

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

RUBEN FLORES, *Applicant*

vs.

AA HOLDINGS; EMPLOYERS ASSURANCE COMPANY, *Defendants*

**Adjudication Numbers: ADJ16382526; ADJ15808844
Riverside District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Applicant, acting in pro per,¹ seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on May 5, 2025, wherein the WCJ found in pertinent part that applicant worked for more than six (6) months, but there is no industrial injury to the psyche as the applicant failed to carry their burden of proof. The WCJ ordered that applicant take nothing.

Applicant appears to contend that he was wrongfully terminated on the grounds that Labor Code section² 132a prohibits employers from discriminating against employees who file or plan to file workers' compensation claims. Applicant also appears to contend that defendant made a knowingly false or fraudulent material statement or material representation for the purpose of compensation.

We received an Answer from defendant.³

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto.

¹ Applicant filed a Notice of Dismissal of Attorney on May 20, 2025.

² All statutory references are to the Labor Code unless otherwise stated.

³ In their Answer, defendant contends that they were not served with the Petition. We remind applicant that he must comply with the Labor Code and the WCAB Rules regarding service. (Lab. Code § 5905; Cal. Code Regs., tit. 8, §§ 10610, 10625(c).)

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 section 5950, et seq.

I.

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.
 - (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 11, 2025, and 60 days from the date of transmission is Sunday, August 10, 2025. The next business day that is 60 days from the date of transmission is Monday, August 11, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)⁴ This decision is issued by or on Monday, August 11, 2025, so that we have timely acted on the petition as required by section 5909(a).

⁴ 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 shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on June 11, 2025, and the case was transmitted to the Appeals Board on June 11, 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 11, 2025.

II.

Preliminarily, we note the following, which may be relevant to our review. The WCJ's Report provides the following background:

The Application for Adjudication was filed on July 5, 2022 by Ochoa Calderon Riverside. The applicant alleged injury to nervous system (840, 841, and 842) from 06/01/2001-02/09/2022.

Applicant attorney filed a Declaration of Readiness on 06/03/2024. A Mandatory Settlement Conference was held on 08/01/2024. The defendant representative objected.

The case proceeded to Trial on three different days, in person, in which the applicant was represented at each hearing, and case was considered submitted on March 5, 2025.

Findings, Orders and Opinion on Decision issued on 05/05/2025 in which a take nothing issued. It was determined that the termination of the applicant after an investigation was considered a good faith personnel action and therefore the alleged psychiatric injury was non-compensable.

It appears that the applicant, in pro per, is arguing that the applicant discovered new evidence that he could not have discovered before and could not have produced; there was fraud, discrimination, retaliation, or unfair dismissal. It also appears that the applicant is arguing that the Findings of Fact do not support the Order, Decision, or Award and in the five attached pages and additional 93 pages submitted appear to allege fraud.

It should be noted that the undersigned tried ADJ16382526 which involved an alleged psychiatric cumulative trauma from 06/01/2021-02/09/2022 and not ADJ15808844, a specific orthopedic injury on 11/24/2021.

(Report, p. 2.)

Panel Qualified Medical Evaluator (QME) in psychology, Elsie Cheng, Ph.D., examined applicant on April 13, 2023 and psychological testing was completed on April 18, 2023. (Exhibit 2, QME Report, dated May 13, 2023.) Dr. Cheng was provided additional records and issued a supplemental report on April 11, 2024. (Exhibit 1, supplemental QME Report, dated April 11, 2024.)

III.

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

To be compensable, an injury must arise out of and occur in the course of employment. (Lab. Code, § 3600.) The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.)

Where applicant claims a psychiatric injury, section 3208.3 states:

(b)

(1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.

(3) For the purposes of this section, "substantial cause" means at least 35 to 40 percent of the causation from all sources combined.

(c) It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division.

(d) Notwithstanding any other provision of this division, no compensation shall be paid pursuant to this division for a psychiatric injury related to a claim against an employer unless the employee has been employed by that employer for at least six months. The six months of employment need not be continuous.

(e) Where the claim for compensation is filed after notice of termination of employment or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury and one or more of the following conditions exist:

- (1) Sudden and extraordinary events of employment were the cause of the injury.
- (2) The employer has notice of the psychiatric injury under Chapter 2 (commencing with Section 5400) prior to the notice of termination or layoff.
- (3) The employee's medical records existing prior to notice of termination or layoff contain evidence of treatment of the psychiatric injury.
- (4) Upon a finding of sexual or racial harassment by any trier of fact, whether contractual, administrative, regulatory, or judicial.
- (5) Evidence that the date of injury, as specified in Section 5411 or 5412, is subsequent to the date of the notice of termination or layoff, but prior to the effective date of the termination or layoff.

(g) A notice of termination or layoff that is not followed within 60 days by that termination or layoff shall not be subject to the provisions of this subdivision, and this subdivision shall not apply until receipt of a later notice of termination or layoff. The issuance of frequent notices of termination or layoff to an employee shall be considered a bad faith personnel action and shall make this subdivision inapplicable to the employee.

(h) No compensation under this division shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue.

(Lab. Code, § 3208.3.)

Here, applicant asserts that they sustained a compensable psychiatric injury. According to the medical evidence, it appears that the QME concluded that applicant's claim of injury was due to his termination and based on our initial review, this raises the issue of a good faith personnel action. (See *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 245-247 (Appeals Bd. en

banc); *San Francisco Unified School Dist. v. Workers' Comp. Appeals Bd. (Cardozo)* (2013) 190 Cal.App.4th 1, 9 [75 Cal.Comp.Cases 1251] (writ den.).)

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; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593.) 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 after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 11, 2025

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

**RUBEN FLORES
OCHOA & CALDERON
HANNA, BROPHY, MacLEAN, McALEER & JENSEN, LLP**

JB/pm

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