after age and occupation of 4% dental, 4% left knee, 3% right knee, and 7% lumbar spine.

The issues raised were as follows:

> 1. Whether there was injury arising out of and in the course of employment causing hypertension.
>
> 2. Whether the apportionment indicated by AME Dr. Hirsch as to hypertension constitutes substantial medical evidence.
>
> 3. Whether Applicant's Attorney is entitled to Attorney's Fees and the amounts and appropriateness thereof.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), 7/2/24, p.2.)

Exhibits were offered and admitted consisting of medical reporting relating to applicant's claim for hypertension, and the matter was submitted on the existing record, without testimony.

On October 4, 2024, the WCJ issued his Findings and Order in which he found as follows:

> 1. Ms. Maribel Lara, born [], while employed on June 6, 2017, as a Retail Sales Associate Group No. 214, at Los Angeles, California, by Goodwill Industries of Southern California, sustained injury arising out of and in the course of employment to her left knee, right knee, lumbar spine, dental, and causing and/or exacerbating hypertension.
>
> 2. At the time of injury, the employer was permissibly self-insured, administered by AdminSure.
>
> 3. At the time of the injury, the employee's earnings warranted Permanent Disability Indemnity Rates of $232.00 per week.
>
> 4. The employer has furnished some medical treatment.
>
> 5. No attorney fees have been paid and no attorney fee arrangements have been made.
>
> 6. The Permanent Disability Ratings, after adjustment for age and occupation, are as follows: Dental 4%; Left Knee 4%; Right Knee 3%; Lumbar Spine 7%.
>
> 7. There was injury arising out of and in the course of employment causing and/or exacerbating hypertension.

8. The apportionment evidence, as it relates to hypertension, as indicated by AME Dr. Hirsch, fails to meet defendant's burden. The applicant is entitled to an unapportioned award.

9. Applicant's Attorney is entitled to reasonable Attorney's Fee of 15% for any Permanent Disability Indemnity to applicant less credit for any sums previously paid.

ORDER:

1. IT IS ORDERED THAT the DEFENDANT administer treatment and adjust workers' compensation benefits according to the findings of fact above with jurisdiction reserved in the event of a dispute.

(F&O, 10/4/24.)

It is from these Findings and Order that defendant seeks reconsideration.

III.

DISCUSSION

Defendant contends the medical reporting does not constitute substantial evidence upon which a finding of injury to applicant in the form of hypertension, or aggravation of hypertension exists, but that if such injury is found based upon such reporting, the evidence supports valid apportionment.

On April 30, 2019, applicant was evaluated for her claim of hypertension with Jeffrey Hirsch, M.D., as an AME. Dr. Hirsch examined applicant, reviewed the existing medical records, and issued a report dated May 29, 2019 in which he deferred applicant's orthopedic and dental complaints to the appropriate specialists, and found applicant's weight and hyperlipidemia as well as diabetic issues to be non-industrial. As to hypertension, the AME diagnosed applicant with hypertension with inadequate control on monotherapy and left ventricular hypertrophy by echocardiography. (Ex. X1, p. 9.)

Under the causation discussion, the AME opined that he believed applicant sustained permanent disability in the industrial arena. He goes on to state:

> Ms. Lara is a limited historian; furthermore, I do not have any medical records that predate the specific injury occurring on June 6, 2017. It is biologically plausible that an individual who developed significant orthopedic injuries might develop the new onset of hypertension and/or diabetes (or the worsening of pre-existing disorders of this nature).
> In many respects, critical aspects of this case exist as a black hole. While I strongly suspect that Ms. Lara had both hypertension and diabetes for some years before she fell in mid-2017, I have no documentation or proof of same. Viewing the specific

data relating to this case, I do not believe that it is plausible that her diabetes has been aggravated or caused on an industrial basis. However, based on reasonable medical probability and utilizing only the information currently available, I do recognize non-predominant industrial contribution to her very significant hypertensive disorder.

(Ex. X1, pp. 9-10.)

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In order to assess Ms. Lara's current status, I performed non-invasive testing in my office. It is highly probable that Ms. Lara had hypertension for years before she fell at work (owing to the presence of very significant concentric left ventricular hypertrophy). Left ventricular hypertrophy (LVH) is the abnormal thickening of the left ventricle, which is a sign of longstanding exposure to elevated blood pressure. Thickening of the ventricle predisposes an individual to myocardial infarction (heart attack), stroke, and pulmonary edema (also called congestive heart failure, but more appropriately termed pulmonary edema in this setting). This type of hypertensive heart disease usually occurs after three to five years of exposure to inadequately-controlled hypertension.

