**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**JIMMY HAMMONDS, *Applicant***

**vs.**

**TESORO WEST COAST CORPORATION;
INSURANCE COMPANY OF THE STATE OF CALIFORNIA, administered by
BROADSPIRE, *Defendants***

**Adjudication Number: ADJ7940908, ADJ7942224**
**San Diego District Office**

# OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Applicant, in pro per, seeks reconsideration of the Findings and Order (F&O) dated February 26, 2026. The workers' compensation administrative law judge (WCJ) found that applicant was terminated on July 18, 2011 and that his termination was not in violation of Labor Code section 132a.[1]

Applicant asserts that the decision is defective as there was obstruction of justice, retaliation, bias, and a failure of the WCJ to apply legal analysis in her decision.

Defendant filed an Answer to Petition for Reconsideration. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending the petition be denied as it was untimely and did not fairly state all material evidence pursuant to WCAB Rule §10945(a) (Cal. Code. Regs. § 10945(a)).

We have considered the allegations of the Petition for Reconsideration and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

[1] All further statutory references will be to the Labor Code unless otherwise indicated.

## FACTS

Applicant, while employed by defendant on March 23, 2011, sustained injury arising out of and in the course of employment to his right knee and lower back. Applicant also sustained an injury on November 29, 2010 while employed to his groin. Both claims were resolved by compromise and release (C&R) on September 25, 2017.

On July 9, 2012, applicant filed an Application for Discrimination Benefits Pursuant to Labor Code § 132(a). The petition alleges that on July 20, 2011, the employer discriminated against applicant by wrongfully terminating him. Applicant contends that he received two notices of unacceptable performance on June 10, 2011 and June 17, 2011. On July 22, 2011 applicant received a written notice of termination with a date of termination of July 20, 2011.

On July 29, 2019, the matter was set for trial on the issues of:

1. Labor Code section 132(a). Whether applicant was improperly terminated from employment as a result of filing a workers' compensation claim
2. Date of termination: applicant asserts July 23, 2011. The employer asserts July 18, 2011."

(Minutes of Hearing/Summary of Evidence (MOH/SOE), 07/29/2019, 3:7-11.)

Applicant was called as a witness on his own behalf. Applicant testified that he was employed as an assistant manager which entailed doing the same tasks as the store manager. (*Id.* at 8:18-20.) Applicant interviewed for the manager position but was not offered the job but had to train the person who was given the position. Applicant felt this was unfair and caused friction between himself and the new manager. (*Id*. at 9:3-13.) This apparently occurred prior to injury.

Following the injury on May 23, 2011, applicant was taken by his manager for medical treatment for his knee and low back and given restrictions which were accommodated after three days off of work. (*Id.* at 9:14-24.)

Applicant testified that on June 10, 2011 the area manager checked the cash register and there was over $100.00 in the register which was against company policy. He explained that he had not had a chance to put money in the safe but was written up anyway. (*Id.* at 10:7-14.) Applicant felt that the discipline was not consistent with company policy of progressive discipline. (*Id*. at 10:15-19.)

On June 17, 2011, applicant got into a verbal argument with the store manager because the manager was asking him to work outside of his work restrictions. (*Id.* at 11:10-15.) He again received a written reprimand. (*Id.* at 11:23-24.)

On September 24, 2019, trial continued with questioning of the applicant by the WCJ. The WCJ confirmed that applicant had spoken with Information and Assistance (I&A) to calculate the maximum benefit he would be entitled to. There were apparently some issues prior to going on the record and a CHP officer was called into the courtroom, with applicant requesting that this fact be noted in the record in addition to his allegations of bias. ( MOH/SOE, 09/24/2019, 6-18.)

As the hearing went on, applicant admitted that he received a civil settlement against the employer in Superior Court in the amount of $197,000.00. (*Id.* at 4:13-17.) Applicant objected to any inquiry regarding this settlement. Defendant argued that the settlement included consideration for release of lost wages and work benefits and contend that applicant may not double recover. The WCJ read into the record portions of the settlement agreement (Defendant's Exhibit A) regarding payment of wages and other benefits as well as a portion that indicates that applicant will not be eligible for employment with the defendant. (*Id.* at 5:15-6:5.) Applicant reiterated his objection to the statements and defendant's characterization of settlement. Applicant argued that his entitlement to lost wages should be based on the amount the store manager was earning because he should have been hired for the manager position. (*Id*. at 7:22-7:25.) He estimated he was entitled to $368,000.00 plus penalties and interest.

