WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

REBECCA BLUNT, *Applicant*

vs.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION; legally uninsured, adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ10305799
Sacramento District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the December 30, 2020 Findings and Award issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant sustained psychiatric injury arising out of and occurring in the course of employment (AOE/COE) while employed during the continuous trauma period ending April 15, 2014. The WCJ further found that applicant became permanent and stationary on May 15, 2018 and that the injury herein caused 21% permanent disability after apportionment but did not cause temporary disability for the period March 13, 2014 through March 13, 2016.

Applicant contends that WCJ should have relied on the opinion of psychology qualified medical evaluator (QME) James O'Dowd, Ph.D., to find applicant entitled to temporary disability and should not have relied on his opinion to find a basis for apportionment.

We receive an Answer. The WCJ issued a Recommendations on Petition for Reconsideration recommending that we deny reconsideration.

We have considered the Petition for Reconsideration, the contents of the Report, and 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.

Former Labor Code[1] 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." 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 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." When the Appeals Board does not review the petition within 60 days due to irregularities outside the petitioner's control, and the 60-day period lapses through no fault of the petitioner, the Appeals Board must then consider whether circumstances exist to allow an equitable remedy, such as equitable tolling.

It is well-settled that the Appeals Board has broad equitable powers. (*Kaiser Foundation Hospitals v. Workers' Compensation Appeals Board* (1978) 83 Cal.App.3d 413, 418 [43 Cal.Comp.Cases 785] citing *Bankers Indem. Ins. Co.* v. *Indus. Acc. Com*. (1935) 4 Cal.2d 89, 94-98 [47 P.2d 719]; see *Truck Ins. Exchange v. Workers' Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers' Comp. Appeals Bd. (Lutz)* (2013) 218 Cal.App.4th 258, 268 [78 Cal.Comp.Cases 758]; *Dyer v. Workers' Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [59 Cal.Comp.Cases 96].) It is an issue of fact whether an equitable doctrine such as laches applies. (*Kwok*, *supra*, 2 Cal.App.5th at p. 402.) The doctrine of equitable tolling applies to workers' compensation cases, and the analysis turns on the factual determination of whether an opposing party received notice and will suffer prejudice if equitable tolling is permitted. (*Elkins v. Derby* (1974) 12 Cal.3d 410, 412 [39 Cal.Comp.Cases

[1] All further statutory references are to the Labor Code, unless otherwise noted.

624].) As explained further below, only the Appeals Board is empowered to make this factual determination.[2]

In *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493], the Appeals Board denied the applicant's petition for reconsideration because it had not acted on the petition within the statutory time limits of section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board's decision holding that the time to act on applicant's petition was tolled during the period that the file was misplaced. (*Id.* at p. 1108.) Pursuant to the holding in *Shipley* allowing equitable tolling of the 60-day time period in section 5909, the Appeals Board acts to grant, dismiss, or deny such petitions for reconsideration within 60 days of receipt of the petition, and thereafter issues a decision on the merits.

"[I]t is a fundamental principle of due process that a party may not be deprived of a substantial right without notice…." (*Shipley*, *supra*, 7 Cal.App.4th at p. 1108.) All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 635, fn. 22 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd*. (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].)

If a timely filed petition is never acted upon and considered by the Appeals Board because it is "deemed denied" due to an administrative irregularity and not through the fault of the parties, the petitioning party is deprived of their right to a decision on the merits of the petition. (Lab. Code, § 5908.5; see *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 754-755 [33 Cal.Comp.Cases 350]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) Just as significantly, the parties' ability to seek meaningful appellate review is compromised, raising issues of due process. (Lab. Code, §§ 5901, 5950, 5952; see *Evans*, *supra*, 68 Cal.2d 753; see also *Rea*, *supra*, 127 Cal.App.4th at p. 643.)

[2] Section 5952 sets forth the scope of appellate review, and states that: "Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence." (Lab. Code, § 5952; see Lab. Code, § 5953.)

On December 11, 2024, the California Supreme Court granted review in *Mayor v. Workers' Compensation Appeals Bd.* (2024) 104 Cal.App.5th 713 [2024 Cal.App. LEXIS 531] ("*Mayor*"). The Supreme Court noted the conflict present in the published decisions of the Courts of Appeal, and in its order granting review of *Mayor*, stated as follows:

> Pending review, the opinion of the Court of Appeal, which is currently published at 104 Cal.App.5th 1297, may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority that would in turn allow trial courts to exercise discretion under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456, to choose between sides of any such conflict. (See *Standing Order Exercising Authority Under California Rules of Court, Rule 8.1115 (e)(3), Upon Grant of Review or Transfer of a Matter with an Underlying Published Court of Appeal Opinion,* Administrative Order 2021-04-21; Cal. Rules of Court, rule 8.1115(e)(3) and corresponding Comment, par. 2.)