***

As emphasized above, the database in this case is far from ideal. I see very clear evidence that the applicant was hypertensive before she fell at work (owing to the degree of left ventricular hypertrophy in this non-obese patient). However, it is biologically plausible that she would experience worsening of hypertension as a consequence of the industrial factors referenced earlier in this "Discussion... " I do not yet have final conclusions from Dr. Halbridge. It appears that the applicant also sustained significant orthopedic injuries at the time of the motor vehicle accident only about one month after the fall at Goodwill Industries.

(Ex. X1, pp.13-14.)

With respect to the issue of apportionment, Dr. Hirsch opines that 67% of the permanent disability caused by hypertension is non-industrial and 33% is industrial, and states that all conclusions on apportionment are provided mindful of Labor Code Sections 4663, 4664, and the *Escobedo* ruling, and the conclusions in the report are provided within reasonable medical probability. He assesses the disability as 32% whole person impairment, based upon a class 3 impairment as found in Table 4-2 on page 66 of the AMA Guides. (Ex. X1, pp. 16-17.)

Dr. Hirsch was deposed on October 13, 2020[3]. At that time, he acknowledged that the

[3] The deposition transcript (Ex. 8.) was mistakenly labeled in the MOH/SOE of 7/2/24 as October 13, 2022, but the correct date is October 13, 2020.

applicant had sustained a non-industrial motor vehicle accident on July 12, 2017, which was a little over a month after her industrial slip and fall. (Ex. X8, p. 12; 21-25.)

He further acknowledged that he had not yet had a chance to review the deposition transcript of Dr. Halbridge, nor the medical records from the applicant's motor vehicle accident, and while opining he feels the hypertension is industrial, he states that he has not finished his conclusions at all. The parties then agreed to provide additional reports and testimony to the AME and send applicant back for further evaluation and questioning. (Ex.X8, pp. 38-39.)

He was again deposed on August 10, 2022. By that time, Dr. Hirsch had issued three more medical reports dated February 9, 2021, January 5, 2022, and February 3, 2022. (Ex. X8, p. 47; 13-25.) He had reviewed the applicant's records from her motor vehicle accident of July 12, 2017, as well as the medical reporting and deposition testimony of the AME in orthopedic surgery, Dr. Halbridge, who had found applicant's knees and back industrial, but not her cervical spine or left wrist. (*Id*., pp. 48:18 -25, 50:23-25, 52:13-18.)

When questioned by defendant on the issue of applicant's hypertension, he stated as follows:

> Q …Look, the orthopedic injury -- and you mentioned non-steroidal drugs, right?
>
> A Yes, sir, I did.
>
> Q Okay. And do you find that the drugs played a role in aggravating the underlying hypertension, those --
>
> A Yeah, the non-steroidal anti-inflammatory drugs I believe so stated in the first report.
>
> Q Right. So how much of that medication had she taken before she got that blood pressure reading?
>
> A How much of that medication that -- you mean the initial blood pressure reading?
>
> Q Isn't that what you're banking on? You're looking at that reading and go, "That's high"?
>
> A Well, I think you're talking about what the first blood pressure which was only a few days after she fell. So in the immediate aftermath of a painful injury, acute and subacute time period, hours, several days, depending on the injury could be out four or five days, one week, the person is still in the place of acute pain. They

are often still -- they have a lot of adrenaline and, you know, if you want to call it anxiety or just emotional response to the incident. So, you know, the medications not always, but typically take a while before they start aggravating the blood pressure like one month, three months, six months. So I don't believe the immediate blood pressure readings were so high because of NSAIDS. I believe that's why the high blood pressure readings persisted down the line.

Q Okay. That would sound to me like total speculation, but I won't go there. I don't want to broaden our discussion.

A Well, speculation as to the effects of NSAIDS medications on blood pressure? You think that's speculation?

Q No. But I -- you know, at some point if she's taking medication, she's taking them on the M.V.A. as well and it all sort of becomes pulled together. I think I have to go back and track the medication.

A Yes. I haven't looked at that issue. In other words, these latest questions now you're asking me, if I can rephrase, you know, kind of summarize, "Dr. Hirsch, what does the evidence show in regards to the potential effects of pain medications on her blood pressure?" I would have to go look at the records again with a focus on that particular question.

Q Right. I agree with you. But certainly with non-steroidals it's more than two or three weeks or a week?

A Well, again, a person can drop dead from one dose of Motrin, so I don't want to say impossible. I don't want to say it's impossible to see an immediate effect. But as I testified about two minutes ago or 90 seconds ago, typically the average effects of NSAIDS start after protracted usage like one month, three months, six months. Not in just one week.

Q So then we're left with the orthopedic pain, aren't we?

