WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CATRINA DIMICELLI, *Applicant*

vs.

DIVERSIFIED PHOTO SUPPLY; CALIFORNIA INSURANCE GUARANTEE ASSOCIATION for FREMONT INDEMNITY COMPANY, in liquidation, *Defendants*

Adjudication Number: ADJ117564
Long Beach District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Lien claimant David Silver, M.D., seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on October 31, 2025, wherein the WCJ found in pertinent part that: the Appeals Board previously found that applicant did not sustain injury in the form of fibromyalgia, complex regional pain syndrome and reflex sympathetic dystrophy;[1] lien claimant provided treatment to applicant for those non-industrial conditions; defendant has no liability for payment for the treatment of these non-industrial body parts or conditions; and the issues of penalties are moot. She ordered that the lien was dismissed.

On November 23, 2025, lien claimant filed a notice of errata. On November 24, 2025, lien claimant filed a Supplemental Petition. Pursuant to WCAB Rule 10964, we have accepted and considered lien claimant's notice of errata and Supplemental Petition. (Cal. Code Regs., tit. 8, § 10964.)

We received an Answer from defendant.

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

We have considered the allegations of the Petition, the Supplemental Petition, the notice of errata, the Answer, and the contents of WCJ's Report with respect thereto. Based upon our

[1] We issued our Opinion and Decision after Reconsideration on October 5, 2012, wherein we affirmed the Findings and Award issued by a WCJ on December 17, 2010. Commissioners Lowe, Moresi and Caplane who were on the panel that issued the October 5, 2012 decision, no longer serve on the Appeals Board and new panelists were appointed in their place.

preliminary review of the record, we will grant lien claimant's Petition for Reconsideration. Our order granting the Petition for Reconsideration 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 Petition 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 Code section 5950[2] 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.
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> (b)
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> (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.
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> (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 November 21, 2025, and 60 days from the date of transmission is January 20, 2026. This decision is issued by or on January 20, 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

[2] All statutory references are to the Labor Code unless otherwise stated.

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 shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on November 21, 2025, and the case was transmitted to the Appeals Board on November 21, 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 November 21, 2025.

II.

Preliminarily, we note the following, which may be relevant to our review.

The WCJ stated following in the Report:

> Dr. David Silver, M.D., lien claimant, hereinafter "Petitioner", filed a timely, verified Petition for Reconsideration to the October 31, 2025, Findings and Award which reiterated the prior Findings and Award issued by the court on December 17, 2010, subsequently upheld by the Board, that applicant did not sustain injury AOE/COE in the form of Fibromyalgia, Complex Regional Pain Syndrome (CRPS) and Reflex Sympathetic Dystrophy (RSD), the back or any other part of the spine aside from the neck, internal, head, scalp, headaches, nervous system, nervous strain or lower extremities. Thus, the court found that Dr. Silver's treatment of the applicant's internal complaints related to Fibromyalgia and Complex Regional Pain Syndrome provided on a lien basis were also not reimbursable and all issues brought forth by Petitioner regarding further interest, increased penalty and additional penalties, were moot as injury AOE/COE had already been decided over a decade ago, e.g. collateral estoppel.
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> Applicant, while employed during the period June 19, 1995, through July 24, 1996, a period of roughly one year, as a phone salesperson (Group 35) at Torrance, California, by the above-referenced employer, whose workers' compensation insurance carrier was then Fremont Insurance Company, now liquidated, sustained injury arising out of and occurring in the course of employment to her neck and bilateral upper extremities only.
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> Prior to trial, applicant had received treatment from a myriad of physicians treating on a lien basis, and in particular sought treatment by Petitioner for symptoms previously diagnosed as Fibromyalgia, CRPS or RSD. Petitioner provided said services for seven years on a lien basis, and filed its lien July 29, 2013, for dates of service November 19, 2004, through November 23, 2011.

The court found that applicant's claims for Fibromyalgia, CRPS and RSD were part of a non-industrial "Undifferentiated Somatoform Disorder versus a Factitious Disorder," as explained by orthopedic AME Dr. Stuart Kuschner and psychiatric QME Dr. William Sullivan. (Exhibits WCAB X and Y, and Defendant's E). The AME stated that applicant did not, in fact, have a pain disorder like CRPS or RSD because the applicant did not fit the criteria and was exhibiting improvement with treatment, therefore, the diagnosis was erroneous. (WCAB Exhibit Y, Deposition of Dr. Kuschner, 10/9/2007, 8:2-25, 9:1-10.) The court adopted the reasoning and was upheld by the Board upon Reconsideration. (Findings and Award 12-17-2010, EAMS Doc. ID 22873603, Opinion on Decision 12-17-2010, EAMS Doc. ID 22873624; WCAB Opinion and Decision After Reconsideration 10-05-2012, EAMS Doc. ID 43222922).

