

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

GERALD DUBY, *Applicant*

vs.

SIERRA PACIFIC INDUSTRIES, permissibly self-insured.; *Defendant*

**Adjudication Number: ADJ19868198
Redding District Office**

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

Applicant seeks reconsideration of the January 27, 2026 Findings and Order (“F&O”), wherein the workers’ compensation administrative law judge (“WCJ”) found that applicant did not suffer a work-related injury, based upon a lack of supporting medical evidence. Applicant contends that the WCJ erred by failing admit and consider reports prepared by a Qualified Medical Evaluator (“QME”) that found applicant sustained injury arising out of and in the course of his employment (“AOE/COE”).

We received an Answer. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (“Report”), recommending that the Petition be denied.

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 F&O, and return the matter to the WCJ for further proceedings.

FACTS AND PROCEDURAL HISTORY

Applicant filed an Application for Adjudication, alleging a cumulative trauma injury sustained from March 28, 2018 through September 6, 2024, while employed by defendant as a quality inspector. Defendant denied the claim.

On August 29, 2025, applicant filed a Declaration of Readiness to Proceed (“DOR”), which states in relevant part: “QMES [*sic*] Dr. Ethan Harris (Chico) has provided industrial reporting.” (Declaration, at p. 7.) Defendant filed an Objection, arguing that discovery had not been completed because defendant had not yet been able to depose the QME. At a hearing on September 18, 2025, the matter was set for a priority conference 60 days later. (Minutes of Hearing (“MOH”), 9/18/2025, at p. 1.)

The parties appeared for the priority conference on November 18, 2025, and a Pre-trial Conference Statement (“PTCS”) was filled out and filed, with the matter set for trial. According to the PTCS, defendant disputed the substantiality of QME Harris’ reporting, asserting it was based on an inaccurate history. (PTCS, at p. 3.) The PTCS went on to state that discovery was closed as to trial issues, and instructed the parties to exchange exhibits no longer than 10 days before trial, and to provide a copy of the exhibits to the trial judge no later than five days before trial. (*Id.* at p. 4.) For reasons that are unclear from the record, the PTCS included an exhibit sheet listing defendant’s exhibits and witnesses, but no such sheet was attached listing applicant’s exhibits and witnesses. (PTCS, at p. 5.) The QME reporting is not included on defendant’s exhibit list. (*Id.*)

On December 31, 2025, applicant filed a Petition for Remote Hearing, requesting that the matter be allowed to proceed to a remote trial on the basis that applicant lives in “Texas and significant travel to the Redding Workers’ Compensation Appeals Board will take significant cost in terms of both time and resources.” (Petition for Remote Hearing, at p. 1.) On January 5, 2026, the WCJ denied the Petition for Remote Trial, stating:

IT APPEARING THAT applicant made no objection to the need for an in person trial appearance when the matter was set at the mandatory settlement conference, and has only filed their petition to appear at trial remotely on December 31st, less than two weeks before the scheduled and noticed trial, and has known of the travel requirements required by the in person trial all along, it is determined that the request neither shows good cause nor is it timely.

(Order Denying Petition to Appear at Trial Remotely, at p. 1 (emphasis original).)

Shortly thereafter, on January 8, 2026, applicant filed a number of documents in the Electronic Management Adjudication System (“EAMS”). These documents were not clearly demarcated or labelled, but careful review shows that they did include two reports prepared by QME Harris, an initial report dated June 22, 2025 and a supplemental report dated August 15, 2025. The initial report is preceded by a coversheet bearing the title “Exhibit 2,” while the

supplemental report is preceded by a coversheet bearing the title “Exhibit 3.” (See EAMS filing Nos. 61950262 & 61950263.) The filings also include an unsigned, undated copy of what appears to be an exhibit and witness list page from a PTCS, preceded by a coversheet bearing the title “Exhibit 1.” (See EAMS filing No. 61950261.) This page lists both QME reports as exhibits, and lists applicant as a witness. (*Ibid.*) No explanation is provided for why the latter document was not attached to the PTCS, nor as to why the document is unsigned and undated.

