

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

ANGIE AGATON, *Applicant*

vs.

**RIVERSIDE COUNTY SHERIFF'S DEPARTMENT, self-insured;
Administered by COUNTY OF RIVERSIDE WORKERS' COMPENSATION DIVISION,
*Defendants***

**Adjudication Number: ADJ18164316
Riverside District Office**

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

Applicant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on December 15, 2025, wherein the WCJ found, in relevant part, that applicant, while employed as a correctional deputy trainee, sustained injury arising out of and occurring in the course of employment (AOE/COE) to her right shoulder and big toes; that her injury caused temporary disability for which she has been adequately compensated; that her injury caused 0% permanent disability, entitling applicant to zero weeks of disability; that her permanent and stationary date is August 20, 2024; and, that she will require further medical treatment.

Applicant contends that there is no substantial evidence supporting the finding of 0% whole person impairment; that her due process rights were violated by the WCJ's decision to close discovery before Dr. Hardy was deposed; and that the record should be reopened for newly discovered evidence in the form of the December 16, 2025 deposition of Dr. Hardy.

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

We have received an Answer from defendant.

We have considered the allegations of the Petition and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the December 15, 2025 F&A, and return the matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

Applicant filed an Application for Adjudication of Claim (Application) on August 31, 2023, claiming a specific injury on July 18, 2023 to her right shoulder and toes of both feet, while employed as a correctional deputy trainee by defendant.

Applicant's injury was admitted by defendant and pursuant to the County of Riverside alternative dispute program, the parties proceeded to an Independent Medical Evaluation (IME) with Scott Hardy, M.D., M.P.H. Dr. Hardy issued his first report after examining applicant on August 20, 2024; in it, he diagnosed applicant with history of right shoulder strain, mild rotator cuff tendonitis involving the infraspinatus, and bilateral big toe contusions with nail avulsions by history, healed. (Defendant's Exh. B, at pp. 14-15.) He concluded that "there is a 0% whole person impairment for...the right shoulder or toes" and that she was permanent and stationary as of August 20, 2024. (*Id.* at p. 15.) He found that applicant's injuries were "attributed entirely" to her "brief involvement" with the Sheriff's Academy, and that, since there is no permanent impairment, apportionment is not applicable. (*Ibid.*) Dr. Hardy noted that there were no work restrictions, and applicant "can return to her usual and customary duties as a correctional assistant" and "may pursue a career in correctional law enforcement should she desire." (*Ibid.*) He recommended another course of physical therapy for her right shoulder, if desired, and indicated that "in the event of exacerbations" applicant may require follow up with occupational, physical medicine or an orthopedic surgeon. (*Id.* at p. 16.)

Applicant's attorney sent a letter to Dr. Hardy dated September 3, 2024, requesting a supplemental report. (Applicant's Exh. 3.)

In response, Dr. Hardy prepared a supplemental report, dated February 5, 2025, in which he reviewed the letter from applicant's attorney and reviewed his own prior report, examination, and conclusions. (Defendant's Exh. A, at pp. 1-6, 8.) He did not reexamine applicant and did not change his prior conclusions. (*Id.* at pp. 1, 7.)

On June 18, 2025, applicant served an objection letter on defendant, objecting to Dr. Hardy's medical determination in his February 5, 2025 supplemental report, pursuant to Labor Code sections 4061 and 4062¹. The letter also stated:

We reserved our right to cross-exam Scott Hardy, MD.

We ask that you refrain from the filing of any Declaration of Readiness to Proceed to MSC, as you are now on notice of anticipated further discovery.

(Applicant's Exh. 1.)

Also on June 18, 2025, a declaration of readiness (DOR) was filed by defendant, seeking a mandatory settlement conference (MSC), noting that the principal issue is permanent disability, and stating that the parties had "come to an impasse in regard to settlement of this claim..." without noting any specific settlement efforts that had taken place. (6/18/25 DOR, at p. 7.)

On July 21, 2025, applicant filed a DOR, requesting an expedited hearing regarding entitlement to medical treatment, in which she alleged that she requested an updated authorization for treatment by Dr. Barry Grames, and that defendant had failed to timely provide that authorization. (7/21/25 DOR, at p. 7.) Defendant filed an objection on July 24, 2025, alleging that the authorization was sent to Dr. Grimes on July 17, mooting the issue. (7/24/25 Objection to DOR, at p. 1; see also, Applicant's Exh. 2.)

