

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

**ANDREW TOM, *Applicant***

**vs.**

**CITY OF LOS ANGELES, permissibly self-insured,  
*Defendant***

**Adjudication Number: ADJ21980525  
Van Nuys District Office**

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

Defendant seeks reconsideration of an Order Denying Petition for Credit (Order) issued on March 14, 2026. The workers' compensation administrative law judge (WCJ) denied defendant's Petition for Credit because there was no proposed order and the proof of service did not reflect service on all parties of record.

Defendant contends that there is no legal requirement that a proposed order be included with a petition for credit as a condition for the petition to be heard; and alleges that they served all parties of record with the petition for credit.

Applicant did not file a response. The WCJ issued "Recommendations on Petition for Reconsideration" (Report) on April 15, 2026, recommending that the Order be rescinded and that the matter be returned to the district office.

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons below, we will grant reconsideration, rescind the WCJ's Order, and return this matter to the district office for further proceedings consistent with this decision. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

## FACTS

Defendant filed an Application for Adjudication on December 23, 2025, alleging a specific injury on May 16, 2020 to the skin. The Application indicated that it was filed for the purposes of a third-party credit.

On the same date, defendant filed “Defendant’s Petition for Credit from Employee’s 3<sup>rd</sup> party Recovery per LC 3861.” The petition alleges that the injured worker filed a civil lawsuit against a third party and obtained settlement which resulted in a net recovery to applicant in the amount of \$594,741.95. Attached to the petition is an unsigned “case accounting sheet” noting total attorney’s fees and costs deducted from an overall settlement of \$800,000.00. The petition was served on McNicholas & McNicholas, LLP; Sedgwick; and Andrew Tom, the injured worker.

To date, the injured worker, who is in pro per, has not responded to the Application or petition for credit and has not appeared in this matter.

On March 14, 2026, the WCJ issued an Order Denying Petition for Credit, denying the petition without prejudice on the basis that the petition did not include a proposed order and because the proof of service did not reflect service on all parties of record.

### I.

Former Labor Code section 5909<sup>1</sup> 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

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<sup>1</sup> All further statutory references will be to the Labor Code unless otherwise indicated.

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 April 15, 2026 and 60 days from the date of transmission is Sunday June 14, 2026. The next business day that is 60 days from the date of transmission is Monday, June 15, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision issued by or on Monday, June 15, 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.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on April 15, 2026 and the case was transmitted to the Appeals Board on April 15, 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 April 15, 2026.

## II.

A petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) 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])

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<sup>2</sup> 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.

or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].)

Here, the WCJ takes issue with defendant’s use of a petition for reconsideration to set aside the Order in this matter. While there may have been less cumbersome avenues for defendant to seek its remedy, because there is a final order affecting defendant’s right to a credit, the Petition is appropriate. Additionally, we note that the WCJ had the option to timely rescind her own order and initiate further proceedings pursuant to WCAB Rule 10961 (Cal. Code Regs., tit. 8, §10961). This would have been particularly appropriate where the basis for the Order was in error.

Turning to the merits, the WCJ may issue a notice of intention for any proper purpose, including granting, denying, or dismissing a petition. (Cal. Code Regs., tit. 8, § 10832 (a)(1).) Due process requires the issuance of an NIT to deny or to grant a petition, thereby affording the interested party or parties an opportunity to be heard. (See *Fortich v. Workers’ Comp. Appeals Bd.* (*Fortich*) (1991) 233 Cal.App.3d 1449, 1452-1453 [56 Cal.Comp.Cases 537]; Cal. Code Regs., tit. 8, § 10850; Cal. Code Regs., tit. 8, § 10832.) The NIT must clearly state the reason(s) for denying or granting the petition, so as to provide the parties with adequate notice and a meaningful opportunity to respond. The basis for the NIT must also be supported by the evidence. (See, e.g., *Terrazas v. S & S Foods, LLC* (March 27, 2023, ADJ14315608) 2023 Cal. Wrk. Comp. P.D. LEXIS 77, \*6-8 [NIT contained language “too vague to constitute proper notice or to ensure due process.”].)

Here, prior to denying the petition, the WCJ should have issued an NIT so that defendant and the injured worker had an opportunity to respond and be heard on the matter. Likewise, if the WCJ chose to grant the petition, an NIT should issue first.

The WCJ concedes error in denying the petition. There is no explicit requirement for a proposed order to be included with every petition, and requiring such an order without more, could be a violation of due process and constitute an underground regulation.

We do recommend, however, that the petition be set for a hearing on the merits as the injured worker is not represented and should be apprised of his rights as it pertains to the credit. WCAB Rule 10555(b) (Cal. Code Regs., tit. 8, § 10555) requires a petition for credit to include (1) a copy of the settlement or judgement, if available; and (2) an itemization of any credit applied to expenses and attorney’s fees pursuant to sections 3856, 3858, and 3860. Although it is not in evidence currently, the itemization applied to expenses and attorney’s fees, but the actual

settlement agreement was not attached. Further, we note that there are limitations to the amount of credit for persons employed by a city or county as a firefighter pursuant to section 3852(b). Based on the allegations in the Application, the injured worker could possibly fall into this category. Thus, proceeding without a hearing on the merits, and creating a record that includes evidence as to the calculation of the amount of credit and the settlement agreement would not be appropriate in these circumstances.

Accordingly, we grant the Petition for Reconsideration, rescind the Order and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the decision of March 14, 2026 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of March 14, 2026 is **RESCINDED** and that the matter is **RETURNED** to the WCJ for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

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

**/s/ PAUL F. KELLY, COMMISSIONER**



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

**JUNE 15, 2026**

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

**ANDREW TOM  
OFFICE OF THE CITY ATTORNEY LOS ANGELES**

**TF/md**

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