The matter continued to February 26, 2020. The record notes that ADJ942224 was dismissed with prejudice and the matter would only be heard on the master file number. Exhibits are entered again. The matter was continued.

On April 12, 2022, trial resumed. Applicant objected to several exhibits including settlement documents from civil matter (Defendant's Exhibit A), deposition transcripts from the civil matter (Defendant's Exhibit B1 and C), and redacted telephone records. (Joint Exhibit FF.) The WCJ allowed the deposition transcripts into evidence for impeachment purposes only and deferred decision on the settlement documents and telephone records. (MOH/SOE, 04/12/2022, 2:6-21.)

Applicant continued to testify. He reiterated some of the prior testimony. On this date, he indicated that he received a written warning on June 10, 2011 (Defendant's Exhibit F.) and another on July 20, 2011 that was listed as a final warning. (Applicant's Exhibit 18.) (*Id*. at 3:9-12.)

According to applicant there was another notice dated June 17, 2011 (Defendant Exhibit G.) which was a suspension notice. (*Id*. at 3:13.) Applicant received a termination letter on July 20, 2011 that noted a date of termination of July 19. (*Id*. at 3:17-19.) Applicant testified again that the employer did not follow company policy of giving a verbal warning first, followed by a written warning, then termination. He felt that they discriminated against him because he had a doctor's appointment but still put him on the schedule. (*Id*. at 4:1.)

Defendant's Exhibit F is a document entitled, "Employee Performance Note" dated June 10, 2011. The note marks "Final Written Warning" and includes the following description:

> While Jimmy Hammond was working the Retail Area Manager came to do a site visit. Jimmy's cash drawer had $340.00 in it. This violated Tesoro's drawer limited policy which states that shifts from 6 am-10pm cannot exceed $100.00 cash in the drawer, and from 10 pm-6am, the drawer must not exceed $50.00.

The other reprimand admitted into evidence is also titled, "Employee Performance Notice" dated June 17, 2011. The note indicates "suspension until further notice" and includes the following narrative:

> On 06/17/11, Jimmy was being insubordinate and rude while on duty. He called the store manager a "dick." This took place in front of a customer. This type of behavior is unacceptable, violates Tesoro's Code of Conduct, and will not be tolerated.

The employer handbook admitted into evidence as Joint Exhibit DD, outlines a "progressive discipline policy" which notes that an employee *may* be subject to verbal *or* written counselling, verbal *or* written warnings, and suspension or termination. (Joint Exhibit DD, p. 1.)

The matter was continued over several dates in 2022 without going on record. On January 31, 2023 the MOH included an addenda wherein the WCJ outlined continued issues with applicant's demeanor. She subsequently issued a Notice of Intention to Impose Monetary Sanctions on Applicant dated February 2, 2023. The matter was set again on April 11, 2023, but had to be continued as there were issues with the building. The MOH note that applicant hung up on WCJ as she continued the matter. On June 13, 2023, the WCJ issued a MOH continuing the matter to an in-person trial and also included a lengthy addendum outlining the proceedings. Applicant objected to continuing the matter with "this court", reiterated complaints about EAMS and exhibits, and complained that a full day of trial had not yet occurred. Applicant filed a petition for reconsideration in response to this MOH which was treated as a Removal and Petition for Disqualification, but was ultimately dismissed and denied, respectively, on September 5, 2023.