(Order Granting Petition for Review, S287261, December 11, 2024.)

Like the Court in *Shipley*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." (*Shipley*, *supra*, 7 Cal.App.4th at p. 1108.) The touchstone of the workers' compensation system is our constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.) "Substantial justice" is not a euphemism for inadequate justice. Instead, it is an exhortation that the workers' compensation system must focus on the *substance* of justice, rather than on the arcana or minutiae of its administration. (See Lab. Code, § 4709 ["No informality in any proceeding . . . shall invalidate any order, decision, award, or rule made and filed as specified in this division."].) When a litigant is deprived of their due process rights based upon the administrative errors of a third party, for which they bear no blame and over whom they have no control, substantial justice cannot be compatible with such a draconian result.

In keeping with the WCAB's constitutional and statutory mandate, all litigants before the WCAB must be able to rely on precedential authority, and all litigants must have the expectation that they will be treated equitably on issues of procedure and be accorded same or similar access to the WCAB. The Appeals Board has relied on the *Shipley* precedent for over thirty years, by continuing to consider all timely filed petitions for reconsideration on the merits, consistent with due process. Treating all petitions for reconsideration in the same or similar way procedurally promotes judicial stability, consistency, and predictability and safeguards due process for all

litigants. We also observe that a decision on the merits of the petition protects every litigant's right to seek meaningful appellate review after receiving a final decision from the Appeals Board.

Only the Appeals Board is statutorily authorized to issue a decision on a petition for reconsideration. (Lab. Code, §§ 112, 115, 5301, 5901, 5908.5, 5950; see Cal. Code Regs., tit. 8, §§ 10320, 10330.) The Appeals Board must conduct de novo review as to the merits of the petition and review the entire proceedings in the case. (Lab. Code, §§ 5906, 5908, 5908.5; see Lab. Code, §§ 5301, 5315, 5701, 5911.) Once a final decision by the Appeals Board on the merits of the petition issues, the parties may seek review under section 5950, but appellate review is limited to review of the record certified by the Appeals Board. (Lab. Code, §§ 5901, 5951, 5952, 5953.)

Consequently, we apply the doctrine of equitable tolling pursuant to *Shipley* to this case. Here, the WCJ issued the Findings and Award on December 30, 2020. Applicant filed the timely Petition for Reconsideration on January 19, 2021 and the WCJ issued the Report and Recommendation on Petition for Reconsideration and, according to Events in EAMS, the case was transmitted to the Appeals Board on February 1, 2021. However, for reasons that are not entirely clear from the record, the Appeals Board did not actually receive notice of and review the petition until May 23, 2025. Accordingly, the Appeals Board failed to act on the petition within 60 days, through no fault of the parties.

Accordingly, our time to act on applicant's petition was equitably tolled until 60 days after May 23, 2025. The date 60 days from May 23, 2025, is July 22, 2025. This decision is issued by or on July 22, 2025, so that we have timely acted on the petition as required by section 5909(a).

II.

The WCJ stated following in the Report:

> Applicant sustained an industrially related psychiatric injury during a continuous trauma period ending on April 15, 2014. Dr. O'Dowd acted as the Panel QME. The Court issued a Findings & Award on December 30, 2020 finding the injury to be industrially related, that applicant did not meet her burden to prove that she was temporarily totally disabled and that applicant suffered 21 % permanent disability inclusive of legal apportionment. Applicant filed her Petition for Reconsideration contesting the findings regarding temporary disability and apportionment.
>
> The matter originally submitted for trial on December 18, 2018. The parties stipulated that applicant became permanent and stationary on May 15, 2018. Several issues were submitted for decision including AOE/COE, temporary disability for the period of March 13, 2014 through March 13, 2016, permanent disability and apportionment.

Applicant worked as a Registered Nurse for the Department of Corrections and Rehabilitation. At trial, applicant testified that she experienced several instances wherein she witnessed inmates masturbating. Applicant was subsequently diagnosed with PTSD and experienced various psychological symptoms.

