WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

GERARDO REYES, *Applicant*

vs.

MICHAEL PENTA SEWER SPECIALIST, INC.;
CLEAR SPRING PROPERTY AND CASUALTY COMPANY, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Numbers: ADJ19353474 (MF), ADJ19353449, ADJ19600685
Oxnard District Office

OPINION AND ORDER DISMISSING PETITION FOR REMOVAL GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks removal/reconsideration of the Order for Attorney Fees (Order) issued on January 13, 2026, by a workers' compensation administrative law judge (WCJ), wherein the WCJ ordered Clear Springs Property and Casualty[1] and Sedgwick CMS to pay attorney fees in the amount of $5,900.00 to the Law Offices of Thomas J. Anderson. The Order follows a Petition for Attorney Fees entitled "Bill of Particulars," which was filed by applicant's attorney requesting $5,900.00 as payment for time expended seeking authorization for cervical spine and right shoulder MRIs. The MRIs were originally recommended by chiropractic panel Qualified Medical Evaluator (PQME) Nicholas Houston, D.C. in a report dated October 8, 2024. On April 9, 2025, defendant was ordered to provide the MRIs in a Joint Findings, Award, and Orders (JFA&O) issued by the WCJ. Thereafter, on October 29, 2025, in a subsequent Findings and Orders (F&O), the WCJ held that defendant did not provide the MRIs in a timely manner, and in the Opinion on Decision (OOD), requested that applicant's attorney "provide a bill of particulars explaining the hours spent on obtaining the MRI's [sic] after the first decision [of April 9, 2025] became final."

Defendant contends that the WCJ erred in ordering said payment as the issue of attorney fees was deferred, the record shows that defendant made efforts to schedule and complete the

[1] We note that the insurance carrier is Clear Spring Property and Casualty Company, not Clear Springs Property and Casualty.

MRIs, and per the "Bill of Particulars," the attorney fees were mostly incurred after the MRIs had already been completed. (Petition for Reconsideration/Removal (Petition), pp. 3-4.) Defendant further contends that Labor Code[2] sections 5813, 4607, and 5814, and WCAB Rule 10421, do not support the Order. (*Id*. at pp. 5-6.)

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

We have considered the allegations in the Petition and Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will dismiss the Petition to the extent that it seeks removal, grant it as one seeking reconsideration, and vacate the Order.

FACTS

Applicant claimed that while employed by defendant as a laborer, he sustained an injury arising out of and occurring the in the course of employment (AOE/COE) to the cervical spine, right shoulder, elbow and hand on April 16, 2024 (ADJ9353474), and to the cervical spine, right shoulder, right elbow, and right hand during the period from August 31, 2023, through May 7, 2024 (ADJ19600685).[3]

The parties proceeded with discovery and retained Dr. Houston to serve as the chiropractic PQME in ADJ19353474 and ADJ19600685.

In his report dated October 8, 2024, Dr. Houston indicated that applicant had not yet reached permanent and stationary status. (Exhibit 1, p. 58.) He recommended further medical treatment as well as MRIs for the cervical spine and right shoulder. (*Id*. at p. 59.)

On November 22, 2024, applicant filed a Declaration of Readiness to Proceed (DOR) to a Mandatory Settlement Conference in ADJ19353474 and ADJ19600685, alleging that defendant had failed to authorize the recommended MRIs. The matter proceeded to hearing on December 19, 2024, but was taken off calendar after the parties agreed to complete the diagnostics.

On January 6, 2025, an additional DOR for a Mandatory Settlement Conference was filed by applicant in ADJ19353474 and ADJ19600685. Among the issues listed were completion of the

[2] All further statutory references will be to the Labor Code unless otherwise indicated.
[3] Applicant also claims to have sustained injury AOE/COE to the cervical spine, right shoulder, elbow and hand on January 31, 2024 (ADJ19353449), but that case is not at issue, or subject to the Order for which the Petition was filed.

recommended diagnostics and costs/sanctions. The matter proceeded to multiple hearings and was ultimately set for trial, to be held on May 10, 2025.

At trial, ADJ9353474 and ADJ19600685 were ordered consolidated and ADJ9353474 was designated as the master file. The parties stipulated, in relevant part, that while employed by defendant as a laborer, applicant sustained injury AOE/COE to the cervical spine, right shoulder, right elbow, and right hand on April 16, 2024 (ADJ9353474) and during the period from August 31, 2023, to May 7, 2024 (ADJ19600685). Among the issues listed for determination were need for further medical treatment; attorney fees; and whether defendant must authorize the diagnostics recommended by the PQME.

On April 9, 2025, the WCJ issued a JFA&O wherein he found, in relevant part, that while employed by defendant as a laborer, applicant sustained injury AOE/COE to the neck, right shoulder, right elbow, and right hand on April 16, 2024 (ADJ9353474) and during the period from August 31, 2023, to May 7, 2024 (ADJ19600685). He also found a need for further medical treatment and held that "[d]efendant is required by law to authorize diagnostic testing requested by the [PQME]." The issues of attorney fees and penalties, costs, and sanctions were deferred. These findings were not appealed.