On November 29, 2023, the matter resumed. The WCJ addressed applicant's complaints about herself, renumbering of exhibits, and the length of actual trial time on each occasion the matter had been set. (MOH/SOE, 11/29/2023, 2:3-4:8.) The applicant then continued his direct testimony. He testified that his last date of employment was July 23, 2011. (*Id*. at 3:15.) On cross examination, applicant testified that his date of hire was January 5, 2010. (*Id.* at 3:20.) He confirmed that he signed and understood a document titled "Employee Expectation" (Defendant's Exhibit D.) which included a paragraph prohibiting harassment and verbal abuse which could result in immediate termination. (*Id.* at 3:24-4:4.) He also testified that he read, signed, and understood a document titled "Supplement to NEO" which outlines the policy for maintaining the cash register, including the limit of $100.00. (*Id.* at 4:5-9.) He also read and understood the store operations manual in which the four-step process for discipline was outlined but included an exception that allowed the employer to skip any steps. (*Id.* at 4:10-14.)

Following his injury on May 23, 2011, applicant went to the doctor on May 27, 2011 and was returned to modified duty. (*Id.* at 4: 24-5:2.) He was taken off work from June 28, 2011 through July 12, 2011, and was scheduled to return on July 12, 2011. Prior to this period he was working periodically and went to doctor's appointment without being disciplined. (*Id*. 5:3-7.)

Applicant agreed that he was written up for violating the policy against keeping more than $100 in cash in the cash register. He would not agree to sign the written warning. (*Id.* at 5:8-18.) Applicant was referred to his deposition transcript from June 2016 wherein he testified that he was present when another employee, "Shawn," was fired on the spot for having more than $100.00 in the cash register.

Applicant acknowledged that on June 17, 2011 he was written up for calling his manager a dick, and confirmed that an incident happened, but that he said he was "acting like a dick." The write up was dated June 10, 2011, so applicant thinks it must have been written before the incident occurred and again would not sign. (*Id*. at 6:1-13.)

The applicant had doctor's appointments on July 11, 2011 and July 18, 2011. He was shown the Employee Shift Schedule which showed that applicant was scheduled to work July 16, 2011, July 17, 2011, and July 18, 2011, for which applicant did not report. (*Id*. at 7:9-12.) Applicant stated that he did not work those shifts because the employer was not going to accommodate his restrictions. (*Id.* at 7:12-13.) Defendant then directed applicant to refer to phone records, but applicant could not recall specifics of any of the calls cited by defendant.

Applicant went on to testify that no one from the employer expressed that they were unhappy that he was injured or with the work restrictions. (*Id*. at 8:8-14.) On re-direct, applicant indicated that it was his belief that the termination was the result of his filing a workers' compensation. He cites an email in which the HR representative outline four reasons for his termination; he takes issue with all four reasons. (*Id.* at 9:3-8.) In part, he notes that he believed he was not released to go back to full time work and did not understand why he would be put on the schedule for full time. (*Id.* at 9:8.) He also reiterated that he received his final check prior to being advised of his termination. (*Id*. at 9:11-14.)

Subsequently, applicant requested a trial transcript, to which the WCJ provided instructions for doing so. Applicant then accused the WCJ and defense counsel of having ex parte communications and that defense counsel destroyed evidence. (*Id.* at 9:20-9:25.) There was continued argument apparently and the WCJ threatened sanctions. Applicant decided that he wanted to conclude, so the matter was continued for defense witnesses.

At the continued trial on February 12, 2024, defendant called Mr. Stephen Hilliard, store manager, as a witness. Mr. Hilliard confirmed the same policies regarding harassment and management of the cash register. (MOH/SOE, 02/12/2024, 2:14-3:6.) He testified that Mr. Tingle was the regional manager and his boss. When he visited stores he would always audit the tills and would routinely discipline employees for violating the policy. (*Id*. at 3:7-11.) Mr. Hilliard testified that he wrote the written warning for applicant's violation of the policy on June 10, 2011 at the direction of Mr. Tingle. (*Id.* at 3:21-25.)

Mr. Hilliard recalled the events relating to the written disciplinary action dated June 17, 2011. He stated that he was outside helping a customer. Applicant was parked next to the customer's car. Applicant called Mr. Hilliard a "dick" and got aggressive. The behavior was so aggressive that the customer gave Mr. Hilliard her information to act as a witness if needed. (*Id.* at 4:6-4:12.) He gave applicant a three-day suspension, which he felt was not an adequate punishment for the behavior. (*Id.* at 4:20.)

