**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**DOMINGA AMPIE, *Applicant***

**vs.**

**SONESTA INTERNATIONAL HOTELS CORP;**
**insured by THE NORTH RIVER INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ18361634**
**San Francisco District Office**

# OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration and alternatively requests removal regarding the Findings and Order issued by the workers' compensation administrative law judge (WCJ) on August 6, 2026. We have considered the allegations of the Petition for Reconsideration and the contents of the Report and Recommendation on Petition for Reconsideration and Removal (Report) of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated below, we will deny the Petition for Reconsideration

## I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code[1] section 5909, which states 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.

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

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 September 2, 2026 and 60 days from the date of transmission is Sunday, November 1, 2026. The next business day that is 60 days from the date of transmission is Monday, October 19, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on November 2, 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on September 2, 2026, and the case was transmitted to the Appeals Board on September 2, 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 September 2, 2026.

**II.**

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out

[2] 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.

of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd*. (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

Here, the WCJ's decision includes final findings regarding employment, injury arising out of and occurring in the course of employment (AOE/COE), and liability for temporary disability. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

**III.**

As relevant here, the WCJ stated the following in the Report:

> **INTRODUCTION**
>
> Defendants filed a petition for reconsideration and removal of my August 6, 2026 Findings and Award wherein I found that applicant was temporarily disabled. Defendants contend that I should have allowed further discovery, that the finding is not supported by substantial evidence and that defendants were denied due process. I recommend that the petition be denied.
>
> **FACTS**
>
> *1. Procedural background*.
>
> Applicant filed an Application of Adjudication on October 17, 2023 for an accepted cumulative injury ending February 20, 2022. On June 30, 2026, applicant filed a Declaration of Readiness for an Expedited Hearing. The matter came on for an Expedited trial on July 22, 2026. Applicant sought an award for Temporary Disability Indemnity for the period May 8, 2025 through January 6, 2026. At trial, I denied the defendants' request for further discovery before proceeding to trial. The parties submitted the matter on the record. I took the case under submission.
>
> On August 6, 2026 I issued a Findings and Order. I found that applicant was temporarily disabled from May 8, 2025 through January 6, 2026. I deferred an award because the Employment Development Department (EDD) had paid 52 weeks of state disability benefits. I set the case for a lien conference on August 25, 2026. At the lien conference, the parties were unable to resolve the EDD lien. The matter went off calendar. On August 31, 2026, defendants filed a timely verified petition for reconsideration and petition for removal in the alternative.

*2. Evidence at trial and decision*.

Applicant initially obtained treatment from Shabi Khan, M.D. for her right knee. Defendants paid temporary disability benefits to applicant until Dr. Khan declared her permanent and stationary on April 28, 2023. Adam [Stoller], M.D. acting as a Qualified Medical Evaluator (QME) reported on May 8, 2025 that applicant had a compensable consequence injury to her back which was not permanent and stationary. Additionally, applicant's new primary treating physician for her back, Mathew Wedemeyer, M.D., reported that applicant was temporarily disabled for her back. On January 15, 2026, Dr. Stoller evaluated applicant and reported that her back was permanent and stationary. I found that applicant was temporarily disabled from May 8, 2025 through January 15, 2026 based on Dr. Wedemeyer and Dr. Stoller's unrebutted reports.

At trial, defendants objected to going forward because they: (1) filed an objection to applicant's declaration of readiness to proceed to expedited hearing, (2) objected to Dr. Stoller's opinions on June 22, 2026; and (3) scheduled his cross-examination for September 22, 2026.

*3. Contentions on reconsideration.*

Defendants maintain that I should have allowed further discovery before going forward with the expedited hearing, that my finding of temporary disability is not based on substantial evidence and that defendants were denied due process because they were not allowed to take the Qualified Medical Evaluator's deposition before proceeding to trial.

## DISCUSSION

*1. DEFENDANTS WERE NOT DENIED DUE PROCESS BECAUSE THEY DID NOT CONDUCT DISCOVERY WITH DUE DILIGENCE*

At trial on July 22, 2026, defendants objected to going forward. They asked to delay the expedited hearing so that they could take Dr. Stoller's deposition. I denied their request because they had not acted with due diligence. Dr. Stoller had reported that applicant was temporarily disabled on March 8, 2025 (applicant exhibit 1). Applicant's primary treating physician agreed in his June 6, 2025 report (applicant exhibit 3). Dr. Stoller reported that applicant's condition was again permanent and stationary on January 15, 2026 (applicant exhibit 2). On April 20, 2026, defendants requested a supplemental report from Dr. Stoller (applicant exhibit 6). Defendants did not ask Dr. Stoller any questions about applicant's work status, temporary disability or permanent and stationary status for the back. Defendants had the opportunity to take Dr. Stoller's deposition about whether or not applicant was temporarily disabled for the back beginning March 8, 2025. Defendants' delay in seeking to take Dr. Stoller's

deposition was not reasonable. Defendants failed to act with due diligence. They had a reasonable opportunity to conduct discovery. There was no denial of due process.

*2. MY FINDING THAT APPLICANT WAS TEMPORARILY DISABLED FROM MAY 8, 2025 TO JANUARY 15, 2026 IS BASED ON SUBSTANTIAL EVIDENCE*

Defendants assert, "The evidence does not justify the Findings & Award". There was ample evidence in the record to support my finding that applicant was temporarily disabled from May 8, 2025 to January 15, 2026. I relied on Dr. Stoller's March 8, 2025 (applicant's exhibit 1) in finding that applicant's condition was no longer permanent and stationary because she had a compensable back injury. The primary treating physician agreed (applicant exhibit 3). I relied on Dr. Stoller's January 15, 2026 report (applicant exhibit 2) in finding that applicant's condition was again permanent and stationary. Dr. Stoller and Dr. Wedemeyer's reports constitute substantial evidence for my Findings. There was no contrary evidence. Dr. Khan's earlier report (defendants exhibit B) only addresses the knee and cannot constitute substantial evidence on the issues pertaining to the back.

**RECOMMENDATION**

For the foregoing reasons, I recommend that defendants' Petition for Reconsideration and Removal, filed herein on August 31, 2026, be denied. This matter is being transmitted to the Appeals Board on the service date indicated below my signature.

(Report, at pp. 1-4.)

**IV.**

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, including the right to cross-examine a witness. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805]; *Gangwish v. Workers' Comp. Appeals Bd*. (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].) 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]; see also *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924].) However, the duty to develop the record must be balanced with the parties' obligation to exercise due diligence to complete necessary discovery in a timely manner. (See *San*

*Bernardino Community Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986].)

For the reason stated by the WCJ, we agree that defendant did not exercise due diligence in setting Dr. Stoller's deposition, which it had the opportunity to do beginning March 8, 2025. Additionally, defendant did not raise the issue of temporary disability in its letter requesting subsequent supplemental reporting and waited 14 months after the issuance of the March 8, 2025 report to set the deposition.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

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

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

**November 2, 2026**

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

**DOMINGA AMPIE**
**GIMBEL LAW FIRM PC**
**COLEMAN CHAVEZ & ASSOCIATES LLP**

**PAG/cm**

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