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

**RICK CARROLL, *Applicant***

**vs.**

**SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ13841944**
**San Luis Obispo District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the May 5, 2025 Findings of Fact, Order issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant sustained admitted industrial injury to his lumber back, hips, and ankle while employed as a maintenance mechanic on September 18, 2020. Based on the parties' stipulations, the WCJ further found that the "[p]arties stipulate to [Subsequent Injuries Benefits Trust Fund (SIBTF)] eligibility," that "applicant's permanent disability benefits commenced on October 21, 2022," and that "[a]pplicant had a subsequent injury rating at 54% permanent disability worth $87,942.50…." In addition, the WCJ found that the reporting of Raye Bellinger, M.D., does not constitute substantial medical evidence and that applicant failed to carry the burden of proving pre-existing labor-disabling disabilities pursuant to Labor Code[1] section 4751. Based on these findings, the WCJ ordered that applicant is not entitled to SIBTF benefits and to take nothing.

Applicant contends that the WCJ erred in failing to rely on the parties' stipulation that applicant was eligible for SIBTF benefits and that the issue raised for trial was the "extent" of applicant's pre-existing labor disabling conditions pursuant to section 4751 not their "existence."

We received an Answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration recommending that we deny applicant's Petition for Reconsideration.

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

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 the 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 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.
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> (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 June 23, 2025 and 60 days from the date of transmission is August 22, 2025. This decision is issued by or on August 22, 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 June 23, 2025, and the case was transmitted to the Appeals Board on June 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 June 23, 2025.

**II.**

The WCJ stated following in the Report:

> **SYNOPSIS**
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> The crux of this case revolves around whether the applicant's lone trial exhibit constituted substantial medical evidence. After considering the entire record and extensive briefing, the judge ruled that the applicant failed to carry their burden of proof because their only evidence was seriously flawed and contradicted by other evidence. (Opinion On Decision at p.5.)
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> The applicant now challenges this determination because they contend the parties' stipulation to SIBTF eligibility obviated their burden of proving the extent of their pre-existing labor disabling disabilities. (They seem to argue that this is because issue 4a is "the extent of the applicant's pre-existing labor disabling disabilities per LC § 4751" rather than existence, and they argue "extent" does not include the possibility of the applicant failing to prove any pre-existing labor disabling disabilities.) They also provide responses to each of the errors in Dr. Bellinger's reporting identified by the trial Judge, and they want to further develop the record.
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> The Judge disagrees because the issues of whether Dr. Bellinger's report constituted substantial medical evidence and the extent of pre-existing disability were set for trial, and the defendant's evidence contradicted the doctor's report. Furthermore, additional discovery is inappropriate because: the record is adequately developed, the applicant had plenty of time to seek discovery, and the trial stemmed from the applicant's declaration under penalty of perjury in their DOR stating discovery was complete. Nothing has changed except that the trial occurred.

The defendants have also filed an answer asserting there is no basis to develop the record, and that the applicant failed to carry their burden of proving eligibility for SIBTF benefits. (Answer to Petition For Reconsideration at p.5, lns. 3-17, and at p.6, lns. 11-24.) They also note the applicant's petition for reconsideration violates title 8 CCR § 10945 because it does not provide specific references to the record. (Id. at p.4, lns. 2-13.)

## II
## FACTS

The applicant filed a DOR on 5/17/2024 declaring under penalty of perjury that their discovery was complete on the issue of SIBTF Benefits, and they requested the matter be set for MSC. (DOR dated 5/7/2024, EAMS #77966927.) The first MSC on 8/1/2024 was continued with discovery open and the parties Ordered to file a joint PTCS. (MOH dated 8/1/2024 EAMS#78249413.) It was not explicitly written in the MOH but discovery may have automatically closed at the second MSC on 9/5/2024 per LC§ 5502(d)(3), and the matter proceeded to trial on 2/6/2025. (MOH dated 9/5/2024 EAMS#78350089; MOH dated 2/6/2025 EAMS#78861447. Note: trial was delayed partially due to SIBTF hearings only being set one day a month.)

At trial, the matter continued into the lunch hour partially because the Judge had other hearings that morning, but also because there was a long discussion regarding the specific language used to frame the stipulations and issues for trial. (MOH dated 2/6/2025 EAMS#78861447 stating the record was opened from 11 :40 a.m.-12:20 p.m.)

SIBTF eligibility requires several elements to be proven, but not all of them were in controversy. As a result, the stipulations by the parties as read into the record generally stated they stipulated to SIBTF eligibility except for the elements and issues being submitted for decision including "the extent of the applicant's pre-existing labor-disabling disabilities per Labor Code Section 4751[; and] Whether the opinions ofSIF consultant, Dr. Raye L. Bellinger, constitute substantial medical evidence". (MOH 2/6/2025 at p.3, Ins. 1-5.)