Mr. Hilliard testified that he was present when the injury occurred. He also knew of the work restrictions in place, which included limitations on lifting and made sure that applicant was working within those restrictions. (*Id.* at 4:12-15.) Mr. Tingle told him to write applicant up and suspend him for three days. Mr. Hilliard testified that the date of June 10, 2011 for the write-up was the incorrect date. (*Id*. at 4:13-17.)

Applicant had a work note that expired on July 12, 2011. When they did not hear from applicant, they proceeded to put him back on the schedule to work July 16, July 17, and July 18, 2011. (*Id*. at 5:2-6 and 5:10-12.) Mr. Hilliard advised applicant of the schedule via phone call and text messages but never heard from applicant. (*Id*. at 5:7-20.) On July 18, 2011, Mr. Hilliard completed the termination paperwork. After applicant had been notified, he came into the store, caused a disturbance, and the police were called. (*Id*. at 5:24-6:6:2.)

During cross examination of Mr. Hilliard, the witness reiterated the policy violations and procedures to address the violations, which included immediate termination. Applicant asked about documents from California Unemployment Insurance and his Department of Fair Housing and Employment (DFEH) claims, for which Mr. Hilliard had no personal knowledge. (*Id*. at 6:14-7:23.) Applicant noted a medical report dated July 29, 2011 in which the doctor noted that the prior restrictions ended July 12, 2011 but were extended through the next evaluation. The witness noted that applicant had restrictions that could be accommodated, so he put him on the schedule and tried to reach him. (*Id*. at 8:4-9.)

Once again, the trial ended with a dispute between applicant and the WCJ. The applicant asked that he be escorted to another room so that the hearing could conclude on Lifesize so that the record was clear. Applicant then tried recording the proceedings over the WCJ's admonishment not to do so. Instead of being escorted out, applicant advised that he was done for the day and the matter was continued again. (*Id.* at 8:25-9:6.)

The matter resumed on July 15, 2024, however, the record noted that applicant did not appear. Defendant received an email from applicant that he would not be appearing in person due to being exposed to Covid. The WCJ instructed Information and Assistance (I&A) to contact him and tell him to appear via Lifesize. When reached he advised he had a doctor's appointment but apparently advised he would not appear. The WCJ advised she would work around the appointment but by 9:50 am he still had not appeared. The WCJ had I&A contact him once more and tell him he was ordered to appear, otherwise they would continue with testimony in his absence. When applicant did not appear, WCJ moved forward with testimony as the witness traveled from out of town to be present in person and applicant was aware of the same.

Defendant called Mr. Charles Michael Tingle, regional manager. Mr. Tingle noted the progressive discipline policy but noted that there was an additional policy that allowed immediate removal depending on the severity of the violations. (*Id*. at 4:7-12.) He also testified that the

employee manual at page 234 outlines a policy for absenteeism, wherein missing 3 or more consecutive days results in immediate termination. (*Id*. at 4:14-17.) There was also a policy that medical note would need to be provided for missing due to medical reasons and that there was a policy that the employee contact their supervisor if they were late or absent. (*Id*. at 4:18-24.) In terms of the other policy violations, his testimony is substantively the same as Mr. Hilliard's testimony. He likewise noted that he consulted with Human Resources before every action.

The matter was continued several times and ultimately resumed June 30, 2025 for cross examination of Mr. Tingle by applicant. Applicant asked a few questions regarding his other claims not set before the WCAB, for which Mr. Tingle had no knowledge. At this point, applicant again became disruptive and an officer escorted him to another courtroom. Applicant stated he was ill and would not continue, but that he had no further questions for Mr. Tingle. (MOH/SOE, 06/30/2025.) The matter was continued once again for final disposition.

On December 8, 2025, trial resumed via Courtcall. Again, applicant raised his concerns that there was collusion between defense counsel and the WCJ. Applicant stated that he had won his claims for unemployment and wrongful termination in other forums, and was entitled to 15 years of back pay, interest, and reinstatement.[2] WCJ addressed his concerns and the matter was submitted. (MOH/SOE, 12/08/2025.)