On July 24, 2025, applicant filed a DOR to a Mandatory Settlement Conference in ADJ9353474 and ADJ19600685 on the issues of authorization of a primary treating physician; attorney fees; and penalties, costs, and sanctions. The matters proceeded to hearing, and were set for another trial, to be held on September 10, 2025.

At trial, various issues were set for determination, including enforcement of the JFA&O; defendant's liability for attorney fees, penalties, and sanctions for failure to comply with the JFA&O; failure to authorize the said diagnostic studies requested by the PQME and ordered by the WCJ; judicial notice of the JFA&O and accompanying OOD; and defendant's assertion that the JFA&O deferred attorney fees.

On October 29, 2025, the WCJ issued a F&O wherein he found, in relevant part, that the said diagnostics were not provided by defendant in a timely fashion; defendant is liable for sanctions in the amount of $500.00 for violating the JFA&O; and the issue of attorney fees is deferred. The WCJ ordered payment of the sanctions to the general fund. In the OOD, the WCJ requested that applicant's attorney "provide a bill of particulars explaining the hours spent on obtaining the MRI's [sic] after the first decision [of April 9, 2025] became final."

On December 18, 2025, applicant's attorney filed a Petition for Attorney Fees titled "Bill of Particulars" detailing the above events as well as the time spent from June 17, 2025, through December 18, 2025, obtaining authorization for the diagnostic studies ordered by the WCJ on April 9, 2025. Applicant's attorney requested that defendant be ordered to pay the sum of $ 5,900.00 based upon 11.8 hours of time expended at a rate of $500.00 "pursuant to the decision of October 29, 2025" and "Labor Code Sections 5813 and 5814.5 and Title 8, Cal. Code of Regs., Section 10421."

On January 13, 2026, the WCJ issued an Order that defendant carrier and adjusting agency pay attorney fees in the amount of $5,900.00 to applicant's attorney.

It is from this Order that defendant seeks reconsideration.

DISCUSSION

I.

Preliminarily, petitions for reconsideration filed on or after July 14, 2026, are subject to 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.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within sixty (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 August 31, 2026, and 60 days from the date of transmission is October 30, 2026. This decision is issued by or on October 30, 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 August 31, 2026, and the case was transmitted to the Appeals Board on August 31, 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 August 31, 2026.

II.

Given that defendant has filed for a petition for reconsideration, or in the alternative, a petition for removal, we find it relevant here to discuss the distinction between the two. A petition for reconsideration is taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order is defined as one that determines "any substantive right or liability of those involved in the case" or a "threshold" issue fundamental to a claim for benefits. (*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]; *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold issues include, but are not limited to, injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of limitations. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd.* (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].)

Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian*, *supra*, at p. 1075 ["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"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, and other similar issues. If a decision includes a determination of a "threshold" issue, then it is treated as a "final" decision, regardless of whether all issues are resolved or whether 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 Bd. en banc).)

Here, the Order concerns the payment of attorney fees, which is a final order. As such, reconsideration and not removal, is appropriate. Accordingly, we will dismiss the Petition to the extent that it seeks removal.

III.

Turning now to the merits of the Petition, defendant contends that sections 5813, 4607, and 5814, and WCAB Rule 10421 do not support an Order for payment of attorney fees. (Petition, pp. 5-6.)

Section 5813 states, in pertinent part that:

> (a) The workers' compensation referee or appeals board may order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars ($2,500) to be transmitted to the General Fund.

(Lab. Code, § 5813.)

Further, WCAB Rule 10421(b) provides a comprehensive, non-exhaustive list of actions that could be subject to sanctions. As applicable here, subdivision (b) states that a party may be subject to sanctions where the party has engaged in:

> (1) Failure to appear or appearing late at a conference or trial where a reasonable excuse is not offered or the offending party has demonstrated a pattern of such conduct
>
> (2) Filing a pleading, petition or legal document unless there is some reasonable justification for filing the document.

(3) Failure to timely serve documents (including but not limited to medical reports and medical-legal reports) as required by the rules of the Workers' Compensation Appeals Board, or the Administrative Director, where the documents are within the party's possession or control, unless that failure resulted from mistake, inadvertence or excusable neglect.

(4) Failing to comply with the Workers' Compensation Appeals Board's Rules of Practice and Procedure, with the regulations of the Administrative Director, or with any award or order of the Workers' Compensation Appeals Board, including an order of discovery, which is not pending on reconsideration, removal or appellate review and which is not subject to a timely petition for reconsideration, removal or appellate review, unless that failure results from mistake, inadvertence, surprise or excusable neglect.