A In the immediate aftermath it's pain and the anxiety response, the adrenaline.

(Ex. X9, pp. 70-72.)

***

Q Okay. And that's the only causal connection establishing possibly an industrial aggravation of her pre-existing, non-industrial hypertension, right?

A At that early evaluation, in the immediate aftermath of the incident not as -- not as weeks and months passed. I mean, she told me that she became a less active person. I offered up medical research showing that a person changing from more active to less active is a probable contributor to worsening hypertension. So, again, in the immediate aftermath of the incident, that's not relevant. That's a process that takes not even weeks. That takes a month, three months, six months slowly over time. So you can say there's near-term effects of post injury and there's medium terms effects and the medium effects overlap with long-term effects. Obviously there's not the acute post injury adrenaline and shock and anger at one year, right? We are passed that phase at one year. At one year we're dealing with the effects of pain, psychological effects of pain, physiological effects of pain, effects of being less active, effects of analgesic medications. That's at one year. But we haven't had time. No one has had time to experience those affects at several days. I mean, we're looking at a blood pressure reading -- I think you are talking about the one from Dr. Ledow (phonetic spelling). She said she fell on June 6, 2017 and she sees him June 12th. So we're looking at a blood pressure reading six days after the incident that I believe is prompting your current questions.

Q Well, I'm going to stick with my theory, okay, or my sense of proving injury by a preponderance of the evidence, that is, causation, that you don't know if a day before the slip and fall she had the same blood pressure reading.

A I do not know that. You're correct.

Q My ultimate bottom line is if you don't know, then it's got to be speculation to say, "Well, this could have caused it or this might have caused but I don't know if it caused anything because the blood pressure could have been at that level before the slip and fall."

A Well, knowing implies servitude. I can't advance any level of my analysis from the internal view with servitude. But I can advance it with probability, again, based on the facts at hand. I think it's probable looking at the effects of this slip and fall on Miss Lara and all that's transpired since then, it's probable that it has adversely affected her blood pressure.

(Ex. X9, pp. 73-75; 13-25, 1-25, 1-8.)

Thereafter, Dr. Hirsch issued three supplemental reports dated September 30, 2022, November 24, 2023, and January 3, 2024. Responds to separate interrogatories from the parties, as well as a review of additional medical records. In his September 30, 2022 report he opines:

> I agree with Mr. Gabriel's seven bullet points at the bottom of the first page of his interrogatory (excepting the last bullet point). It is not accurate to state that my only rationale in identification of an aggravated hypertensive disorder is my "experience." Rather, it is my experience combined with the plausibility of this process in Ms. Lara (an acute orthopedic injury leading to chronic pain then, secondarily, having adverse effects on hypertension).
>
> Therefore, it is my experience plus the plausibility of aggravated hypertension in this case.
>
> Nonetheless, Mr. Gabriel also offers a tautologic statement with which (of course) I agree. Since no one knows Ms. Lara's blood pressure readings before the specific date of injury, no one can point to exact data demonstrating the process of industrial aggravation as described in my reports.

(Ex. X5, p. 2.)

The November 24, 2023 report responds to questions from applicant' counsel relative to apportionment to pre-existing hypertension. He states that although he agrees that no medical records exist that document hypertension before the applicant sustained injuries at Goodwill Industries, he disagrees with the idea that there is no "medical evidence" to support apportionment to pre-existing hypertension based upon his recognition of multiple causative forces that contributed to the applicant's hypertension. (Ex. X 6, p. 3.)

While not artfully stated, it appears that the inquiry was as to the issue of apportionment of permanent disability to pre-existing hypertension.

Finally, Dr. Hirsch's January 3, 2024 report reviews a medical record from Desert Regional Medical Center from April 15, 2009 and opines that at that time applicant did not manifest evidence of chronic hypertension. Dr. Hirsch continues on to state:

> Previously, I explained the collection of information that exceeded the threshold of reasonable medical probability connecting Ms. Lara's specific injury to aggravation of her hypertensive disorder. In fact, based on the fact pattern in this case and the lack of pre-injury medical records, no one can "prove" that Ms. Lara had chronic hypertension before she sustained injuries while working at Goodwill Industries. I have previously explained (on multiple occasions) that Ms. Lara confronted multiple known and defined causative forces that can cause or aggravate

> hypertension due to her injury at work. It is reasonably medically probable that the injury at Goodwill Industries aggravated the applicant's pre-existing hypertensive disorder. It is reasonably medically probable that Ms. Lara already had chronic hypertension before she was injured at Goodwill Industries (because other non-industrial causative forces that cause hypertension are also evident in this case).

(Ex. X7, p. 3.)

In his decision, the WCJ states in his Findings that "there was injury arising out of and in the course of employment causing and/or exacerbating hypertension.

