

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

BRIAN MORRIS (DEC.); CHARISMA JOHNSON (DEPENDENT), *Applicant*

vs.

**CENTINELA STATE PRISON, legally uninsured;
administered by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ18933118, ADJ13048416
San Diego District Office**

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

Defendant seeks reconsideration of the Findings and Award and Orders (FA&O) of November 6, 2025, wherein the workers' compensation judge (WCJ) found in relevant part that the minor niece Jamiyah ("niece") was entitled to death benefits pursuant to Labor Code¹ section 4702(a)(5) and special death benefits pursuant to section 4703.5 until she is no longer eligible to receive the 4703.5 benefits. Defendant contends that the niece was not entitled to benefits pursuant to section 4703.5 as she was not the child of the employee pursuant to section 3501(a).

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for Reconsideration, rescind the FA&O, and return this matter to the WCJ for further proceedings.

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

FACTS

Applicant, while employed by defendant as a correctional officer, sustained injury arising out of and in the course of employment (AOE/COE) to his heart, resulting in his death on January 3, 2024. Applicant was survived by his partner Charisma Johnson; his son; his stepdaughter (Ms. Johnson's child); and the niece. Defendant has only raised issues related to the niece so we will focus our discussion on the facts relevant to the niece.

At the trial on August 6, 2025, Johnson testified that she and applicant were never married but raised three children together. (8/6/25 Minutes of Hearing/ Statement of Evidence (MOH/SOE), pp. 2, 6-8.) Applicant and Johnson were caring for their niece, the daughter of Johnson's sister. (MOH/SOE, p. 7.) Johnson testified that both applicant and Johnson were the legal guardians of their niece as of 2019. (MOH/SOE, p. 7.) The niece initially came to live with them as a baby in December 2017, until March 2019, when she returned to her mother for a period of time. (MOH/SOE, p. 7.) Applicant and Johnson were completely responsible for their niece during that time period. (MOH/SOE, p. 7.) When the niece's mother died in 2022, the niece returned to live with applicant and Johnson. (MOH/SOE, p. 7.) Johnson received \$700.00 per month in assistance for the niece when she returned to them to cover childcare; she and applicant paid for everything else. (MOH/SOE, p. 7.) Johnson was in the process of adopting her niece and applicant also wanted to adopt her. (MOH/SOE, p. 7.)

In Johnson's deposition, which was admitted into evidence at the trial, she testified that she had been her niece's legal guardian from December 2017, to March 2019. (Jt. Ex. 4, deposition of Charisma Johnson, dated 11/13/24, pp. 24-26.) The niece lived with her and applicant during that time and applicant contributed to their niece's living expenses. (Jt. Ex. 4, pp. 26-27.) Her niece was placed back with them in June 2022, and the parental rights of the niece's father were terminated at some point after the mother's death. (Jt. Ex. 4, pp. 27-28.)

The WCJ also accepted legal documents purporting to establish legal guardianship over the niece into evidence. (App. Ex. 3, Legal court documents appointing guardianship, dated 10/23/23.) The documents contained an Authorization for General Medical Care for a Child Placed by Order of the Juvenile Court to Johnson and applicant (App. Ex. 3, p. 5); an Agency-Relative Caregiver Placement Agreement for care of the niece while placed with Johnson (App. Ex. 3, p. 7); and an Order Designating Education Rights Holder as Johnson. (App. Ex. 3, pp. 8-9.)

Following the trial, the WCJ issued the FA&O on November 6, 2025, finding in relevant part that the niece, son, and stepdaughter were all total dependents and therefore were to be paid death benefits pursuant to 4702(a)(5) and that the special death benefits pursuant to section 4703.5 were to be paid to the niece and applicant's son as long as they meet the requirements of receiving those benefits. (FA&O, pp. 3-4.) The WCJ awarded death benefits to all three children as total dependents and special death benefits pursuant to section 4703.5 to the son and niece. (FA&O, pp. 4-5.) Defendant filed its Petition of the FA&O on December 1, 2025.

DISCUSSION

I.

Former Labor Code² 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 December 10, 2025, and 60 days from the date of transmission is Sunday, February 8, 2026. The next business day that is 60 days from the date of transmission is Monday, February 9, 2026. (See Cal. Code

² All further statutory references are to the Labor Code unless otherwise noted.