A Pre-Trial Conference Statement (PTCS) was filed August 20, 2025, in which the parties stipulated to employment, injury AOE/COE, applicant's wage rate, that defendant paid temporary disability for approximately one month in 2023, that some medical treatment was furnished, and that defendant's recently authorized Dr. Grames to provide additional medical treatment for applicant's right shoulder and big toes. (8/20/25 PTCS, at p. 2.) Under Other Stipulations, the parties stipulated that: "Deposition of Dr. Scott Hardy is scheduled for 12/16/2025." (*Ibid.*) The issues listed for trial were the permanent and stationary date, permanent disability, need for medical treatment, liability for self-procured treatment, whether discovery should remain open to complete Dr. Hardy's deposition on December 16, 2025, and applicant's June 18, 2025 objection to Dr. Hardy's reporting. (*Id.* at p. 3.)

At a mandatory settlement conference (MSC) on August 21, 2025, the matter was set for trial on October 6, 2025, and the minutes of hearing indicate:

¹ All section references are to the Labor Code, unless otherwise indicated.

AA did not object to the DOR; HR for applicant states they set the cross ex of the pqme on 8/8/2025. DOR was filed 6/18/2025; PQME received 5/30/2025; HR for applicant states they don't agree with PD of PQME but cannot point out obj/diagnostics that support PD per AMA guides.²

(8/21/25 MOH.)

On August 29, 2025, applicant filed a petition for remote trial and witness testimony.

On September 2, 2025, without setting the petition for a hearing, the WCJ issued the following order:

IT APPEARS THAT on 08/29/2025 Applicant's Attorney e-filed a unilateral Request/Petition for the parties to appear by Court Call for the Trial set for 10/06/2025. In reviewing said Petition the same is **DENIED** for the following reasons:

1. The Administration has ordered that in-person hearings resume as of 03/21/2022. Per 8 CCR 10816, if a party intends to appear electronically at any hearing, they must file a Petition **showing good cause** pursuant to rule 10510. No good cause is stated in the Petition. Therefore, undersigned WCALJ does not find parties have stated good cause for a virtual hearing.

Based upon the foregoing, **IT IS HEREBY ORDERED THAT** Applicant's Petition to Appear Remotely at Trial e-filed on 08/29/2025, be and is **DENIED** at this time.

The matter proceeded to trial on October 6, 2025. (10/6/25 Minutes of Hearing and Summary of Evidence.) The stipulations for trial were as indicated in the PTCS; the issues for trial included: the permanent and stationary date; permanent disability; need for further medical treatment; attorney's fees; whether discovery should be left open to complete Dr. Hardy's deposition set for December 16, 2025; and, applicant's objection to the reporting of Dr. Scott Hardy on June 18, 2025. (*Id.* at pp. 2-3.) Trial evidence consisted of applicant's June 18, 2025 objection letter, the July 17, 2025 treatment authorization for Dr. Grames, applicant's September 3, 2024 request for a supplemental report from Dr. Hardy, and both of Dr. Hardy's reports. (Applicant's Exhs. 1-3; Defendant's Exhs. A-B.) Applicant was the only witness. She testified about her current position for the Sheriff's Department as a corrections assistant, described her injury and subsequent treatment, and explained that she continues to have pain in her right shoulder

² We note two apparent typographical errors in this recitation of facts on the MOH for the August 21, 2025 MSC. First, the MOH repeatedly refers to a "PQME" but there was no PQME in this matter. Rather, Dr. Hardy served as the IME. Second, the MOH states that the cross-examination of the doctor was set for "8/8/25" but since that date was three weeks prior to the MSC date, it appears that the actual deposition date of December 16, 2025 was intended.

that sometimes requires her to take breaks at work and avoid physical activity. (10/6/25 Minutes of Hearing and Summary of Evidence, at pp. 4-6.)

The WCJ issued the Findings of Fact and Award on December 12, 2025, as indicated above. In the Opinion on Decision, the WCJ explained that the findings regarding the permanent and stationary date, that applicant was 0% permanently disabled, and that future physical therapy or other treatment may be required were based on Dr. Hardy's reporting, and that there were no contrary medical reports. (12/12/25 OOD, at pp. 1-5.) The WCJ noted, too, that applicant testified that she "has some residual discomfort" but that "her testimony was not inconsistent with the testimony given to the IME Scott Hardy" and that she is able to perform her required job duties. (*Id.* at p. 4.) Regarding applicant's request for the matter to be left open for additional discovery, the WCJ wrote,

The second report of IME Dr. Scott Hardy dated 02/05/2025 was in response to a very detailed request for further discussion by Applicant's Attorney by way of letter dated 09/03/2024. The Proof of Service on the report is 02/07/2025. A Declaration of Readiness to Proceed was filed by Defendant on 06/18/2025 for an MSC. Applicants' Attorney did not object to the Declaration of Readiness to Proceed and the MSC took place on 08/21/2025. It was noted on the Minutes of Hearing that the Hearing Representative appearing for Applicant's Attorney indicated that they set the Cross Examination of the PQME on 08/08/2025. The Hearing Representative for applicant states that they don't agree with the permanent disability of the PQME but cannot point out objective/ diagnostics that support permanent disability per AMA Guides. Although Applicant's Attorney objected to the report of IME Dr. Scott Hardy in a letter to Defendant dated 06/18/2025, (Applicant Exhibit 1), There was no discussion in that letter as to the alleged findings upon which the objection was based.

