WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DONNA M. WHITE, *Applicant*

vs.

CITY OF MARINA and ACCLAMATION INSURANCE MANAGEMENT SERVICES; INCORPORATED, *Defendants*

Adjudication Number: ADJ16147948
Salinas District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the October 23, 2025 Findings and Award issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant sustained a "specific injury" to her psyche arising out of and occurring in the course of employment (AOE/COE) while employed as a police commander "during the period [January 4, 2019] through [April 18, 2022];"[1] that applicant was temporarily totally disabled from July 17, 2023 through December 4, 2024; and that the injury did not result in any permanent partial disability or need for continuing medical treatment.

Defendant contends that the WCJ erred in finding psychiatric injury AOE/COE arguing that applicant failed to establish predominate causation; that the claim is defeated by the good faith, nondiscriminatory personnel action defense; that there is a lack of objective evidence of harassment; that the date of injury found is incorrect; and that defendant cannot comply with the Award due to its vagueness.

We did not receive an answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

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[1] The WCJ appears to have erroneously referred to applicant's injury as a "specific injury" while also describing the date of employment as the period from January 4, 2019 through April 18, 2022. We note that the parties stipulated that applicant claimed a claimed cumulative trauma from January 4, 2019 through April 18, 2022. (Minutes of Hearing and Summary of Evidence (MOH/SOE), 9/23/25, at p. 2:4-7.)

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant defendant'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 et seq.

I.

Preliminarily, we note that former Labor Code[2] 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.
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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 26, 2025 and 60 days from the date of transmission is Sunday, January 25, 2026. The next business day that is 60 days from the date of transmission is Monday, January 26, 2025. (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, January 26, 2025, so that we have timely acted on the petition as required by Labor Code 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 November 26, 2025, and the case was transmitted to the Appeals Board on November 26, 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 26, 2025.

II.

The WCJ provided the following discussion in the Report:

> **II.**
> **SUMMARY OF FACTS**
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> The Applicant, Donna White, was employed as a Commander for the City of Marina's Police department until 4/30/2024 (although her last date of actual work for the City of Marina was considerably earlier). On 4/18/2022, Applicant filed a claim for worker's compensation benefits alleging cumulative psychiatric injury. Defendant disputes the date of injury and claims that either 4/18/2022 or 10/21/2022 are better viewed as the correct date of injury under Section 5412 than the date found below, 7/17/2023. During the period prior to 7/17/2023, Applicant was [temporarily totally disabled] as the result of a prior foot injury unconnected to the present litigation. No medical evidence supports psychiatric [temporary disability] prior to 7/17/2023.
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> Injury was denied and the parties sought the assistance of [panel qualified medical evaluator (PQME)] Elizabeth Wantuch, Ph.D. Dr. Wantuch initially

[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.

reported in favor of industrial causation. Defendant requested a reevaluation based upon documents originally withheld from the QME, and based upon these new facts, Dr. Wantuch changed her mind and found the claim non-compensable. Applicant then produced even more documents previously withheld from Dr, Wantuch and in due course Dr, Wantuch produced a third report (Exhibit EE, misidentified in the F&A as Exhibit DD). In this third report, Dr. Wantuch produced a third version of a *Rolda* analysis and deferred causation to the finder of fact, set forth at pages 6-7 of Exhibit EE.

When one considers the *Rolda* factors and the percentage of causation ascribed to each, one may easily group these factors into three roughly similar groups. For ease of reference, I will use the numbers provided by Dr. Wantuch (at Exhibit DD pp 6-7) to refer to each causal factor. Factors 1, 3, 4, and 8 all appear to concern actual events of employment. On this point the testimony presented is remarkably congruent. While Sherriff Nieto and Commander White disagree sharply as to why each listed event occurred, and do not agree as to the motivation of one another's actions before and after each event, they do not disagree that the events actually occurred and were the cause of actual conflict. For example, Factor 3 states that Applicant was included in fewer meetings than previously and kept out of the loop. Applicant believes that this happened because Sherriff Nieto deliberately excluded Applicant from policy meetings. Sherriff Nieto states that while many meetings did occur without Applicant, excluding the Applicant did not motivate Applicant's reduced participation. Having heard testimony from both witnesses and observed their demeanor, it seems to be that both witnesses have reached reasonable conclusions based on their own experience. The basic events of employment, that Applicant's participation became gradually curtailed, does not appear to be in dispute.

