WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JAMES BECHTOLD, *Applicant*

vs.

ORACLE AMERICA, INC.; SAFETY NATIONAL CASUALTY CORPORATION, administered by Tristar Risk Management, Inc., *Defendants*

Adjudication Number: ADJ10522919
Oakland District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration[1] of the Opinion and Decision After Reconsideration (ODAR) issued on July 9, 2026 by the Workers' Compensation Appeals Board (WCAB), wherein we amended the Findings, Award and Order issued on May 17, 2022 by the workers' compensation administrative law judge (WCJ) and substituted a new Findings and Award that found, in pertinent part: (1) that applicant sustained injury arising out of and in the course of employment while employed by defendant on November 27, 2013 as a field service engineer to his lumbar spine, right shoulder, bladder incontinence, and sexual dysfunction; and (2) that applicant is entitled to an award of 100% permanent disability, without apportionment, beginning December 16, 2015 to present and continuing, less attorney fees.

Defendant contends that the assignment of a replacement commissioner to the panel is invalid; that the dissenting commissioner opinion raises the question of potential reversible error; that the vocational expert reporting of Frank Diaz, CDMS, relied upon to find 100% permanent disability is not substantial evidence; that our August 3, 2022 "Opinion and Order Granting Petition for Reconsideration" (Order) was an impermissible "grant-for-study" under *Earley v. Workers' Comp. Appeals Bd.* (2023) 94 Cal.App.5th 1 [88 Cal.Comp.Cases 769]; and that, due to a nearly four year delay in our ODAR, the case requires remand for additional medical evaluation and further discovery rather than issuing an award on the existing record.

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[1] Defendant titled its petition "Request for En Banc Review of Opinion and Decision After Reconsideration" which we will consider as a Petition for Reconsideration. In addition, on August 20, 2026, Defendant also filed a Petition for Writ of Review with the Court of Appeal essentially raising similar arguments.

Applicant filed an Answer contending that defendant filed a Request for En Banc Review rather than a proper and timely Petition for Reconsideration; that assigning a replacement for an unavailable commissioner does not constitute reversible error; that a dissenting opinion does not invalidate the majority decision; that the vocational reports of Mr. Diaz are substantial evidence; and that the record should not be reopened for further discovery because the record closed at the mandatory settlement conference.

We have considered defendant's Petition for Reconsideration and applicant's Answer, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant the 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.[2]

DISCUSSION

I.

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.
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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

[2] Unless otherwise stated, all further statutory references are to the Labor Code.

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 14, 2026, and 60 days from the date of transmission is October 13, 2026. This decision is issued by or on October 13, 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 our review of the record, no other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with the notice of transmission required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on August 14, 2026.

II.

Defendant contends that our Order of August 3, 2022 was merely a "boilerplate" grant-for-study order thereby mandating denial by operation of law.

Up through July 1, 2024, former section 5909 deemed a petition for reconsideration denied by operation of law only when the Appeals Board fails to act within 60 days of filing. The Appeals Board acts within the meaning of section 5909 when it issues an order granting reconsideration within that statutory period, even when it grants reconsideration to permit further study of the record. (*Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 754–755 [33 Cal.Comp.Cases 350]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16]; *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1075-1076 [65 Cal.Comp.Cases 508].) Once we grant reconsideration, the 60-day limitation is satisfied, and the matter remains within the jurisdiction of the Appeals Board for issuance of a final decision on the merits. (Lab. Code, §§ 5901, 5906.)

Here, applicant filed his Petition for Reconsideration on June 8, 2022, and on August 3, 2022, less than 60 days from the date of filing of the petition, we issued our Order.

Accordingly, we acted within the time limits prescribed by former section 5909. Neither applicant nor defendant sought reconsideration or appellate review in response to our Order.