The parties appeared for trial on January 13, 2026. (Minutes of Hearing / Summary of Evidence (“MOH/SOE”), 1/13/2026.) The MOH/SOE reflects that applicant’s counsel objected to going to trial, with the objection overruled. (*Id.* at p. 1.) The issues for trial were listed as:

1. Injury arising out of an in the course of employment.
2. Whether Dr. Harris’ report is substantial evidence.
3. Liability for self-procured medical treatment is deferred.

(*Id.* at p. 2.) Defendant’s exhibits listed in the PTCS were admitted, while the MOH/SOE states that “Applicant offered no exhibits.” (*Id.* at p. 3.) Testimony was taken from defense witnesses, and the matter was taken under submission. (*Id.* at pp. 3–5.)

On January 27, 2026, the WCJ issued the instant F&O, finding in relevant part that applicant take nothing on his claim because “[t]here is no medical evidence that supports the claim of industrial injury.” (F&O, at p. 1.) The appended Opinion on Decision makes clear that the WCJ’s finding was based upon the fact that applicant introduced no medical records or testimony. (*Id.* at p. 2.)

The instant Petition for Reconsideration followed, and provides scant explanation for this remarkable situation. Instead, rather vaguely, the Petition states:

The report was uploaded to EAMS and was in FileNet at the time of hearing. At trial, the court denied Applicant’s renewed oral request to appear remotely and denied a request for a continuance to allow Applicant to appear in person. The court also erroneously noted in its minutes that Applicant did not present evidence even though the undersigned advised the court that the report existed, that the report was placed at issue on the PTCS and that she believed it to be in Filenet. The court had ample notice that a QME report was obtained in this case but made no effort to review it. In its decision, the court stated that Applicant had not provided any evidence of his claim despite his request and that Applicant had sought to introduce QME reporting into the record.

(Petition, at p. 2.) The Petition goes on to allege that the QME reporting “was indicated on Applicant’s Exhibit Page of the Pretrial Conference Statement (“PTCS”) which is in EAMS as Document ID number 6190261.” (*Id.* at p. 3.) No explanation is provided, however, as to how this page was neither appended to the filed PTCS, nor signed or dated by any of the parties. The Answer also provides no explanation as to the circumstances surrounding the filling out and filing of the PTCS, instead simply stating that applicant did not list any exhibits or witnesses on that form and therefore should be barred from seeking to introduce the QME reports at a later date, citing to Labor Code section 5502. (See Answer, at p. 4.) The Report, although clarifying the timeline of events to some degree, similarly sheds no light on the fundamental question of why applicant’s exhibit and witness list was not appended to the PTCS. (See Report, at pp. 2–7.)

DISCUSSION

I.

Former Labor Code 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, Labor Code 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 Labor Code 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 February 20, 2026, and 60 days from the date of transmission is Tuesday, April 21, 2026. This decision is issued by or on Tuesday, April 21, 2026, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 February 20, 2026, and the case was transmitted to the Appeals Board on February 20, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on February 20, 2026.

II.

As a matter of due process, 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].)

It is the policy of the law to favor, whenever possible, a hearing on the merits. (*Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205 [57 Cal.Comp.Cases 149]; see also *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478 [243 Cal. Rptr. 902] (“when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default.”).) This is particularly true in workers’ compensation cases, where there is a constitutional mandate “to accomplish substantial justice in all cases.” (Cal. Const., art. XIV, § 4.)

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) 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].) 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.) Furthermore, decisions of 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].)