In a similar way, Factor 1, the accusation by Sherriff Nieto that Applicant had trouble dealing with members of racial or ethnic minorities did in fact occur. Both witnesses agree that such a criticism was made. The fact that one party believed the accusation was true and the other did not is immaterial, in view of the fact that no basis for the accusation has ever been brought forward. The parties' beliefs are all we have. No personnel action was ever taken. Given the timing, it is easy to see why Applicant concluded that the unsupported allegation was made in retaliation for Applicant's complaints, and I found her belief reasonably held. In the same way, I see no particular reason to dismiss Sherriff Nieto's belief that the accusation was not motivated by anything improper. The accusation did in fact occur, was not a personnel action, and was found to be a legitimate stressor by Dr. Wantuch.

Factors 4 and 8 may be analyzed in a very similar way. The events found causative were certainly actual events of employment. Both Applicant and Sherriff Nieto interpreted these events in a light wholly favorable to themselves, and both had a reasonable basis for their belief. The test for whether an event may be the basis of a psychiatric claim is whether the event is an 'actual event

> of employment' and not a fantasy of the Applicant's where the workplace was a mere passive stage. Factors 1,3, 4, and 8 all meet this test and, per Dr. Wantuch, account for 40 percent of the cause of Applicant's disability. All of these events occurred in the workplace and occurred before the date of injury, found to be 7/17/2023.
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> Factors 2,[]5, 6, 7, and 9 all appear to involve allegations of injustices in the claims handling process. These factors are almost certainly outside the scope of those actual events of employment which might support industrial causation. Ample case law exists to support this conclusion in compensable consequence cases. All of these incidents occurred well after the date of injury, no matter which date of injury is accepted.
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> Based on these facts, an Award was issued which found injury with no permanent disability or continuing need for medical treatment. An additional claim of TTD/4850 benefits was deferred pending further development of the record.
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> From this Award, Defendant sought Reconsideration.
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> (Report at pp. 2-4.)

III.

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

In order to establish the compensability of a psychiatric injury under section 3208.3, an injured worker has the burden of establishing "by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury." (Lab. Code, § 3208.3(b)(1).) "Predominant as to all causes" means that "the work-related cause has greater than a 50 percent share of the entire set of causal factors." (*Dept. of Corrections v. Workers' Comp. Appeals Bd. (Garcia)* (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356, 1360]; *Watts v. Workers' Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 684, 688 (writ den.); *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 246 (Appeals Board en banc).)

In *Rolda*, we set forth the multilevel analysis for determining if a claimed psychiatric injury is compensable when the affirmative defense of lawful, nondiscriminatory, good faith personnel action has been raised: "The WCJ, after considering all the medical evidence, and the other documentary and testimonial evidence of record, must determine: (1) whether the alleged psychiatric injury involves actual events of employment, a factual/legal determination; (2) if so, whether such actual events were the predominant cause of the psychiatric injury, a determination

which requires medical evidence; (3) if so, whether any of the actual employment events were personnel actions that were lawful, nondiscriminatory and in good faith, a factual/legal determination; and (4) if so, whether the lawful, nondiscriminatory, good faith personnel actions were a "substantial cause" of the psychiatric injury, a determination which requires medical evidence." (*Rolda, supra*, 66 Cal.Comp.Cases at pp. 245-247.)

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Medical evidence is required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c)(d), 4061(i), 4062.3(l).) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Here, it is unclear from our preliminary review that there is substantial medical evidence to support the WCJ's decision without additional development of the record. Where the medical evidence or opinion on an issue is incomplete, stale, and no longer germane, or is based on an inaccurate history, or speculation, it does not constitute substantial evidence. (*Place v. Workers'*

Comp. Appeals Bd. (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Based on our review, we are not persuaded that the record is properly developed. Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

IV.

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 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) 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 p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at 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 is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

V.

Accordingly, we grant defendant'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 defendant's Petition for Reconsideration 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/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 26, 2026

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

DONNA WHITE
RUCKA, O'BOYLE, LOMBARDO & MCKENNA
WITZIG, HANNAH, SANDERS & REAGAN, LLP

PAG/bp

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