Defendant's reliance on the characterization of the August 3, 2022 Order as "boilerplate" is unavailing. Even assuming that the Order contained standardized language indicating that we granted reconsideration to permit further study of the factual and legal issues, such language does not render the order a nullity for purposes of former section 5909. The statutory requirement under section 5909 is that the Appeals Board act within 60 days. There is no requirement that a final decision issue within 60 days. The issuance of an order granting reconsideration, whether detailed or concise, constitutes timely action and preserves the Appeals Board's jurisdiction.

Nor does the holding in *Earley* appear to compel a different result. (*Earley, supra*, 94 Cal.App.5th at p. 11 ["Section 5908.5 sets the requirements for a decision. Section 5909 explains the consequence of no decision . . . Section 5909 does not apply here because in each of these cases the Board rendered some decision, not no decision."].)

III.

As a preliminary procedural matter, defendant improperly styled its appellate pleading as a Request for En Banc Review rather than a standard Petition for Reconsideration. The Labor Code contains no provision authorizing a party to file a standalone request for en banc adjudication. Under the statutory framework, the reassignment of a case for an en banc decision operates strictly as an internal administrative function. (Lab. Code, § 115.) Specifically, the chairperson of the Appeals Board holds the exclusive authority to call for a majority vote of the commissioners to determine whether a case requires en banc resolution. (Cal. Code Regs., tit. 8, § 10325(a).)

With respect to substituting another panelist to the Order, section 115 governs Appeals Board actions, directing that decisions require a majority vote. The statute mandates the chairperson to assign pending reconsideration cases to three rotating members for hearing, consideration, and decision. Once assigned, those three members hear and decide the matter unless a majority of the Board votes to reassign the case en banc to resolve novel issues or achieve uniformity. This statutory language is explicit, where it establishes the three-member panel requirement but does not have any requirement about identifying the members of the panel.

IV.

Defendant next contends that the vocational reporting of Mr. Diaz lacks substantiality and that the Appeals Board improperly relied upon stale medical evidence, requiring a mandatory remand for updated discovery.

We acknowledge the duty of the Appeals Board to develop the record when appropriate. "[I]n order to ensure reliance on substantial evidence, and a complete adjudication of the issues consistent with due process," the WCJ and the Appeals Board both have a duty to further develop the record where there is an absence of, or insufficient evidence to determine the issues raised for trial. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal. App.4th 389, 393-395 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; see Lab. Code, §§ 5701 and 5906; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 139 (Appeals Board en banc).) "[A]llowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims" and militates in favor of our presuming the continued vitality of sections 5701 and 5906, absent a clear legislative intention to the contrary. (*Tyler*, *supra*, 56 Cal.App.4th at p. 394.) An adequately developed record affords all parties due process of law and further provides for meaningful review by the Appeals Board of a WCJ's decision. (*Evans v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]; *Hernandez v. Staff Leasing* (2011) 76 Cal.Comp.Cases 343, 346-347 (Appeals Board significant panel decision).)

On the other hand, the adjudicative function of the Appeals Board during the reconsideration process involves a comprehensive retrospective examination of the evidentiary record exactly as it crystallized at the time of the underlying trial. The formal hearing in this matter took place on March 9, 2022. The evidentiary record closed based squarely on the extensive documentation submitted by the parties at that precise chronological juncture. The administrative duration of the subsequent appellate review process does not retroactively invalidate the substantiality of the existing medical reporting. Defendant heavily emphasizes the span of nearly four years between the August 3, 2022 Order and the July 9, 2026 ODAR. However, the chronological aging of an appellate case file does not necessarily extinguish the probative value of the constituent medical exhibits.

Accordingly, 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 how the facts of this case apply to unaddressed and developing legal issues, and to ensure that the parties are afforded due process. Thereafter, a final decision after reconsideration will be issued by the Appeals Board, from which any aggrieved person may timely seek a writ of review pursuant to section 5950 et seq.

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 and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the July 9, 2026 Findings and Award 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/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 13, 2026

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

JAMES BECHTOLD
BOXER & GERSON, LLP
RTGR LAW, LLP

DLP/md

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