WCAB Rule 10817 states in relevant part that: “If a witness intends to testify electronically, a petition showing good cause shall be filed pursuant to rule 10510 by the witness or by the party offering the witness’s testimony before the hearing, and shall identify the witness and contain the witness’s full legal name” (Cal. Code Regs., tit. 8, § 10817(a).) We recently had occasion to consider this question in *Perez v. Chicago Dogs* (2025) 90 Cal. Comp. Cases 830 (Appeals Board en banc), where we stated:

In considering the application of WCAB Rule 10817(a), we preliminarily conclude that a request on the record for electronic witness testimony at the beginning of the hearing, with an opportunity for any party to respond, satisfies the petition requirement and is sufficient to adjudicate the issue of electronic testimony. Moreover, we preliminarily conclude that the due process right to a fair hearing and a determination based on the merits is good cause to allow the electronic testimony of the witness. Therefore, when a

witness is unable to appear in person, as a matter of due process, a request to testify electronically should be readily permitted.

(*Id.* at p. 840 (emphasis original).)

We turn first to applicant’s contention that the WCJ erred by denying his petition to testify remotely. Initially, we note that although the petition appears to have requested an entirely remote trial, the parties and the WCJ have all treated the issue as whether applicant should have been allowed to appear remotely to provide witness testimony pursuant to WCAB Rule 10817 at an otherwise in-person trial. We therefore follow their lead and analyze the issue on those terms.

The Report and Answer both suggest applicant waived the right to raise this argument on reconsideration by failing to seek removal of the January 5, 2026 Order Denying Petition to Appear at Trial Remotely. However, no authority is cited by the Report, and the case cited by the Answer for the proposition that “failure to timely challenge a procedural ruling constitutes waiver” – *Scott Co. v. WCAB* (1983) 139 Cal.App.3d 98 – does not appear to discuss the issue of waiver at all, much less with regard to any situation analogous to the one here.¹

Perhaps more relevantly, we can glean from the MOH/SOE and the Report that applicant’s attorney objected to going forward at trial on the basis that applicant could not be present at the hearing and therefore could not provide testimony – the same basis upon which applicant requested the remote appearance. Although the record could no doubt be clearer, it does not appear to us that applicant abandoned the contention that he should be allowed to appear remotely to provide testimony, and we therefore do not find that the issue was waived.

Turning to the merits, we disagree with the WCJ that no good cause was stated by the petition. Although the WCJ is correct that the petition technically did not assert that it was *impossible* for applicant to attend the hearing, we do not believe that impossibility is the required standard. Nor do we believe that the failure to raise the issue at the mandatory settlement conference waived applicant’s right to file a petition to appear remotely at a later date. Although advance notice is both courteous and advisable, here applicant’s petition was filed significantly in advance of the hearing date, and there is no suggestion that either the WCJ or defendant was adversely impacted by a lack of notice.

¹ Frankly, we are perplexed by this citation, which contains no pin cite and appears to have no relation whatsoever to the principle of law the Answer cites it for. Although we will take no further action at this time, we caution defense counsel that citing cases for propositions they do not support may be cause for the imposition of sanctions. (See Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)

Similarly, we are not persuaded by the WCJ's reasoning that applicant's failure to plead the precise amount of time and resources involved in attending the hearing bears significantly upon whether good cause was stated for an electronic appearance. Here, applicant apparently resides in Texas, and we do not think that such specific pleading is required to appreciate that attending a hearing in Redding, California would require a significant outlay in both time and resources.

Perhaps more importantly, neither the WCJ nor defendant raised any specific objection to applicant providing electronic testimony, or otherwise explained why applicant testifying electronically would cause some sort of articulable harm either to defendant's due process rights or to the ability of the WCJ to fairly adjudicate the case. In the absence of any such showing, we think good cause was stated by the petition, and that the WCJ should have granted it. Accordingly, once a new hearing date is set for this matter, we recommend that applicant renew his petition to appear remotely, and we encourage the WCJ to grant it unless some significant, specific and articulable harm would result from allowing that remote appearance.

We turn next to the issue of the QME reporting. Here, both the pleadings and the record are frustratingly vague as to how or why the PTCS filed in this case did not contain applicant's exhibit and witness list. At a minimum, it appears that applicant's attorney was significantly remiss in failing to ensure that the page in question made it into the PTCS, and must accordingly shoulder the lion's share of the blame for what seems to have been a significant and very unfortunate oversight.