The WCJ issued her F&O finding that applicant was terminated on July 18, 2011 and that the termination was not in violation of section 132a. In her opinion, she noted that both sides had a number of objections to exhibits being admitted. In her opinion all objections were overruled and the exhibits were admitted. She found that applicant did not meet his burden to prove that he was terminated because of his workers' compensation claim and that the evidence supports employer's position that he was terminated for cause.

On March 25, 2026, applicant filed a petition for reconsideration but did not include a proof of service. The document is date stamped as received by the district office on March 25, 2026, however it was not entered into EAMS until April 1, 2026. The WCJ issued an Order Service

[2] Applicant's exhibit 11 and Applicant's exhibit 7 relate to the DFEH claim and indicate that the DFEH claim was actually withdrawn in favor of proceeding with a lawsuit. Applicant's exhibit 5 does show that applicant was awarded unemployment benefits over the employer's assertion that he had been terminated for misconduct. Though he was awarded benefits, the finding was that his consecutive absences were not a substantial breach of his duty as an employee.

Applicant's Petition for Reconsideration on April 2, 2026, serving the petition on all parties of record.

## DISCUSSION

### I.

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 April 2, 2026 and 60 days from the date of transmission is June 1, 2026. This decision is issued by or on June 1, 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 workers' compensation administrative law judge, the Report was served on April 2, 2026 and the case was

transmitted to the Appeals Board on April 2, 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 April 2, 2026.

**II.**

Applicant's Petition for Reconsideration was timely. There are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address in California and 30 days if served by mail to an address outside of California but within the United States. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1), (2).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

The Order was served on January 9, 2025, and included service on a party with an out of state address. Therefore, the parties had 30 days from that date to file a Petition for Reconsideration. (Cal. Code Regs., tit. 8, §§ 10600, 10605(a)(2).) Applicant filed his Petition for Reconsideration on March 25, 2026. As applicant filed his Petition for Reconsideration within 30 days of the Order, the Petition for Reconsideration was timely filed.

We acknowledge that the Petition did not comply with WCAB Rule 10945 (Cal. Code Regs., tit. 8 §10945) as applicant included documents that were not received into evidence and because the bases for reconsideration are not supported by specific references to the record. We therefore admonish applicant to follow the Board's Rules of Practice and Procedure, including but not limited to, WCAB Rule 10945 in all future matters.

**III.**

Under section 132a, "[i]t is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment." Section 132a protects an employee from retaliation or discrimination by an employer because of an exercise of workers' compensation rights. (*City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143 [63 Cal.Comp.Cases 944] (*Moorpark*); *Judson Steel Corp. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 658 [43 Cal.Comp.Cases 1205]; *Department of Rehabilitation v.*

*Workers' Comp. Appeals Bd.* (*Lauher*) (2003) 30 Cal.4th 1281, 1298-1299 [68 Cal.Comp.Cases 831]; *Franco v. MV Transportation*, *Inc*. (2019) 84 Cal.Comp.Cases 666, 678.) Section 132a has been "interpreted liberally to achieve the goal of preventing discrimination against workers injured on the job," while not compelling an employer to "ignore the realities of doing business by 'reemploying' unqualified employees or employees for whom positions are no longer available." (*Lauher*, *supra*, at 1298–1299 [citations omitted].)

Pursuant to section 132a, "[a]ny employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim … or an application for adjudication, or because the employee has received a rating, award, or settlement, … testified or made known his or her intention to testify in another employee's case …" may be guilty of a misdemeanor and responsible for the payment of increased compensation, costs, lost wages, and work benefits to the injured employee. (Lab. Code, § 132a; *Franco*, *supra*, at 678.) However, an employer "does not necessarily engage in 'discrimination' prohibited by section 132a merely because it requires an employee to shoulder some of the disadvantages of his industrial injury." (*Lauher*, *supra*, at 1300; *Franco*, *supra*, at 679.)

Thus, "[t]o meet the burden of presenting a prima facie claim of unlawful discrimination in violation of section 132a, it is insufficient that the industrially injured worker show only that … he or she suffered some adverse result as a consequence of some action or inaction by the employer that was triggered by the industrial injury. The claimant must also show that he or she had a legal right to receive or retain the deprived benefit or status, and the employer had a corresponding legal duty to provide or refrain from taking away that benefit or status." (*Lauher*, *supra*, at 1300; *Franco*, *supra*, at 679.) Stated another way, an injured worker must show they were subject to "disadvantages not visited on other employees because they were injured." (*Id*.)