This was in fact the premise upon which the court subsequently found in applicant's favor against the Subsequent Injuries Benefits Trust Fund (SIBTF) (EAMS Doc. ID 56138895). During that trial the applicant produced substantial medical evidence to support that she had pre-existing conditions that when combined with the subsequent industrial injury rendered her 100% disabled. (Findings and Award (SIBTF), EAMS Doc. ID 56138895 and Opinion on Decision, EAMS Doc. ID 56138896)

DISCUSSION

A. The court can only rely on substantial medical evidence.

The opinions of Petitioner and the testimony of the applicant, who is not a physician, do not controvert the opinion of the Agreed Medical Examiner. All findings of the WCAB must be based on substantial evidence. (Le Vesque v. Workmen's Comp. Appeals Bd. (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16]; Escobedo v. Marshalls (2005) 70 Cal.Comp.Cases 604, 620 [Appeals Bd. en banc].) When weighing medical reports, an AME is given more weight presuming the doctor has been chosen by the parties because of his expertise and neutrality, and his opinion should ordinarily be followed unless there is good reason to find that opinion unpersuasive. (Power v. Workers' Comp. Appeals Bd. (1986) 179 Cal.App.3d 775, 782 [224 Cal.Rptr. 758]. See also Pearson Ford v. Workers' Comp. Appeals Bd. (2017) 16 Cal.App.5th 889 [225 Cal.Rptr.3d 557].) Notwithstanding the opinions and assertions of Dr. Silver, which do not bear the same neutrality and are in fact self-serving, the Board upheld the finding, and applicant did not file a writ. The issue of no injury AOE/COE to Fibromyalgia, CRPS/RSD, the back or any other part of the spine aside from the neck, and no injury AOE/COE to internal, head, scalp, headaches nervous system, nervous strain or lower extremities, remains as established findings of fact.

B. There is no requirement in the 2010 Award to reimburse a provider for treatment of non-industrial condition.

The prior Findings and Award do not infer a requirement to reimburse treatment for non-industrial condition, as that would contradict the premise of Labor Code §4600. Labor Code §4600(b) specifically binds treatment in the California workers compensation arena as limited to that which is "reasonably required to cure or relieve the injured worker from the effects of the worker's injury." It goes without saying that "injury" means industrial injury, not, all injuries from whatever source or cause, existing or imagined. The prior Award indicates, "Applicant is entitled to reimbursement of self-procured medical treatment payable by defendant pursuant to the Official Medical Fee Schedule, where applicable, in an exact amount to be adjusted by and between the parties, with the WCAB retaining jurisdiction in the event of a dispute."

The court does not interpret the Award to mean a mandate for the employer to pay out all treatment everywhere, including for non-industrial, misdiagnosed or non-existent conditions. Medical legal services were reimbursable, and Respondent did pay $7,917.20 based on prior bill review. The remaining dispute is in regard to the $44,155.79 treatment bill. Even if the applicant had self-procured medical treatment and paid out of pocket for non-industrial conditions or conditions thought to be part of the claim, in the instant case, based on these particular facts, the outcome would also be the same. Generally, treatment for non-industrial body parts and conditions that can be distinguished and set apart from the industrial injury, or in this case, misdiagnosed or somatoform condition stemming from a non-industrial psychiatric injury, that were not reasonably procured to cure and or relieve the industrial injury, are not the responsibility of the employer under the law.

C. That Petitioner was the primary treating physician has no bearing on injury AOE/COE.

The fact that Petitioner was an authorized primary treating physician is irrelevant insofar as it treated on a lien basis, and any assertion of reimbursement is tied to the applicant's recovery. (*Moelleken v. Workers Comp. App. Bd. (Brock)* (2012) 77 Cal. Comp. Cases 753 (writ denied). Distinguished from medical-legal costs, a pure treatment lien for a condition that was deemed non-industrial, or non-existent, or misdiagnosed, can be parceled out as not reimbursable. It is a well-established rule that a lien claimant stands in the shoes of the applicant when it comes to burden of proof (Labor Code §3202.5, Labor Code §5705; *Torres v. AJC Sandblasting* (2012) 77 Cal. Comp. Cases 1113 (appeals board en banc); *Kunz v. Patterson Floor Coverings, Inc*. (2002) 67 Cal. Comp. Cases 1588, 1592 (appeals board en banc)). However, in this situation, the issue of AOE/COE was thoroughly litigated 15 years prior and under collateral estoppel; the court has no jurisdiction to revisit the issue at this

juncture. Where the applicant cannot recover, so too follows the lien claimant, for that is the nature of treatment on a lien basis.