The parties originally submitted six reports from Dr. O'Dowd (Exhibits 1-6). The Court issued a Findings and Order that Dr. O'Dowd's reporting was not substantial medical evidence. Neither party appealed the decision that the reporting was not substantial medical evidence. On the issue of temporary total disability Dr. O'Dowd's report stated:

> Ms. Blunt first developed psychological symptoms in 2013 following her first exposure to inmates masturbating. Ms. Blunt reported that her anxiety and panic worsened over the next year due to repeated exposures to inmates and the failure of supervisors to act on her behalf. Based on this history, I believe that Ms. Blunt has been Temporarily Partially Disabled from a psychiatric perspective since January 2014. This disability status continued until the date of this report.
>
> I am of the belief that Ms. Blunt's psychological condition could greatly benefit from consistent and sustained treatment-that is, psychological treatment on a weekly basis and psychotropic medication. Thus, I believe that her psychological condition has not reached Maximum Medical Improvement but is rather Temporarily Totally Disabled .
>
> ... Ms. Blunt's injury to her psyche is nearly 3 years old. Additionally, she has received bi-monthly treatment since 2009, it has been a year since my last evaluation and Ms. Blunt is still manifesting the same level of psychological acuity. While I believe Ms. Blunt could continue to improve with sustained treatment, I believe her current level of functioning is her new baseline and she has reached a permanent and stationary status.

(Exhibit 3 pages 19-20) In his May 15, 2018 report Dr. O'Dowd reviewed applicant's treatment reports for the period of January 8, 2013 through October 11, 2017; the majority of the reports deal with non-industrial issues. (Exhibit 4) In the February 20, 2019 Opinion on Decision the Court specifically noted "Dr. O'Dowd also opined that applicant was 'temporarily partially disabled from a psychiatric perspective since January 2014' until the date of the report (Exhibit 3). Immediately thereafter in his report he states that applicant is TTD and not yet MMI. He then goes on to say that applicant has reached MMI and has a WPI of 30%." (emphasis added). The Court ordered the parties to develop the record regarding applicant's allegation of TTD owed.

Defendant filed a trial brief on July 16, 2020 arguing that Dr. O'Dowd's reporting was not substantial medical evidence. Although defendant's brief focuses on the issue of AOE/COE, the brief mentions that Dr. O'Dowd failed to

discuss the issue of applicant's MMI/TTD status. Applicant filed a Response to the trial brief dated September 20, 2020 stating "the report of June 21, 2020 is substantial evidence and should be followed by the trier of fact." (Applicant's Response to Defendant's Supplemental Trial Brief p.2 lines 1-2) On September 24, 2020 the parties appeared at a Mandatory Settlement Conference wherein they listed Dr. O'Dowd's cross examination (Exhibit 11) and June 21, 2020 report (Exhibit 12) as evidence. Neither party objected to proceeding to trial. The matter proceeded to trial on October 26, 2020, exhibits 11 and 12 were entered into the record.

Dr. O'Dowd did not provide clarification regarding applicant's TTD status as noted in the February 20, 2019 Opinion on Decision in either his deposition or his subsequent reporting (Exhibits 11, 12). Applicant made no attempt to clarify the issue with the doctor through further deposition or supplemental reporting. Applicant filed a trial brief that the report was substantial medical evidence and did not object to going forward with trial.

The Court issued a Findings & Award dated December 30, 2020 finding that applicant did not sustain her burden to prove TTD for the period of May 13, 2014 through March 13, 2016. Applicant filed her Petition for Reconsideration arguing that she met her burden to prove TTD. The February 20, 2019 Opinion on Decision explained why the TTD issue was not substantial medical evidence. Dr. O'Dowd stated that applicant was temporarily partially disabled and temporarily totally disabled all within the same report. Then, to confuse matters more, he stated that applicant was permanent and stationary at the same time he stated she was temporarily disabled. In addition, Dr. O'Dowd failed to explain why applicant's TTD status for four years was due to her work injury when her treatment records during that time primarily focus on applicant's non-industrial family matters. It is unclear if applicant simply took herself off of work during that time or if she had her treating psychiatrist opine that she was unable to work. Simply put, Dr. O'Dowd simply retroactively found that applicant was temporarily disabled with little to no explanation as to how the period tied into applicant's industrial injury. The parties were ordered to develop the record on this issue and failed to make the necessary efforts to do so. Applicant now argues that the original reports constitute substantial medical evidence in which to find applicant TTD for the period in question. There is absolutely no new information about applicant's TTD status in the most recent report.