While it is unclear applicant's specific dispute regarding the WCJ's legal analysis in this case or his exact position on the merits, the evidence in the record does not support the assertion that either applicant was terminated as a result of filing a workers' compensation claim or that he was singled out for discrimination because of his injury. Here, applicant admittedly violated the company policy regarding having only $100.00 in the register. Pursuant to the policy in the employer handbook, this is a policy that could result in immediate termination and other employees have been immediately terminated for the same in the past. Though applicant disputes the framing

and content of the harassment violation on July 17, 2011, he did admit that an altercation did occur. We do not find it persuasive that the write up was pretextual simply because it was mistakenly dated an earlier date when the basic facts of the incident did occur on the stated date. Finally, applicant missed three consecutive shifts without a contacting or responding to the employer. In combination with the prior two violations and the use of the progressive discipline policy rather than the immediate termination, we cannot find persuasive evidence that applicant was discriminated against because of his injury.

Additionally, the WCJ weighed the witnesses' testimony and found them to be credible in their assertions. Realistically, there was not much differentiation between the testimony of the employer from Applicant's testimony. We accord this credibility determination great weight because the WCJ had the opportunity to observe the witnesses' demeanor while testifying at trial. (*Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 318–319 [35 Cal.Comp.Cases 500].) Thus, applicant failed to prove either a prima facie case of discrimination in violation of section 132a, or an actual violation of that section by a preponderance of the evidence with respect to his termination or disciplinary actions.

Applicant's allegations in the petition of collusion between defendant and the WCJ, spoliation of evidence, or retaliation are not supported by specific allegations in either the petition or the record. To the extent that applicant seemingly would like the WCJ disqualified, we have already rejected that request in our prior opinion in this matter. If applicant is alleging a new basis for disqualification we likewise deny that request.

Labor Code section 5311 provides that a party may seek to disqualify a WCJ upon any one or more of the grounds specified in Code of Civil Procedure section 641. (Lab. Code, § 5311; see also Code Civ. Proc., § 641.) Among the grounds for disqualification under section 641 are that the WCJ has "formed or expressed an unqualified opinion or belief as to the merits of the action" (Code Civ. Proc., § 641(f)) or that the WCJ has demonstrated "[t]he existence of a state of mind … evincing enmity against or bias toward either party" (Code Civ. Proc., § 641(g)).

Under WCAB Rule 10960, proceedings to disqualify a WCJ "shall be initiated by the filing of a petition for disqualification supported by an affidavit or declaration under penalty of perjury stating in detail facts establishing one or more of the grounds for disqualification … ." (Cal. Code Regs., tit. 8, former § 10452, now § 10960 (eff. Jan. 1, 2020), italics added.) It has long been recognized that "[t]he allegations in a statement charging bias and prejudice of a judge must set

forth specifically the facts on which the charge is predicated," that "[a] statement containing nothing but conclusions and setting forth no facts constituting a ground for disqualification may be ignored," and that "[w]here no facts are set forth in the statement there is no issue of fact to be determined." (Mackie v. Dyer (1957) 154 Cal.App.2d 395, 399, italics added.)

WCAB Rule 10960 provides that when the WCJ and "the grounds for disqualification" are known, a petition for disqualification "shall be filed not more than 10 days after service of notice of hearing or after grounds for disqualification are known."

Here, the petition does not set forth facts, declared under penalty of perjury, that are sufficient to establish disqualification pursuant to Labor Code section 5311, WCAB Rule 10960, and Code of Civil Procedure section 641(f) and/or (g). Moreover, the petition is untimely pursuant to WCAB Rule 10960. Accordingly, the request for disqualification is denied.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ PAUL F. KELLY, COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

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

**JUNE 1, 2026**

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

**JIMMY HAMMONDS**
**WINSTON & STRAWN**
**PATRICO HERMANSON GUZMAN**

**TF/md**

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

## REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

### I.
### Nature of Petition

On March 25, 2026, the applicant, In Pro Persona filed an untimely Petition for Reconsideration.

