

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

**JEAN WARD, *Applicant***

**vs.**

**AUTOZONE INC; XL SPECIALTY INSURANCE COMPANY administered by  
GALLAGHER BASSETT SERVICES INC, *Defendants***

**Adjudication Number: ADJ10833788  
Riverside District Office**

**OPINION AND ORDERS DISMISSING  
PETITION FOR RECONSIDERATION AND  
DENYING PETITION FOR REMOVAL**

Defendant seeks reconsideration of the Findings and Orders (F&O) issued on January 21, 2026 by the workers' compensation administrative law judge (WCJ). The F&O found, in pertinent part, that "defendant did not carry the burden of proving the necessity of dismissing the petition to reopen or concluding that there was no proof of new and further disability pursuant to Labor Code<sup>1</sup> section 5410 at this time" and that "applicant carried the burden of proving that further discovery was necessary pursuant to [section] 5410." Based on these findings, the WCJ ordered the parties to further develop the record with regard to either neurological, hypertension, stomach or gastrointestinal issues and headaches, as well as additional treatment to the back. All other issues were ordered deferred.

Defendant contends that applicant failed to carry his burden of showing that new and further disability exists arising within five years of the date of injury and that it is related to the original injury. Defendant further contends that applicant's failure to object to their Declaration of Readiness to Proceed (DOR) shows a lack of due diligence and that discovery closed at the Mandatory Settlement Conference (MSC).

We received an Answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

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<sup>1</sup> All further references are to the Labor Code unless otherwise stated.

We have considered the allegations of the Petition, the Answer and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons discussed below, we will dismiss defendant's Petition for Reconsideration, treat the Petition as one for removal, and deny removal.

## **BACKGROUND**

In his Report, the WCJ provides the factual history as follows:

The Application for Adjudication was filed on April 19, 2017, by Work Injury Group Lawndale. The applicant alleged injury to his back and right leg. Silberman and Lam substituted as attorneys of record for applicant on 10/09/2017. The case was settled by Joint Award on Stipulations with Request for Award on June 23, 2021. Applicant filed a petition to reopen on 03/09/2022 on ADJ10833788 only. The cases ADJ10833787; ADJ11168078 remain off calendar.

Defense attorney filed a Declaration of Readiness on June 2, 2025. A Mandatory Settlement Conference was held on 07/24/2025. The defendant requested Trial and applicant attorney objected. There was no objection to Declaration of Readiness. Trial was initially set on 09/25/2025. Trial was continued to November 20, 2025 on ADJ10833788 only, and proceeded to Trial and was submitted on that date.

Findings and Orders and Opinion on Decision issued on 01/21/2026 in which the Findings of Fact found that the defendant did not carry burden of proving the necessity of dismissing petition to reopen or conclude that there was no proof of new and further disability pursuant to Labor Code 5410 at this time and that applicant carried burden of proving further discovery was necessary pursuant to Labor Code 5410. The parties were ordered to develop record neurological, hypertension, stomach, gastrointestinal and headaches and treatment to back.

(Report, at p. 2.)

It is from the corresponding F&O that defendant seeks reconsideration.

## **DISCUSSION**

### **I.**

Preliminarily, we note that former 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.

(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 February 24, 2026 and 60 days from the date of transmission is Saturday, April 25, 2026. The next business day that is 60 days from the date of transmission is Monday, April 27, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision was issued by or on April 27, 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 and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the WCJ, the Report was served on February 24, 2026, and the case was transmitted to the Appeals Board

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<sup>2</sup> 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.

on February 24, 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 February 24, 2026.

## II.

A petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) 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. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Id.* 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, or similar issues.

In this matter, the January 21, 2026 Findings and Order makes no final orders, decisions, or awards. The issues set for trial on November 20, 2025 were (1) the Petition to Reopen for New and Further (Petition to Reopen) filed on March 9, 2022 and (2) whether there is a need for additional panels in the specialties of psychiatry, neurology, and internal medicine. The WCJ found that defendant did not prove the necessity of dismissing the Petition to Reopen or concluding that there was no proof of new and further disability at this time, and made a finding that applicant established a need for further discovery. These findings do not determine a substantive right or liability or a threshold issue. Rather, it is an interim, evidentiary decision that is not final.

Reconsideration is therefore inappropriate here. Accordingly, the Petition will be dismissed to the extent it seeks reconsideration, and we will review the Petition as one for removal.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).) Here, based upon the WCJ's analysis of the merits of petitioner's arguments, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the Findings and Orders issued on January 21, 2026 by the WCJ is **DISMISSED**.

**IT IS FURTHER ORDERED** that defendant's Petition for Removal of the Findings and Orders issued on January 21, 2026 by the WCJ is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



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

**April 27, 2026**

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

**JEAN WARD  
SILBERMAN & LAM  
HERMANSON, GUZMAN & WANG**

*SL/pm*

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