Applicant also argues that defendant failed to sustain their burden regarding apportionment. Dr. O'Dowd found applicant's psychiatric disability to be 49% non-industrial. Dr. O'Dowd discusses several non-industrial events that affected applicant and thus were relevant to apportionment in his June 21, 2020 report. He notes the following non-industrial events:

- Applicant was sexually abused as a child resulting in life long problems with trust and intimacy
- Death of her father in 2006
- Alcohol abuse 2006-2009
- Began psychological treatment in 2009

• Divorce 2012; start of psychotropic medication
• Previous workers compensation injury in 2013 wherein she reported "significant trauma symptoms"

Dr. O'Dowd also specifically mentions how the sexual abuse as a child affected applicant's reaction to the incidents applicant was exposed to at work. The report further goes through subsequent non-industrial events that applicant experienced and discusses why those events did not affect applicant's permanent disability and are therefore not subject to apportionment. Overall, Dr. O'Dowd's apportionment analysis is the most thorough of his entire reporting on all of the issues.

RECOMMENDATION

Based on the foregoing, it is recommended that the Petition for Reconsideration be denied.

(Report, at pp. 1-5.)

III.

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

Temporary disability indemnity is a workers' compensation benefit that is paid while an injured worker is unable to work because of a work-related injury and is primarily intended to substitute for lost wages. (*Gonzales v. Workers' Comp. Appeals Board* (1998) 68 Cal.App.4th 843 [63 Cal.Comp.Cases 1477]; *J. T. Thorp, Inc. v. Workers' Comp. Appeals Bd. (Butler)* (1984) 153 Cal.App.3d 327, 333 [49 Cal.Comp.Cases 224].)

Generally, a defendant's liability for temporary disability payments ceases when the employee returns to work, is deemed medically able to return to work, or becomes permanent and stationary. (Lab. Code, §§ 4650-4657; *Huston v. Workers' Comp. Appeals Bd*. (1979) 95 Cal.App.3d 856, 868 [44 Cal.Comp.Cases 798]; *Bethlehem Steel Co. v. I.A.C. (Lemons)* (1942) 54 Cal.App.2d 585, 586-587 [7 Cal.Comp.Cases 250]; *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 236 [58 Cal.Comp.Cases 323].)

As explained by the Supreme Court:

> A "disability" under the Work[ers'] Compensation Law connotes an inability to work. Where an employee has been temporarily disabled by an industrial injury, he is considered temporarily totally disabled if he is unable to earn any income during the period when he is recovering from the effects of the injury. For such a disability, the employee's disability payments are based on his earning capacity, the statute providing that the payment is [two-thirds] of his

> average weekly earnings. [Citation.] An employee is considered temporarily partially disabled if he is able to earn some income during his healing period but not his full wages. The disability payment in such event is [two-thirds] of the employee's weekly wage loss.
>
> (*Herrera v. Workmen's Comp. Appeals Bd*. (1969) 71 Cal.2d 254, 257 [34 Cal.Comp.Cases 382].)

In addition, the burden of proving apportionment of permanent disability rests with the defendant. (*Benson v. Workers' Comp. Appeals Bd*. (2009) 170 Cal.App.4th 1535, 1560 [74 Cal.Comp.Cases 113]; *Kopping v. Workers' Comp. Appeals Bd*. (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 607 (Appeals Board en banc).)

In *Escobedo v. Marshalls, supra,* the Appeals Board held that (1) Labor Code section 4663 requires the reporting physician to make an apportionment determination; (2) apportionment to other factors allows apportionment to causation, including pathology, prior conditions, and retroactive work restrictions; (3) applicant holds the initial burden to prove industrial injury and also has the added burden of establishing the approximate percentage of permanent disability directly related to the industrial injury; (4) defendant has the burden of establishing the approximate permanent disability caused by other factors; and (5) a medical report addressing apportionment may not be relied upon unless it constitutes substantial evidence. (*Escobedo, supra*, at p. 612.)

To be substantial evidence on the issue of the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors, a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions. Furthermore, if a physician opines that a percentage of disability is caused by a degenerative disease, the physician must explain the nature of the disease and how and why it is causing disability at the time of the evaluation. (*Id*.)

Moreover, 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 on the issues of temporary disability and apportionment without additional development of the record. We further note that following the filing of the Petition for Reconsideration, it appears that applicant died, that a Petition for Appointment of Guardian Ad Litem and Trustee was approved, and that an Order Approving Compromise and Release and Award (Dependency Claim) appears to have issued in this case, ADJ10305799, despite the pending Petition for Reconsideration, and in two (2) other matters, ADJ14138734 and ADJ14254349.

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/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 22, 2025

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

TERRANCE RICHARDSON, GAL
GEORGE FOGY
STATE COMPENSATION INSURANCE FUND

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