Specifically, the applicant contends that a decision was filed in the above-entitled case on December **26, 2026.** However, as *this date is in the future*, no hearing, no final Order and no final Award issued on that date. Rather, the Finding & Order was filed and served on February 26, 2026. As such, applicant's petition for reconsideration would be deemed untimely as said Petition for Reconsideration should have been filed and received no later than Monday March 23, 2026.

Further, the applicant's petition violates California Code of Regulations, title 8, section 10945(b) in that the petition fails to support the points at issue by specific references to the evidentiary record.

The Petition was filed without a proof of service and applicant attached additional documents that were not part of the evidentiary record.An Order for service of the Petition for Reconsideration was filed and mailed on April 2,
2026.

To date, defendant has not filed an answer to the petition although the statutory period for a response has not expired.

### II.
### Procedural Facts

Applicant represents himself (*In Propria Persona* hereinafter "Pro Per") and settled his worker's compensation case via Compromise & Release on September 25, 2017. The Pro Per applicant pursued a 132A claim against the employer. At trial the parties presented as issues (1) the date of applicant's termination; and (2) whether applicant's termination was for cause unrelated to his work injury or whether the applicant was terminated in violation of Labor Code section 132a.

Although the applicant alleged that he was terminated because of disability related to his work injury, after hearing multiple parties testify and after having reviewed all the documentary evidence, the Court found the applicant was terminated on July 18, 2011 for reasons having nothing to do with his work injury or for being involved in a workers' compensation case against the employer (see February 26,2026 Findings of Fact Nos 1&2).

Specifically, the employer established that applicant was terminated due to (1) violation of company policy having over $100 in the cash drawer; (2) insubordination and harassment for calling his supervisor "a dick" in front of multiple customers; and (3) failing to appear for three consecutive scheduled shifts without calling or proving a physician note.

In response to the WCJ's Findings of Fact dated and served on February 26, 2026, the applicant has filed the instant *untimely* Petition for Reconsideration on March 25, 2026.

## III.
## 'The Petition is Untimely

Procedurally, the petition was filed two days too late and may be denied on that ground. Labor Code § 5903 provides that the petition for reconsideration must be filed within twenty days after service of the order. C.C.P. § 1013(a) provides that documents served by US Mail are deemed served on the fifth day following mailing to addresses in California. Petitioner has a California postal address.

Therefore, to be timely, a petition for reconsideration must be filed and received by the Appeals Board within 20 days of the service of a final order, plus an additional five days if service of the decision is by any method other than personal service, including by email or mail, upon an address in California (Labor Code 5900(a), 5903; Cal. Code of regulations tit. 8, 10605(a)(1)). This time limit is jurisdictional and, *therefore, the appeals board has no authority to consider or act upon an untimely petition for reconsideration.* In this case, the decision was filed *and served* on February 26, 2026. Thus, the Petition for Reconsideration should have been filed *and received no later than close of business on Monday March 23, 2026*. However, the Petition for Reconsideration was mailed on March 23, 2026 and was not filed and received until March 25, 2026. As a Petition for Reconsideration shall be *filed not more than twenty* days after grounds for reconsideration are known, the instant petition is untimely and the court lacks jurisdiction to act upon said Petition.

## IV.
## The Petition is Invalid

The applicant's Petition for Reconsideration is not only untimely but is also on its face invalid. The petition incorrectly identifies that the WCJ filed a decision on *December 26, 2026.* Here, the Finding and Order was filed and served on February 26, 2026. The WCJ is unclear why the applicant chose to list December 26, 2026 the date of the decision being appealed. The applicant also indicates that he is appealing from a decision dated March 3, 2026. This corresponds to an Order Admitting Documentary Evidence, which was issued to formalize the identification of exhibits. All exhibits were admitted or reflected in pages 3-7 of the Findings and order filed and served on February 26, 2026.