D. Petitioner's assertion that the court is apportioning medical treatment is misconstrued.

Services provided by the Petitioner are distinctly for a condition that was previously found non-industrial or misdiagnosed, and the court is not apportioning medical treatment to the same or related body parts or conditions but to causation under Labor Code §4663/4664. Put simply, Petitioner was the applicant's pain management doctor who specifically treated a somatoform type pain connected to a non-industrial psychiatric injury. Applicant admittedly was also getting similar treatment from a non-industrial pain management doctor out of state, Dr. Hooshmand, for the same issues (Summary of Evidence 8/20/2025, 5:7-9). The Board relied on the AME's 1999 deposition testimony wherein he opined that the "nature of applicant's cervical strain performing job duties in a relatively sedentary position would not cause the degenerative disk disease or herniated disk." Her pain manifested 3 years after industrial exposure and was found to be non-industrial by the court and affirmed to be non-industrial by the Board. (Opinion and Decision After Reconsideration 4:10-15; 5:2-11).

Petitioner's citations provided in support of its argument are not on point. Granado stands for the premise that "so long as medical treatment is reasonably required to cure or relieve from the effects of an industrial injury, the employer is required to provide the treatment, and treatment for non-industrial conditions may be required of the employer where it becomes essential in curing or relieving from the effects of the industrial injury itself; such medical expense is not apportionable. (*Granado v. Workmen's Comp. App. Bd*. (1968) 69 Cal.2d 399, 401 [71 Cal.Rptr. 678, 445 P.2d 294].) That is not the case here. The pain is not a byproduct of an industrial body part or condition nor was the treatment of non-industrial condition which developed three years after industrial exposure necessary to treat the industrial injury.

Braewood is also inapplicable as it stands for the premise that specific treatment rendered for a non-industrial condition which must be treated in order to cure or relieve the effects of the industrial injury, must be reimbursed. (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd*. (1983) 34 Cal.3d 159, 162 [193 Cal.Rptr. 157, 666 P.2d 14].) Again, that is not the case here. The AME was clear that he did not believe the RSD/CRPS existed, and that the applicant was misdiagnosed. The QME Dr. Sullivan corroborated when delving into the applicant's personal history of non-industrial physical and substance abuse. The treatment of applicant's pain was neither reasonable nor necessary to treat the industrial cervical injury because it was not caused or connected to the industrial event. The court found it was a standalone somatoform type disorder manifested by a psychiatric condition caused in part by years of

domestic violence and coinciding alcoholism. A physician who continues to treat on a lien basis for seven years because he does not see or refuses to see the reality of the situation should not have a high expectation of full reimbursement under this set of facts.

E. The issue of applicant's credibility is moot if the court does not have jurisdiction to revisit injury AOE/COE.

A prior finding of lack of credibility especially as it pertains to the issue of AOE/COE, absent proof of improper bias by the trier of fact, cannot be undone, and, has no real bearing on the instant matter. Though applicant testified that she believes that Petitioner's treatment was for an industrial condition, the testimony of a layperson does not override that of the AME or QME. Furthermore, the applicant at one point personally acknowledged to the court she has significant cognitive issues, and her memory is "horrid," both of which would make her a poor historian and the court would not have relied upon her testimony on the issue of AOE/COE even if had jurisdiction to do so. (Summary of Evidence 2/15/2023, 4:7-11).

RECOMMENDATION

In its review of the Petition for Reconsideration and the procedural posture of this claim and prior findings, as well as medical evidence, the court does not find reason to alter or rescind its Findings. The court incorporates its Opinion on Decision by reference as support in its request that the Petition for Reconsideration be denied in its entirety.

(Report, pp. 1-7.)

III.

We highlight the following legal principles that may be relevant to our review of this matter:

Pursuant to section 5705, "The burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.) A lien claimant has the burden of proving all elements necessary to establish the validity of its lien. Section 3202.5 states that, "All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence." (Lab. Code, § 3202.5; *Boehm & Associates v. Workers' Comp. Appeals Bd. (Brower)* (2003) 68 Cal.Comp.Cases 548, 557.)

A lien claimant treating physician's burden of proof includes the burden of showing that he or she provided medical treatment "reasonably required to cure or relieve" the injured worker from the effects of an industrial injury. (Lab. Code, § 4600(a); *Williams v. Industrial Acc. Com*.