Regs., tit. 8, § 10600(b).)³ This decision is issued by or on Monday, February 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 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 December 10, 2025, and the case was transmitted to the Appeals Board on December 10, 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 December 10, 2025.

II.

This case concerns the issue of death benefits to a dependent child due to the death of the applicant. Certain death benefits are provided to dependents of an employee when the death results from an industrial injury. "If an injury causes death, either with or without disability, the employer shall be liable, in addition to any other benefits provided by this division, for... [a] death benefit, to be allowed to the dependents when the employee leaves any person dependent upon him or her for support." (Lab. Code, § 4701(b).)

As an initial matter, the WCJ initially found the niece, as well as applicant's stepchild and son, all total dependents of the applicant and were therefore to be provided with death benefits pursuant to sections 3503 and 4702(a)(5). (Lab. Code, §§ 3503, 4702(a)(5).) Defendant has not disputed this benefit to the minor children.

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.

The contested issue is whether the niece is also due the ongoing special death benefits provided to totally dependent minor children pursuant to section 4703.5(a). This section provides that

In the case of one or more totally dependent children, as defined in Section 3501, after payment of the amount specified in Section 4702, and notwithstanding the maximum limitations specified in Sections 4702 and 4703, payment of death benefits shall continue until the youngest child attains 18 years of age, or until the death of a child physically or mentally incapacitated from earning, in the same manner and amount as temporary total disability indemnity would have been paid to the employee, except that no payment shall be made at a weekly rate of less than two hundred twenty-four dollars (\$224).

(Lab. Code § 4703.5(a).)

Section 3501 defines totally dependent children as follows:

A child under the age of 18 years, or a child of any age found by any trier of fact, whether contractual, administrative, regulatory, or judicial, to be physically or mentally incapacitated from earning, shall be conclusively presumed to be wholly dependent for support upon a deceased employee-parent with whom that child is living at the time of injury resulting in death of the parent or for whose maintenance the parent was legally liable at the time of injury resulting in death of the parent.

(Lab. Code, § 3501(a).)

The crux of the issue is whether the niece meets the definition of “child” in section 3501(a) so as to qualify for the special death benefit in 4703.5(a). Foster children may be eligible for the special death benefit due to the death of their foster parent depending on the specific facts of the case. (See *Carlson v. Cont'l Vineyards* (Nov. 21, 2014; ADJ9329165) [2014 Cal. Wrk. Comp. P.D. LEXIS 642] (*Carlson*).)⁴ In *Carlson*, the employee sustained an industrial injury which resulted in her death and the WCJ awarded death benefits to her surviving spouse as well as additional benefits pursuant to section 4703.5 to their minor children, including one foster child. (*Id.* at pp. *3-4.) Defendant filed a Petition for Reconsideration and argued that the WCJ erred in finding the foster child entitled to dependency benefits. (*Id.* at p. *4.) The Appeals Board found that while the

⁴ Panel decisions are not binding precedent (as are en banc decisions) on all other Appeals Board panels and workers' compensation judges. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) A California Compensation Cases digest of a “writ denied” case is also not binding precedent. (*MacDonald v. Western Asbestos Co.* (1982) 47 Cal.Comp.Cases 365, 366 [Appeals Bd. en banc].) While not binding, the WCAB may consider panel decisions to the extent that it finds their reasoning persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc).) We find the reasoning in *Carlson v. Cont'l Vineyards* (Nov. 21, 2014; ADJ9329165) [2014 Cal. Wrk. Comp. P.D. LEXIS 642] and *Franco v. Orange County Plastering Co., Inc.*, (July 14, 2025, ADJ17148489) [2025 Cal. Wrk. Comp. P.D. LEXIS 258] persuasive given that the case currently before us involves similar legal issues.

foster child did not enjoy the presumption of dependency pursuant to section 3501, she could still be considered a dependent pursuant to section 3503, which includes those who are “in good faith a member of the family or household of the employee.” (*Carlson, supra*, pp. *10-11; Lab. Code § 3503.) The Appeals Board further found that the record did not contain enough information to determine the foster child’s dependency and therefore deferred the issue. (*Carlson, supra*, pp. *10-11.)

