

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

**ALLAN FLOWERS, *Applicant***

**vs.**

**SELECT STAFFING; XL INSURANCE AMERICAN, INC.;  
administered by BROADSPIRE, *Defendants***

**Adjudication Number: ADJ11754124  
Pomona District Office**

**OPINION AND ORDER  
GRANTING PETITION  
FOR RECONSIDERATION  
AND DECISION  
AFTER RECONSIDERATION**

Applicant seeks reconsideration of the “Findings and Order” (F&O) issued on February 20, 2026, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant’s internal injury complaints are barred by Labor Code<sup>1</sup> section 5410 because applicant failed to obtain substantial medical evidence establishing internal injury within five years from his date of injury.

Applicant contends that the medical record establishes that applicant sustained new and further disability within five years from his date of injury.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ’s Report. Based on our review of the record we grant applicant’s Petition for Reconsideration and as our Decision After Reconsideration, we rescind the February 20, 2026 F&O and return this matter to the trial level for further proceedings.

---

<sup>1</sup> All future references are to the Labor Code unless noted.

## FACTS

Per the WCJ's Report:

Allan Floweres (*sic*), at the age of 55, sustained an injury arising out of and in the course of his employment to his lumbar spine while employed on October 12, 2018, as a machine operator. At the time of injury, the applicant was employed with Select Staffing which was insured by XL Insurance.

Applicant settled his case via Stipulation with Request for Award on January 6, 2021. Applicant's denied psychiatric portion of the claim was also resolved on January 6, 2021, by way of Compromise and Release. On June 6, 2022, a petition to reopen was filed. Defendants filed an objection to said petition on June 15, 2022, and July 12, 2022. Defendant filed a Petition for Dismissal of the New & Further claim on December 18, 2023, for lack of prosecution, applicant's attorney issued an objection December 22, 2023. On March 25, 2024, applicant's attorney filed a request for a PQME panel in internal medicine. On April 4, 2024, applicant's attorney filed an Amended Application for Adjudication of Claim adding internal system.

Applicant selected Dr. Pietruszka as his treating physician for his internal complaints. His first examination was on February 7, 2024. This is beyond five years from the date of injury.

The matter proceeded to trial and was submitted on January 22, 2026. The following was placed at issue: 1) Parts of the body injured, Hypertension, GERD, IBS, sleep, cephalgia, alopecia and erectile dysfunction; 2) TTD from August 2021 through the present and continuing pursuant to Labor Code section 4656(c); 3) PD; 4) Apportionment; 5) Attorney fees; 6) Whether the applicant sustained new and further disability?; 7) Is the applicant allowed to add new body parts to the Petition for New & Further after the five years have expired?; 8) Is medical evidence required to be obtained for new body parts within five years to support the addition of new body parts to the Petition for New and Further?; 9) Whether good cause exists to develop the record regarding internal complaints; 10) Is the applicant entitled to a PQME in internal medicine?; and 11) Whether the report of PQME Dr. Sirajullah amounts to substantial medical evidence?

The Findings and Order was issued on February 20, 2026, finding applicant's internal complaints were barred by Labor Code section 5410, the applicant was not entitled to additional periods of TTD benefits, and the record needed to be developed in regard to the applicant's lumbar spine. It is from this decision that applicant's attorney has filed a Petition for Reconsideration solely on the issue of the applicant's alleged internal complaints.

(WCJ's Report, pp. 1-3.)

## DISCUSSION

### 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. (§ 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.

(§ 5909.)

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 March 27, 2026, and 60 days from the date of transmission is Tuesday, May 26, 2026. This decision is issued by or on May 26, 2026, so that we have timely acted on the Petition as required by 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on March 27, 2026, and the case was transmitted to the Appeals Board on March 27, 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 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 March 27, 2026.

## II.

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).)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).)

Substantial justice is “[j]ustice fairly administered according to the rules of substantive law, regardless of any procedural errors not affecting the litigant’s substantive rights; a fair trial on the merits.” (Black’s Law Dictionary (7th ed. 1999).)

Section 5410 limits the time period “to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability.” “In light of these principles of liberal construction, we note that the lanstguage of section 5804 – ‘No award shall be . . . amended . . . except upon a petition by a party . . . filed within such five years’ -- does not limit relief to the prayer of the petition. Hence, in a petition to reopen, the injured employee need not request any particular classification of compensation in order to vest the board with jurisdiction to reconsider the entire case.” (*Bland v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 324, 331.)

Here, applicant's petition to reopen was timely filed. Once applicant timely filed his petition to reopen, the Appeals Board gained jurisdiction to reconsider the entire case. This includes jurisdiction to determine liability for compensable consequence injuries. However, "[a]n injured worker . . . cannot confer jurisdiction on the Board by filing a petition to reopen an award before the five-year period has expired for anticipated new and further disability to occur thereafter." (*Sarabi v. Workers' Comp. Appeals Bd.*, (2007) 151 Cal. App. 4th 920, 926.)

The WCJ found that the reporting of applicant's treating physician did not constitute substantial evidence. With no medical evidence to rely on, the WCJ's determination that applicant did not sustain new and further disability is unsupported and thus, we will rescind the F&O. Furthermore, it appears that extensive records were provided to the internal medicine treater, which were referenced in the August 19, 2024 report, but not summarized. (Applicant's Exhibit 14, p. 1, ["I have received 876 pages of medical records for my review and comment."].) Applicant also testified that he developed internal complaints within five years from the date of his injury and no issue of applicant's credibility was raised by the WCJ. Given these facts, it would further appear that development of the record is needed in this matter.

Upon return, and if defendant continues to object to the conclusions of the primary treater, a QME evaluation may be warranted.

Accordingly, we grant applicant's Petition for Reconsideration and as our Decision After Reconsideration, we rescind the February 20, 2026 F&O and return this matter to the trial level for further proceedings.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings and Order issued on February 20, 2026, by the WCJ is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued on February 20, 2026, by the WCJ is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**MAY 26, 2026**

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

**ALLAN FLOWERS  
BURGIS AND ASSOCIATES  
SAMUELSEN GONZALEZ**

**EDL/mt**

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