WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

STEVE BROWN, *Applicant*

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND (SIBTF), *Defendants*

Adjudication Number: ADJ9068361
Anaheim District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the May 21, 2025 Findings and Order issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant's application for Subsequent Injuries Benefits Trust Fund (SIBTF) benefits was not timely filed. Based on this finding, the WCJ ordered that applicant take nothing by way of his application.

Applicant contends that the WCJ erred in failing to find his application for SIBTF benefits was timely filed within a reasonable period of time after he learned about his eligibility.

We received an Answer from defendant. The WCJ issued a Report and Recommendation by Workers' Compensation Judge on Petition for Reconsideration (Report) recommending that we deny applicant's Petition for 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 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[1] section 5950 et seq.

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

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.
>
> (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 July 1, 2025 and 60 days from the date of transmission is Saturday, August 30, 2025. The next business day that is 60 days from the date of transmission is Tuesday, September 2, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Tuesday, September 2, 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

[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.

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 July 1, 2025, and the case was transmitted to the Appeals Board on July 1, 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 July 1, 2025.

II.

The WCJ stated following in the Report:

> **II.**
> **STATEMENT OF FACTS**
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> Applicant filed an Application for Adjudication of Claim for date of injury of 5/25/12 through 5/28/13 to the back, bilateral lower extremities, neck, headaches, bilateral upper extremities, and nervous system. **Application for Adjudication of Clam, EAMS Doc. ID 49568478**. Applicant settled his case by way of Stipulation with Request for Award on 1/23/18 awarding permanent disability of 48% after apportionment. **Joint Exhibit V**. The settlement was based upon AME, Dr. Richard Woods. It was noted in Dr. Woods report that either in 2011 or 2012, Applicant had sinus surgery; in July of 2016, Applicant had left shoulder surgery on a non-industrial basis. Applicant was also diagnosed with hypertension, hypoglycemia, high cholesterol, anxiety, depression, sleep apnea, and diabetes. Dr. Woods also noted Applicant's bilateral knee condition was non-industrial. **Joint Exhibit X**.
>
> At the time Applicant settled his claim, Applicant was represented by counsel and should have reasonably known that there was a likelihood of entitlement to SIBTF benefits, which would have been before the expiration of five years from the date of injury. Instead, Applicant filed his claim against SIBTF on December 28, 2022, ten years after the date of injury. **Application for Subsequent Injuries Fund Benefits, EAMS Doc ID 44443804**.
>
> The matter proceeded to trial on 4/16/25 on the issue of whether Applicant's claim for SIBTF benefits was barred by the statute of limitations. Applicant did not testify at trial however submitted Points and Authorities wherein Applicant alleged he "simply signed the document" and his attorney never explained that he could pursue a SIBTF claim. **EAMS Doc ID. 57370852.**
>
> The court found Applicant's claim for SIBTF benefits was untimely and barred. As a result, Applicant filed a Petition for Reconsideration arguing Applicant was not aware of his rights and should not be barred by the statute of limitations and the finding was not based upon substantial evidence.

III.
DISCUSSION

As to Applicant's contention that Applicant was unaware of his rights and should not be barred by the statute of limitations, the court offers the following:

There is no statute of limitations governing SIBTF claim, but rather a limitation period for filing such claims is governed by case law.