In *Franco v. Orange County Plastering Co., Inc.*, (July 14, 2025, ADJ17148489) [2025 Cal. Wrk. Comp. P.D. LEXIS 258] (*Franco*), the employee sustained industrial injury in the form of Covid-19, resulting in his death in 2022; he was survived by his wife, their two children, and his stepdaughter. (*Id.* at pp. *10-11, 15, 21.) The Appeals Board agreed with the WCJ that the decedent’s stepchild was a dependent covered by section 4703.5. (*Id.* at p. *27.) “To read this statute as exclusionary rather than inclusionary given liberal construction is moving in a direction counter to statutory construction and WCAB caselaw for the last half-century or more on dependency issues dealing with minor children who are not the direct progeny of mother and father.” (*Id.* at pp. *26-27.) The WCJ further stated

To interpret Labor Code section 3501 as excluding someone like [the stepdaughter] from the class of children covered by the statute as well as excluding her from the benefits of Labor Code section 4703.5, in this court’s opinion, completely contravenes the intent of the statute to provide benefits to totally dependent minors. And no splitting of hairs as to whether [the stepdaughter] was a posthumous child, grandchild, adopted child or any other classification changes that assessment where the child lived with and completely depended on the decedent for her support on a good faith basis.

(*Id.* at p. *28.)

In addition to adopting and incorporating the report of the WCJ, the Appeals Board stated that while section 3501 does not specifically include stepchildren, it is subject to the provisions of section 3503, which includes as dependents those who are “good faith a member of the family or household of the employee” as well as adopted children, stepchildren, grandchildren, nieces, and nephews. (*Franco, supra*, 2025 Cal. Wrk. Comp. P.D. LEXIS at p. *6, citing Lab. Code, § 3503.) “The close proximity of this provision equating children with adopted children and stepchildren for purposes of death benefits suggests that the word ‘child’ in section 3501, which includes no definition of its own, should include different kinds of children.” (*Id.* at p. *6.) The Appeals Board further stated that the employee was indisputably acting as a parent even though he was not the biological parent. (*Id.* at p. *7.) The Appeals Board concluded that including the stepdaughter in

the 4703.5 special death benefits “prevents the unreasonable result of providing different treatment to three minor dependent household members, all of whom knew [the decedent] as their father, solely on the basis of their genetic origin.” (*Id.* at p. *9.)

In the instant case, it is not apparent from the record whether applicant was the legal guardian or the foster parent of the niece. The WCJ accepted legal documents purporting to establish legal guardianship over the niece into evidence but only one document establishes a relationship with applicant, an Authorization for General Medical Care for a Child Placed by Order of the Juvenile Court to Johnson and applicant. (Jt. Ex. 3, p. 5.) The document seems to indicate that Johnson and applicant are the foster parents of the niece but there are no other documents establishing applicant as either the foster parent or the legal guardian. (Jt. Ex. 3, p. 5.) There also is not an explanation of the \$700.00 per month that the family received to cover childcare. (MOH/SOE, p. 7.) If applicant is the guardian and/or foster parent of the niece, the WCJ should consider that evidence, as well as the reasoning in the *Carlson* and *Franco* cases, when determining if the niece may qualify for the special death benefit pursuant to section 4703.5.

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with section 5313. “The Labor Code and the Board's rules set forth what must be included in a proper trial record. It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc) (*Hamilton*).) The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Id.* at p. 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) “For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.)

All 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].) “Due process requires notice and a meaningful opportunity to present evidence in regards to the issues.” (*Rea v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers’ Comp. Appeals Bd.* (1991) 233 Cal.App.3d

1449, 1452-1454 [56 Cal.Comp.Cases 537].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; 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. (Baskin)* (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].)

There is not enough evidence in the record to determine whether the niece qualifies for the special death benefits pursuant to section 4703.5. Therefore, we will rescind the FA&O and return this matter to the trial court for further proceedings consistent with this opinion. Upon return to the WCJ, we recommend that the parties provide evidence as to the relationship between applicant and the niece, the WCJ hold a hearing on the issue, and the WCJ consider the evidence in light of the cases discussed above.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the November 6, 2025 Findings and Award and Orders is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the November 6, 2025 Findings and Award and Orders is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 9, 2026

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

**CHARISMA JOHNSON
LAW OFFICES OF O'MARA AND HAMPTON
STATE COMPENSATION INSURANCE FUND**

JMR/pm

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