(5) Executing a declaration or verification to any petition, pleading or other document filed with the Workers' Compensation Appeals Board:

A. That:
   (i.) Contains false or substantially false statements of fact;
   (ii.) Contains statements of fact that are substantially misleading;
   (iii.) Contains substantial misrepresentations of fact;
   (iv.) Contains statements of fact that are made without any reasonable basis or with reckless indifference as to their truth or falsity;
   (v.) Contains statements of fact that are literally true, but are intentionally presented in a manner reasonably calculated to deceive; and/or
   (vi.) Conceals or substantially conceals material facts; and

B. Where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(6) Bringing a claim, conducting a defense or asserting a position:

A. That is:
   (i.) Indisputably without merit;
   (ii.) Done solely or primarily for the purpose of harassing or maliciously injuring any person; and/or
   (iii.) Done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation; and

B. Where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(7) Presenting a claim or a defense, or raising an issue or argument, that is not warranted under existing law -- unless it can be supported by a non-frivolous argument for an extension, modification or reversal of the existing law or for the establishment of new law -- and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct. In determining whether a claim, defense, issue or argument is warranted under existing law, or if there is a reasonable excuse for it, consideration shall be given to:

A. Whether there are reasonable ambiguities or conflicts in the existing statutory, regulatory or case law, taking into consideration the extent to which a litigant has researched the issues and found some support for its theories; and

B. Whether the claim, defense, issue or argument is reasonably being asserted to preserve it for reconsideration or appellate review. This subdivision is specifically intended not to have a "chilling effect" on a party's ability to raise and pursue legal arguments that reasonably can be regarded as not settled.

(8) Asserting a position that misstates or substantially misstates the law, and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(9) Using any language or gesture at or in connection with any hearing, or using any language in any pleading or other document:

A. Where the language or gesture:
   (i.) Is directed to the Workers' Compensation Appeals Board, to any of its officials or staff or to any party (or the attorney or non-attorney representative for a party); and
   (ii.) Is patently insulting, offensive, insolent, intemperate, foul, vulgar, obscene, abusive or disrespectful; or

B. Where the language or gesture impugns the integrity of the Workers' Compensation Appeals Board or its commissioners, judges or staff.

(Cal. Code Regs., tit. 8, § 10421(b).)

With respect to the procedural process for sanctions, WCAB Rule 10832 states, in pertinent part, that the Workers' Compensation Appeals Board may issue a NIT for any proper purpose, including sanctioning a party. (Cal. Code Regs., tit. 8, § 10832(a)(3).) Further, subdivision (c) states that if an objection is filed with the time provided, the WCJ, in their discretion, may sustain the objection, issue an order consistent with the NIT together with an OOD, or set the matter for hearing. (Cal. Code Regs., tit. 8 § 10832(c).)

Here, the WCJ did not issue an NIT prior to issuing an Order for payment of attorney fees. As a result, defendant was unable to provide an objection.

Further, section 5313 requires that the WCJ produce "a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (See *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22.) As explained in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [33 Cal.Comp.Cases 350-351], a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and 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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) Aside from providing assurance that due process is being provided, this "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 p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Due process also requires that a party be provided with reasonable notice and an opportunity to be heard. (*Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 711-712 [57 Cal.Comp.Cases 230].) 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].) A fair hearing is "… one of 'the rudiments of fair play' assured to every litigant …" (*Id*. at 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission … must find facts and declare and enforce rights and liabilities, - in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id*. at p. 577.) 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*, *supra*, at p. 710.)

Here, the WCJ failed to provide a summary of the evidence received and relied upon and the reasons for his Order in contravention to section 5813 and the cases of *Blackledge* and *Hamilton*. The WCJ also failed to provide reasonable notice and an opportunity for defendant to be heard, in violation of defendant's due process rights.

Lastly, assuming arguendo that proper procedure was followed, we note that the Petition for Attorney Fees entitled "Bill of Particulars" was served on December 18, 2025 by applicant's attorney upon the defense attorney at "3415 S Sepulveda Blvd Ste 330 Los Angeles CA 90034[.]" Pursuant to the Notice of Representation filed by defense attorneys, Stockwell Harris, on July 10, 2024, service of all reports, bills, liens and records, are to be made, via U.S. Mail per WCAB Rule 10635 and AD Rule 10205.6(b), upon defendant at 3580 Wilshire Boulevard, 19th Floor Los Angeles, California 90010. Notwithstanding the fact that applicant's attorney mailed the Petition for Attorney Fees to a different mailing address, it appears that the defense attorney's office is located at 3415 S Sepulveda Blvd Ste 320 Los Angeles CA 90034. Applicant's attorney therefore sent the Petition for Attorney Fees to the incorrect suite number (suite 330). Thus, proper notice and service was not made upon defendant.

In light of the foregoing, we find that the Order is void ab initio and must be vacated. Accordingly, we dismiss the Petition to the extent that it seeks removal, grant it as one seeking reconsideration, and vacate the Order.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal of the January 13, 2026, Order for Attorney Fees issued by the workers' compensation administrative law judge is, **DISMISSED**.

IT IS FURTHER ORDERED that defendant's Petition for Reconsideration of the January 13, 2026, Order for Attorney Fees issued by the workers' compensation administrative law judge is, **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 13, 2026, Order for Attorney Fees issued by the workers' compensation administrative law judge is, **VACATED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 30, 2026

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

GERARDO REYES
LAW OFFICES OF THOMAS ANDERSON
WOOLVERTON, WOOLVERTON & WOLSEY, LLP
STATE COMPENSATION INSURANCE FUND, LEGAL

RL/mc

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