In light of these four Supreme Court decisions [*Talcott, supra*, 2 Cal. 3d 56; *Subsequent Injuries Fund v. Workmens' Comp. Appeals Bd.* (*Pullum*) (1970) 2 Cal. 3d 78 [35 Cal. Comp. Cases 96]; *Subsequent Injuries Fund v. Workmens' Comp. Appeals Bd.* (*Woodburn*) (1970) 2 Cal. 3d 81 [35 Cal. Comp. Cases 98]; *Subsequent Injuries Fund v. Workmens' Comp. Appeals Bd.* (*Baca*) (1970) 2 Cal. 3d 74 [35 Cal. Comp. Cases 94]) we interpret the holding in *Talcott* to mean that if applicant knew or could reasonably be deemed to know that there will be a substantial likelihood of entitlement to subsequent injuries benefits before the expiration of five years from the date of injury, then the limitation period to file a SIBTF claim is five years from the date of injury. However, if applicant did not know and could not reasonably be deemed to know that there will be a substantial likelihood of entitlement to subsequent injuries benefits before the expiration of five years from the date of injury, then the limitation period to file a SIBT claim is a reasonable time after applicant learns from the WCAB's findings on the issue of permanent disability that SIBTF has probable liability. (*Adams v. Subsequent Injuries Benefits Trust Fund* (June 22, 2020, ADJ7479135) [2020 Cal. Wrk. Comp. P.D. LEXIS 216].) *Orellano v. WCAB*, 89 Cal. Comp. Cases 898.

Applicant contends he did not know and, based on the complexity of his case, it was impossible for him to know. The standard set is whether an injured worker could have "reasonably" known that there was a substantial likelihood. Applicant settled his by on 1/23/18 by way of Stipulation with Request for Award with 48% permanent disability (64% without apportionment), four months prior to the five-year deadline. **Joint Exhibit V**. The settlement was based upon AME, Dr. Richard Woods. **Joint Exhibit X**. At the time, Applicant was represented by counsel1. Applicant should have "reasonably" known that there was a substantial likelihood he would qualify for SIBTF benefits. Instead, Applicant waited almost ten years after his industrial injury to file his claim. As such, notwithstanding Applicant's statement regarding his lack of knowledge, the fact that Applicant was represented by counsel falls squarely within the consideration of whether he "should have known" of his eligibility for SIBTF benefits when he received his Award in 2018.

At to Applicant's contention that the finding is not based upon substantial evidence, the court offers the following:

As stated previously, Applicant was represented by counsel. Applicant states there was no evidence presented that Applicant's counsel was competent,

however, Applicant's counsel is now a Workers' Compensation Judge, Judge Stefanie Ashton. Applicant further contends there was no evidence presented as to Applicant's awareness of SIBTF, but once again, as previously stated, Applicant should have "reasonably" been aware of his substantial likelihood of SIBT benefits. Applicant received a 48% Award. Dr. Woods discussed Applicant's prior injuries i.e. sinus surgery, left shoulder arthroscopy, hypertension, high cholesterol, diabetes, depression, etc. Applicant's permanent disability for the industrial injury was higher than the initial 35% threshold. *Labor Code* §4751(b). Therefore, the finding was based upon substantial evidence.

(Report, at pp. 1-4.)

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.
>
> (Lab. Code § 4751.)

There is no specific statute of limitations with respect to the filing of an application against SIBTF. An application against the fund will not be barred "where, prior to the expiration of five years from the date of injury, an applicant does not know and could not reasonably be deemed to know that there will be substantial likelihood he will become entitled to subsequent injuries benefits, [] if he files a proceeding against the Fund within a reasonable time after he learns from

the board's findings on the issue of permanent disability that the Fund has probable liability." (*Subsequent Injuries Fund v. Workmens' Comp. Appeals Bd. (Talcott)* (1970) 2 Cal.3d 56, 65 [35 Cal.Comp.Cases 80].) In a claim for SIBTF benefits, an employee must establish that a disability preexisted the industrial injury. (Lab. Code, § 4751.) Evidence of a preexisting disability may include prior stipulated awards of permanent disability or medical evidence. To be entitled to benefits under section 4751, an employee must prove the following elements:

> (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;
>
> (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.)
>
> (*Todd v. Subsequent Injuries Benefits Trust Fund* (2020) 85 Cal.Comp.Cases 576, 581–582 (Appeals Board en banc).)

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 on the issue of whether applicant knew or reasonably should have known that there was a substantial likelihood he would qualify for SIBTF benefits. 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/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 29, 2025

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

STEVE BROWN
LAW OFFICES OF EDWARD J. SINGER, APLC
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