Further, the letter to IME Dr. Scott Hardy from Applicant's Attorney on 09/03/2024 was extremely detailed with request for review of information and records in lieu of a Deposition. There was no offer of proof made at the time of Trial as to what additional information would have been ascertained from IME Dr. Scott Hardy.

Based on the extensive and thorough reports of IME Dr. Scott Hardy it is unclear that any benefit would be obtained by proceeding to Deposition.

After considering the documentary and testamentary evidence presented to the Court, it does not appear that there is any additional information needed and that the reports are comprehensive in nature and are substantial evidence in this matter.

(*Id.* at pp. 5-6.)

Applicant's Petition followed.

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. (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 January 6, 2026 and 60 days from the date of transmission is Saturday, March 7, 2026. The next business day that is 60 days from the date of transmission is Monday, March 9, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on Monday, March 9, 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

³ 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 WCJ's Report, the Report was served on January 6, 2026, and the case was transmitted to the Appeals Board on January 6, 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 January 6, 2026.

II.

We first address the WCJ's order of September 2, 2025, denying applicant's petition for a remote hearing and remote testimony.

WCAB Rule 10325(a) states that:

(a) En banc decisions of the Appeals Board are assigned by the chairperson on a majority vote of the commissioners and are binding on panels of the Appeals Board and workers' compensation judges as legal precedent under the principle of stare decisis.

En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and workers' compensation administrative judges. (Cal. Code Regs., tit. 8, § 10325; *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].) En banc decisions are also adopted as precedent decisions pursuant to Government Code section 11425.60(b).

We draw the WCJ's attention to our recent en banc opinion in *Perez v. Chicago Dogs* (2025) 90 Cal.Comp.Cases 830 ("*Chicago Dogs*"), which issued on August 13, 2025, before she issued her September 2, 2025 order denying applicant's petition.

In *Chicago Dogs*, we observed that "in addition to our constitutional mandate to accomplish substantial justice, the following fundamental legal principles must guide us:

(A) Only the Appeals Board has statutory authority to establish procedures in workers' compensation proceedings and to promulgate rules.

(B) Parties have a due process right to a fair hearing and a determination based on the merits.

(C) In workers' compensation proceedings, pleadings are liberally construed and may be amended to conform to proof.

(*Id.* at p. 836.)

Specifically, under (A), we quoted section 5500.3, which states that:

(a) The appeals board shall establish uniform district office procedures, uniform forms, and uniform time of court settings for all district offices of the appeals board. **No district office of the appeals board or workers' compensation administrative law judge shall require forms or procedures other than as established by the appeals board.** A workers' compensation administrative law judge who violates this section may be subject to disciplinary proceedings.

(b) The appeals board shall establish uniform court procedures and uniform forms for all other proceedings of the appeals board.

(*Ibid.*, emphasis added.)

We noted that: "In addition to this statutory authority granted only to the Appeals Board, the Appeals Board has statutory authority under sections 5307 and 5708 to promulgate regulations regarding the adjudicatory process." (*Ibid.*) Nonetheless, as a basis for her order, the WCJ unilaterally states that the "Administration" ordered in-person hearings as of March 21, 2022.

In *Chicago Dogs*, we held that a hearing must take place when a WCJ denies a request for a virtual appearance in order to create a record and in keeping with due process. (*Id.* at p. 840.) We further held that the due process right to a hearing is good cause to appear remotely. (*Ibid.*) Despite what we believe to be clear direction, the WCJ failed to hold such a hearing, and instead denied the petition outright.

III.

Parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "one of 'the rudiments of fair play' assured to every litigant..." (*Id.* at p. 158.) As stated by the Supreme Court of California in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission... must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.* at p. 577.) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses, to introduce and inspect exhibits, and to offer evidence in

rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acci. Com.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-394 [62 Cal.Comp.Cases 924]; *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741, 752 (Appeals Board en banc); *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. L.A. County Metro. Transit Auth.*, we stated that “[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record . . . the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete. (Citations.)” (*McDuffie v. L.A. County Metro. Transit Auth.* (2002) 67 Cal.Comp.Cases 138, 141 (Appeals Bd. en banc).) 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.)