(1966) 64 Cal.2d 618 [31 Cal.Comp.Cases 186]; *Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd*. (1994) 26 Cal.App.4th 789 [59 Cal.Comp.Cases 461]; *Workmen's Comp. Appeals Bd. v. Small Claims Court (Shans)* (1973) 35 Cal.App.3d 643 [38 Cal.Comp.Cases 748].) Where a lien claimant, rather than the injured worker, litigates the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured worker and the lien claimant must establish injury by preponderance of evidence. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Martin)* (1985) 39 Cal.3d 57, 67 [50 Cal.Comp.Cases 411]; *Kunz, supra*, at 1592.)

All decisions by a WCJ must be supported by substantial evidence. (*Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]; *Bracken v. Workers' Comp. Appeals Bd*. (1989) 214 Cal.App.3d 246 [54 Cal.Comp.Cases 349].) Substantial evidence has been described as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and must be more than a mere scintilla. (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159 [48 Cal.Comp.Cases 566].)

Additionally, decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc).) "[T]he WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Id*. at 475.) "Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313; see *Hamilton, supra*, at 476.)

"The WCJ is also required to prepare an opinion on decision, setting forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on." (*Hamilton, supra*, at 476.) "The opinion 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." (*Hamilton, supra*, at 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*, at 476.)

Here, it is unclear from our preliminary review whether the existing record is sufficient to support the decision, order, award, and legal conclusions of the WCJ, as well as whether further development of the record may be necessary with respect to the issues noted above.

IV.

Petitioner contends that the WCJ applies collateral estoppel in a manner that expands the scope of the 2010 decision beyond the issues actually litigated and decided. (Supplemental Petition, p. 2.) In *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, the California Supreme Court clarified the terms "res judicata," "collateral estoppel," "claim preclusion," and "issue preclusion," as follows:

> We have frequently used "res judicata" as an umbrella term encompassing both claim preclusion and issue preclusion, which we described as two separate "aspects" of an overarching doctrine. [Citations.] Claim preclusion, the 'primary aspect' of res judicata, acts to bar claims that were, or should have been, advanced in a previous suit involving the same parties. [Citations.] Issue preclusion, the 'secondary aspect' historically called collateral estoppel, describes the bar on relitigating issues that were argued and decided in the first suit. [Citations.]
>
> We have sometimes described 'res judicata' as synonymous with claim preclusion, while reserving the term 'collateral estoppel' for issue preclusion. [Citations.] On occasion, however, we have used the term 'res judicata' more broadly, even in a case involving only issue preclusion, or collateral estoppel. [Citations.] We are not the only court to sometimes use the term 'res judicata' with imprecision. (See, e.g., *Migra v. Warren City School Dist. Bd. of Ed*. (1984) 465 U.S. 75, 77, fn. 1 [citations].)
>
> To avoid future confusion, we will follow the example of other courts and use the terms 'claim preclusion' to describe the primary aspect of the res judicata doctrine and 'issue preclusion' to encompass the notion of collateral estoppel. (see *Ibid*.) To avoid future confusion, we will follow the example of other courts and use the terms "claim preclusion" to describe the primary aspect of the res judicata doctrine and "issue preclusion" to encompass the notion of collateral estoppel. (See ibid.) It is important to distinguish these two types of preclusion because they have different requirements.

(*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 823-824.)

Here, in our decision of October 5, 2012, we affirmed the December 17, 2010 decision wherein the WCJ found that applicant sustained injury to the neck and bilateral upper extremities and not to any other body parts including in the form of fibromyalgia, complex regional pain syndrome and reflex sympathetic dystrophy. No party sought appellate review and that decision is

final. (See Lab. Code, § 5950, et seq.) While it is undisputed that lien claimant provided services as a primary treating physician (PTP) and also as a Qualified Medical Evaluator (QME), and it is undisputed that defendant provided payment for some of these services, the October 31, 2025 Opinion on Decision does not clearly articulate the basis of the WCJ's findings with respect to which services relate to which body parts.

V.

In addition, 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 [10 I.A.C. 322]) 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 [32 Cal.Comp.Cases 431]; *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 [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]), 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 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra,* 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 Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. 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 Code sections 5950 et seq.

Accordingly, we grant lien claimant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to WCABmediation@dir.ca.gov.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the Findings and Order issued by the WCJ on October 31, 2025 is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 20, 2026

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

DAVID SILVER, M.D.
LEGAL SERVICE BUREAU (Dan Escamilla)
BENTHALE, McKIBBIN, McKNIGHT & BITZ

JB/*pm*

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