

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

ALEX REDMOND, *Applicant*

vs.

**CINCINNATI BENGALS, permissibly self-insured; NEW ENGLAND PATRIOTS; TRI
STATE INSURANCE CO., administered by BERKLEY ENTERTAINMENT, *Defendants***

**Adjudication Number: ADJ16459359
Santa Ana District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Both defendants – the Cincinnati Bengals (“Bengals”) and the New England Patriots (“Patriots”) – have separately petitioned for reconsideration of the Findings of Fact issued by the workers’ compensation administrative law judge (“WCJ”) on January 15, 2026, wherein the WCJ determined that (1) the Workers’ Compensation Appeals Board (“WCAB”) is not preempted from determining the location of applicant’s hiring for purposes of California workers’ compensation appeals law by the federal Labor Management Relations Act (“LMRA”) (29 U.S.C. § 141 et seq.), and (2) that applicant was orally hired in California on the contracts he entered into with both defendants, thereby creating California subject-matter jurisdiction over his claim. Both defendants contend that the WCJ erred in both determinations. The Bengals further allege that the WCJ erred in failing to find that recovery was also barred against the Bengals by Labor Code section 3600.5, subdivision (b), and in failing to enforce the forum selection clauses in applicant’s contracts with the Bengals.

We received an Answer from applicant, addressing both Petitions. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) jointly addressing both Petitions, recommending that both Petitions be denied.

We have considered the Petitions, the Answer, and the contents of the Report. Based upon our preliminary review of the record, we will grant both Petitions. Our order granting the Petitions 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 Petitions 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 Code¹ 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 February 23, 2026, and 60 days from the date of transmission is Friday, April 24, 2026. This decision is issued by or on April 24, 2026, so that we have timely acted on the petitions 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

¹ All further references are to the Labor Code unless otherwise noted.

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 February 23, 2026, and the case was transmitted to the Appeals Board on February 23, 2026. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on February 23, 2026.

II.

Preliminarily, we note the following in our review:

This case involves a cumulative trauma injury claim to multiple body parts, sustained over the course of applicant's career as a professional athlete while working for defendants from 2016 to 2022.

The matter was originally set for hearing on March 11, 2025. The issues were listed as: (1) whether the WCAB should decline to exercise jurisdiction over the case based on the forum selection clause; (2) whether the claim is exempt under section Labor Code 3600.5, subdivisions (c) and (d); (3) whether the WCAB is precluded or preempted from determining the location of hire in this matter by the National Football League ("NFL") Collective Bargaining Agreement ("CBA"); and (4) whether the Bengals are exempt according to Labor Code 3600.5, subdivision (b). (Minutes of Hearing / Summary of Evidence ("MOH/SOE"), 3/11/2025, at p. 2.) Exhibits were admitted without objection, and trial briefing solicited. (*Id.* at pp. 3–4.) Further hearings were held on May 21, 2025, where applicant provided extensive testimony regarding his professional career; on October 21, 2025, where testimony was heard from Duke Tobin, the Bengals' Director of Player Personnel; and on December 8, 2025, where testimony was heard from Sean Casey, Senior Vice President of Labor Relations for the NFL.

The findings of the WCJ included determinations of law relating to the issue of preemption under the LMRA and the NFL CBA and the application of forum selection clauses in applicant's contracts, as well as findings of fact regarding the location of applicant's hire with each employer. The WCJ did not make an explicit finding with regard to the Bengals' claim that they are exempt

according to Labor Code section 3600.5, subdivision (b), but the Opinion on Decision makes clear that the WCJ found no such exemption based on the rationale that subdivision (b) applies only to employees hired outside this state, while the WCJ found that applicant was hired in California by the Bengals. (See Report, at p. 9.)

We also note that the Bengals' Petition for Reconsideration asserts that the WCJ misstated key facts related to the testimony provided by its witness, Duke Tobin, regarding the relationship between medical examinations and offers of hire by the Bengals organization. (Bengals' Petition for Reconsideration, at p. 5.) The Report addresses this claim, providing some degree of clarification. (Report, at p. 6.)

Here, given our initial review of the record, we are concerned that depending upon our ultimate resolution of the legal questions raised in both Petitions, a transcript of Tobin's testimony may be required to resolve the factual dispute raised by the Bengals' Petition. If we conclude that a transcript is required, we will order its production, and provide the parties an opportunity for further briefing on that issue as appropriate.

We also note that the Patriots appended an arbitration decision to its Petition for Reconsideration. This arbitration decision does not appear to have been introduced into evidence at trial and was not addressed in the Findings or Fact or the Report, though it was also attached to the Patriots' trial brief filed on May 14, 2025.

III.

Finally, we observe that 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) 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; *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; *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 Petitions 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.

IV.

Accordingly, we will grant both Petitions, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petitions and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

IT IS ORDERED that the New England Patriots' Petition for Reconsideration of the Findings of Fact issued on January 15, 2026 by the workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED that the Cincinnati Bengals' Petition for Reconsideration of the Findings of Fact issued on January 15, 2026 by the workers' compensation administrative law judge is also **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petitions 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/ JOSÉ H. RAZO, COMMISSIONER



ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 23, 2026

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

**ALEX REDMOND
PRO ATHLETE LAW
BOBER PETERSON
GOLDBERG SEGALLA**

AW/kl

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