WCAB Rule 10742 requires that a Declaration of Readiness to Proceed (DOR) must be filed and served to place a matter on calendar, that such declarations must state under penalty of perjury that the moving party has made a genuine, good faith effort to resolve the dispute before filing, and must describe “with specificity . . . the efforts made to resolve those issues.” (Cal. Code Regs., tit. 8, § 10742.)

WCAB Rule 10744, regarding Objections to DORs, requires, in pertinent part:

(a) Any objection to a Declaration of Readiness to Proceed shall be filed and served within 10 calendar days after service of the declaration. The objection shall set forth, under penalty of perjury, the specific reason why the case should not be set or why the requested proceedings are inappropriate.

* * *

(d) If a party has received a copy of the Declaration of Readiness to Proceed and has not filed an objection under this rule, that party shall be deemed to have waived any and all objections to proceeding on the issues specified in the declaration, absent extraordinary circumstances.

(Cal. Code Regs., tit. 8, § 10744.)

Here, applicant served her letter objecting to Dr. Hardy's second report on June 18, 2025, (Applicant's Exh. 1.) In it, she not only objected to Dr. Hardy's medical conclusions but also reserved her right to cross-examine Dr. Hardy and requested that defendant "refrain from the filing of any Declaration of Readiness to Proceed to MSC, as you are now on notice of anticipated further discovery." (*Ibid.*) Applicant's letter and defendant's DOR were served on the same date, and the record is silent about which document was first in time. Although applicant did not indicate that her letter was an objection to defendant's June 18, 2025 DOR, her letter met the requirements of WCAB Rule 10744, subdivision (a), in that it was served within 10 calendar days of the DOR, and it set forth the specific reason why the case should not yet proceed to an MSC. We thus conclude that applicant's objection letter is equivalent to an objection to the DOR, and we will treat it as such. Applicant's lack of intention to waive her objection is further demonstrated by the subsequent statements by her hearing representative that Dr. Hardy's deposition was pending, and by applicant's requests for discovery to remain open until the December 2025 deposition was complete. (8/20/25 PTCS at pp. 2-3; 8/21/25 MOH; 10/6/25 Minutes of Hearing and Summary of Evidence at pp. 2-3.) We emphasize that the parties stipulated on the PTCS that Dr. Hardy's deposition was set for December 16, 2025. We conclude that applicant did not waive her objection to the matter proceeding to an MSC. (Cal. Code Regs., tit. 8, § 10744(d).)

Moreover, at trial, the parties once again stipulated that Dr. Hardy's deposition was set for December 16, 2025. Applicant then raised the issue of "Whether discovery should be left open to complete the deposition of IME Scott Hardy set for December 16, 2025." The record does not reveal any basis for defendant's unwillingness to defer a decision, and we cannot discern any. Applicant repeatedly raised the issue of the deposition testimony at the MSC and at the trial, and we do not believe that holding the record open to receive that deposition testimony was in any way prejudicial to defendant. Instead, the failure to grant this request contradicts the clear directive that the WCAB may not leave such matters undeveloped. (See *Kuykendall, supra*, 79 Cal.App.4th at pp. 403-404.) Under these circumstances, due process requires that applicant be provided with an opportunity to present the cross-examination testimony of Dr. Hardy. (See *Gangwish, supra*, 89

Cal.App.4th at p. 1295; *Rucker, supra*, at pp. 157-158, citing *Kaiser, supra*, 109 Cal.App.2d at p. 58; *Katzin, supra*, 5 Cal.App.4th at p. 710.)

To the extent that applicant contends that Dr. Hardy's deposition transcript constitutes "newly discovered" evidence pursuant to section 5903(d), we observe that since it was clear from the record that the deposition was already scheduled at the time of the MSC and the trial, it is not "newly discovered." It appears that applicant may be confusing this basis for a petition for reconsideration with the basis for a WCJ to exercise discretion to allow additional evidence at the time of trial under section 5502(d)(3).

Nevertheless, on due process grounds, we rescind the decision and return the matter to the WCJ to allow the transcript of Dr. Hardy's December 16, 2025 deposition to be admitted into evidence and considered by the WCJ, and for the WCJ to determine if further discovery is needed. As Dr. Hardy's deposition is already completed, we observe that no significant delay will occur in these proceedings as a result of our determination that this matter should be returned to the trial court for the deposition transcript to be entered into evidence and considered by the WCJ.

Accordingly, we grant applicant's Petition, rescind the WCJ's December 15, 2025 F&A, and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the decision of December 15, 2025 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award issued by the WCJ on December 15, 2025 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 9, 2026

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

**ANGIE AGATON
PEREZ LAW, PC
HALLETT, EMERICK, WELLS & SAREEN**

MB/ara

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