The trial Judge's understanding was that "extent" included the possibility that the applicant failed to adequately prove any pre-existing labor-disabling disabilities, and he recalls plainly and clearly confirming this with the applicant's attorney and defense counsel at trial. The defendant's post-trial brief confirms they also understood this to be the case. (See SIBTF Post-trial Brief at p.6, ln.24 thru p. 7, ln.2 stating the applicant's hypertension began after the subsequent industrial injury and no proof it was labor disabling; Id. at p.7, ln.15 thru 21 asserting the same for hypothyroidism; Id. at p.7, ln.27 thru p.8, ln.12 asserting there is no prostate impairment because the AMA Guides requires "continuous treatment" but none of the applicant's medications treat the prostate; and Id. at. p.8, lns.16 thru 25 asserting no GERO impairment was proven because there is no proof of "anatomic loss or alteration" of the upper digestive tract the AMA Guides requires.) Despite the trial Judge's recollection of explicitly confirming this with all parties at trial, this is not specifically written in the MOH.

(But the Judge notes that if the attorneys gave conflicting responses on whether the Judge could rule that no pre- existing labor disabling disabilities were proven, then the trial would not have proceeded until there was agreement one way or the other.)

Following trial, a Finding, Order, and Opinion on Decision issued on 5/5/2025 ruling that the applicant's sole trial Exhibit, Dr. Bellinger's report, did not constitute substantial medical evidence, and the applicant failed to carry their burden of proving pre-existing labor-disabling disabilities per LC 4751. (Findings and Order dated 5/5/2025 at pps. 2-3.)

The applicant now seeks reconsideration of the 5/5/2025 Findings and Order. Their petition was filed on 5/2712025 while the trial Judge was out of the office. An extension to prepare a Report and Recommendation until 6/23/2025 was granted by the Board on 6/5/2025, and a Notice Of Extension was circulated that same day.

(Report, at pp. 2-4.)

**III.**

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

Section 4751 provides:

> If an employee who is permanently partially disabled receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury alone, and the combined effect of the last injury and the previous disability or impairment is a permanent disability equal to 70 percent or more of total, he shall be paid in addition to the compensation due under this code for the permanent partial disability caused by the last injury compensation for the remainder of the combined permanent disability existing after the last injury as provided in this article; provided, that either (a) the previous disability or impairment affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the subsequent injury affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee, is equal to 5 percent or more of total, or (b) the permanent disability resulting from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of total.
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> (Lab. Code § 4751.)

In *Todd v. Subsequent Injuries Benefits Trust Fund* (2020) 85 Cal.Comp.Cases 576, 581-582 [2020 Cal. Wrk. Comp. LEXIS 35] (Appeals Board en banc), we stated that an employee must prove the following elements to recover subsequent injuries fund benefits:

> (1) a preexisting permanent partial disability;
>
> (2) a subsequent compensable injury resulting in additional permanent partial disability:
>
> > (a) if the previous permanent partial disability affected a hand, an arm, a foot, a leg, or an eye, the subsequent permanent disability must affect the opposite and corresponding member, and this subsequent permanent disability must equal to 5% or more of the total disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee; or
> >
> > (b) the subsequent permanent disability must equal 35% or more of the total disability, when considered alone and without regard to, or adjustment for, the occupation or the age of the employee;
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> (3) the combined preexisting and subsequent permanent partial disability is greater than the subsequent permanent partial disability alone; and
>
> 4) the combined preexisting and subsequent permanent partial disability is equal to 70% or more. ([Lab. Code] § 4751.)
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> (*Todd v. Subsequent Injuries Benefits Trust Fund* (2020) 85 Cal.Comp.Cases 576, 581–582 (Appeals Board en banc).)

A stipulation is "'An agreement between opposing counsel … ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,' (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves 'to obviate need for proof or to narrow range of litigable issues' (Black's Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding." (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118 [65 Cal.Comp.Cases 1].) Stipulations are binding on the parties, however the parties may be permitted to withdraw from their stipulations upon a showing of good cause. (*Id*., at 1121.)

All decisions by a WCJ must be supported by substantial evidence. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246 [54 Cal.Comp.Cases 349].) Substantial evidence has been

described as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and must be more than a mere scintilla. (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159 [48 Cal.Comp.Cases 566].) To constitute substantial evidence "… 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." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93, 97].)

Based on our review, we are not persuaded that the record is properly developed in that Dr. Bellinger's discussion regarding pre-existing labor disablement is inadequate. Where the evidence or opinion on an issue is incomplete, stale, and no longer germane, or is based on an inaccurate history, or speculation, it does not constitute substantial evidence. (*Place v. Workers' Comp. Appeals Bd*. (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) Here, we are not persuaded that there is substantial evidence to support the WCJ's decision. The Appeals Board has the discretionary authority to order development of the record when appropriate to provide due process or fully adjudicate the issues consistent with due process. (See *San Bernardino Community Hosp. v. Workers' Comp. Appeals Bd. (McKernan*) (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986]; *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117, 1121–1122 [63 Cal.Comp.Cases 261, 264-265].)

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 are **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/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**AUGUST 20, 2025**

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

**RICK CARROLL**
**GHITTERMAN, GHITTERMAN & FELD**
**OFFICE OF THE DIRECTOR – LEGAL UNIT (LOS ANGELES)**

**PAG/bp**

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