However, we see no indication that applicant's counsel's mistake was anything other than an oversight. It is clear from both the PTCS and the MOH/SOE that all parties contemplated the admission of the QME's reporting, with the MOH/SOE even going so far as to list the substantiality of the QME reports as one of the issues for trial, suggesting that the parties had not yet realized that the QME reports had not been listed on the PTCS at that stage of proceedings. This is not a situation where a party sought to introduce previously undisclosed evidence in order to obtain an advantage in proceedings; defendant was clearly familiar with and ready to address the QME reporting at trial. The QME reporting was also apparently served on defendant prior to trial without incident, and was available in EAMS at the time of trial, albeit under filenames that did not make their contents immediately clear.

Most critically, QME reporting is not the kind of ancillary evidence that a WCJ might reasonably consider unnecessary to determine the legal issues submitted for decision, and therefore

that might reasonably be ignored based upon a procedural oversight. It is no exaggeration to say that QME reporting forms the backbone of the workers' compensation system. In fact, parties are specifically prohibited by statute from filing a DOR on a disputed medical issue "unless there has first been an evaluation by the treating physician or an agreed or qualified medical evaluator." (Lab. Code, § 4062.3(l).) Given that the parties would not even have been permitted to file a DOR – the first step in obtaining a trial date – without a medical evaluation, we do not see how a trial can realistically go forward in the absence of such critical evidence. In this case, the WCJ's decision to proceed without considering the QME reporting in effect amounted to a default judgement, and we cannot find it compatible with our constitutional mandate "to accomplish substantial justice in *all* cases." (Cal. Const., art. XIV, § 4 (emphasis added).)

To be sure, Labor Code section 5502, subdivision (d)(3) states that evidence not disclosed at the mandatory settlement conference is ordinarily not admissible at trial "unless the proponent of the evidence can demonstrate that it was not available or could not have been discoverable by the exercise of due diligence prior to the settlement conference." (Lab. Code, § 5502(d)(3).) However, we must interpret statutory language "consistently with its intended purpose, and harmonized within the statutory framework as a whole." (*Alvarez v. Workers' Comp. Appeals Bd.* (2010) 187 Cal.App.4th 575, 585 [75 Cal.Comp.Cases 817].) "Statutory language should not be interpreted in isolation, but must be construed in the context of the entire statute of which it is a part, in order to achieve harmony among the parts." (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 903.) As noted above, QME reporting forms a critical, foundational role in the workers' compensation process, and here the PTCS does in fact reference the QME reporting as one of the issues in the case, showing clearly that both parties anticipated that the QME reporting would be admitted at trial. (PTCS, at p. 3.) Accordingly, mechanically applying Labor Code section 5502, subdivision (d)(3) to bar this evidence would not be consistent with either the broader statutory scheme or with the purpose of the subdivision itself, which exists to prevent litigants from ambushing their opponents with evidence not disclosed at the time of the mandatory settlement conference, not to bar the admission of critical evidence the PTCS itself references.

We sympathize with the WCJ's evident frustration at the situation he found himself in. However, under the circumstances, we believe the better course of action would have been to either admit the QME reporting based on the stipulation of the parties, to take the matter off calendar for preparation of an amended PTCS, or to make a finding that further development of the record was

required based on the absence of critical evidence – in other words, to find some way to consider the QME reporting prior to rendering his decision on the merits of the claim. To the extent that some penalty should be assessed, rather than finding against applicant on the merits of his claim, the better remedy would have been to issue a notice of intention to seek sanctions against applicant’s attorney.

Accordingly, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this opinion. We leave to the WCJ’s sound discretion the best way to move forward toward scheduling a new trial date at which the QME reporting can be admitted, and at which applicant can present testimony remotely, if that is still his wish.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the January 27, 2026 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 27, 2026 Findings and Order is **RESCINDED**, and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 20, 2026

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

**GERALD DUBY
ABRAMSON LABOR GROUP
DANDRE LAW LLP**

AW/kl

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