An ***exacerbation*** is a temporary increase in the symptoms of a pre-existing condition that returns to its prior level within a reasonable period of time, whereas an aggravation is an increase in the severity of a pre-existing condition where the underlying pathology is permanently moved to a higher level. The industrial aggravation of a pre-existing condition constitutes an injury for workers' compensation purposes. (*Tanenbaum v. Industrial Acc. Com.* (1935) 4 Cal.2d 615, 617 [1935 Cal. LEXIS 590; *Zemke v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358]; *Reynolds Electrical & Engineering Co. v. Workers' Comp. Appeals Bd. (Buckner)* (1966) 65 Cal.2d 438 [31 Cal.Comp.Cases 421].) The Appeals Board has previously held that the aggravation of a prior condition constitutes an injury when the aggravation causes a need for medical treatment and a period of temporary disability. (*City of Los Angeles v. Workers' Comp. Appeals Bd. (Clark)* (2017 W/D) 82 Cal.Comp.Cases 1404.) *Johnson v. Cadlac, Inc*., 2021 Cal. Wrk. Comp. P.D. LEXIS 194.

In finding that applicant sustained injury causing and/or exacerbating hypertension, it is unclear as to whether the WCJ found applicant's orthopedic injuries caused an aggravation of applicant's pre-existing hypertension, or a temporary exacerbation of such condition. It is further unclear as to the extent to which, if any, the subsequent automobile accident and applicant's use of NSAIDS post-accident impacts the findings of the QME as to causation of injury. The existing evidence does not appear to indicate that any medical treatment or period of temporary disability occurred relating to applicant's claim of hypertension. Further, applicant did not testify at the trial, and the matter was submitted on the existing medical evidence.

IV.

Any decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [520 P.2d 978, 113 Cal. Rptr. 162] [39 Cal.Comp.Cases 310]*; Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [475 P.2d 451, 90 Cal. Rptr. 355] [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [463 P.2d 432, 83 Cal. Rptr. 208] [35 Cal.Comp.Cases 16].)

In order to constitute substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

It is not substantial evidence if it is known to be erroneous, based upon facts no longer germane, based upon incorrect legal theory, or based upon an inadequate medical history and examination. (*Hegglin v. Workmen's Comp. Appeals Bd*. (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 1993]; *Place v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Zemke v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358].) There must be a solid and reasonable basis in the medical report for the physician's final conclusion. It is not sufficient for the WCJ to blindly accept a medical opinion that lacks a solid underlying basis. Instead, he must carefully judge the report's weight and credibility; the evidence must have some degree of; probative force. (*National Convenience Stores v. Workers' Comp. Appeals Bd. (Kesser)* (1981) 120 Cal.App.3d 420 [46 Cal.Comp.Cases 783].)

With respect to the issue of apportionment, defendant argues that the medical reporting of QME Hirsch supports valid apportionment of permanent disability if industrial injury in the form of hypertension is found.

In the en banc case of *Escobedo v. Marshalls*, we recognized that a physician's report on permanent disability shall address "the issue of *causation of the permanent disability*." The issue of the causation of permanent disability, for purposes of apportionment, is distinct from the issue of the causation of an injury. (See *Reyes v. Hart Plastering* (2005) 70 Cal.Comp.Cases 223 *(*Significant Panel Decision*)*.) Thus, the percentage to which an applicant's *injury* is causally related to his or her employment is not necessarily the same as the percentage to which an

applicant's *permanent disability* is causally related to his or her injury. The analyses of these issues are different and the medical evidence for any percentage conclusions might be different. (*Escobedo, supra*, at p. 611.)

We also note that the existing record fails to contain any medical reporting relating to the applicant's admitted injuries to her knees, back, and dental injury and the WCJ's concomitant findings of permanent disability after adjustment for age and occupation only. While the issue of permanent disability was not placed in issue at trial, the medical reporting of those physicians as to their findings, and upon which Dr. Hirch repeatedly refers, may be of import.

It is also unclear as to what benefits the WCJ is ordering be adjusted as there are no findings of permanent disability, nor need for treatment set forth in the findings of fact.

As such, it appears from our preliminary review that the existing record may not be sufficient to support the decision, order, and legal conclusions of the WCJ, and that further development of the record may be necessary with respect to the issues noted above.

V.

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"].)

Labor Code 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.

VI.

Accordingly, we grant defendant'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 defendant's Petition for Reconsideration of the Findings and Order issued on October 4, 2024 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 A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 13, 2025

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

MARIBEL LARA
BARKHORDARIAN LAW FIRM
GABRIEL & ASSOCIATES

LAS/abs

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