The petition is not accompanied by a valid proof of service demonstrating service upon the WCAB and the defendant and how service was made in violation of California Code of Regulations, title 8, section 10625(c). It is therefore unclear if the defendant

ever received a copy of the present petition. An order for service of the Petition for Reconsideration was filed and served on April 2, 2026.

Furthermore, those seeking reconsideration from a worker's compensation judge's final order should provide specific and detailed grounds for why the decision was unlawful or unjust, as well as the issues to be addressed. Here, the applicant has failed to do so. The applicant has failed to specifically cite the record and failed to assert material evidence supporting his contentions. The Petition for Reconsideration has failed to make any valid argument explaining why a Petition for Reconsideration is proper.

In addition, it is imperative to provide a citation to the record in support of all substantive arguments. If there is no reference to the record, the Court is not able to read the evidence petitioner relied on and provide an opinion as to whether a party's argument has merit. In this case, the applicant failed to make any specific references to the evidence. Other than the applicant's statements, no other reference to the record appears to have been given by the applicant to support his argument.

Further, a Petition for Reconsideration requires the party is to state all facts accurately. Specifically, 8 CCR § 10842(a) provides that every Petition for Reconsideration shall fairly state all the material evidence relative to the point or points at issue. Each contention contained in a Petition for Reconsideration shall be separately stated and clearly set forth. In the instant case, the applicant failed to do so.

In addition, parties should be mindful of 8 CCR §10561(b)(5)(A) *which prohibits* the following: statements of fact that are substantially misleading, statements that contain substantial misrepresentations of fact, statements that contain statements of fact that are made without any reasonable basis or with reckless indifference as to their truth or falsity, and statements of fact that are literally true, but are intentionally presented in a manner reasonably calculated to deceive and/or conceals or substantially conceals material facts. The applicant's conclusory statements appear to be personal attacks directed against the WCJ and defense counsel instead of directing the Court's attention to matters of record.

Applicant has pled multiple irrelevant issues. Applicant first refers the Court's attention to the "Lazy Judge Rule" under Code of Federal Regulations section 498.204, a code section applicable to ALJs in social security administration.

Applicant appears to be confusing this Code with Trial Rule section 53.2 officially titled "Failure to rule on Motion" involving delay of entering a judgment which is commonly known as "lazy judge rules". However, in any event, the applicant fails to indicate how the present WCJ in establishing the present record over multiple trial dates has failed to conduct a fair and impartial hearing, and assure that the record of the proceeding was complete and accurate.

Applicant further identifies that the order, decision or award was procured by fraud but provides no identification to the record in support of this allegation. Rather applicant indicates that there was "Extreme Retaliation" which presumably is directed towards the WCJ (however, this is not clear) and that the WCAB has deprived applicant of rights "under color of law 42 USC & 1983". There is no 42 USC & 1983. Title 42, a code which is unfamiliar to the WCJ and which the WCJ had to look up, concerns "The Public Health and Welfare" and deals with such topics as disaster relief, development and control of atomic energy, and sanitation and quarantine; clearly topics unrelated to the WCJ's Findings of Facts and Order in the present matter.

Applicant also indicates that the WCJ is biased citing Article 9, 10600-10601. Regulation 10600 involves Time for Actions, not bias. Regulation 10601 concerns Copies of Reports andRecords and is clearly not relevant to the argument the applicant is making. The applicant further identifies Perjury as a ground, however, fails to identify where in the record perjury occurred.

Under the heading "Petitioner has discovered new evidence material to him which he could not with reasonable diligence have discovered and produced at the hearing" petitioner cites "Breach of Mandatory Duties" but does not identify what breach occurred and how. Furthermore, where reconsideration is sought on the ground of newly discovered evidence and fraud, Rule 10974 details what must be provided, and expressly states that a petition sought on this ground which fails to meet the requirements of this rule may be denied. The applicant attached a copy of his exhibit list from a 2019 Pre-Trial Conference Statement but does not argue that any of his exhibits were admitted from the evidentiary record.

Following the above allegations or "grounds" the petitioner gives the following details: "No Constitutional and Legal Analysis" and further cites there was "no interpretation of statues (sic)("statutes"), No relevant facts and applicable laws, No interaction case law, No Statues (sic) no opinion regarding a 132A(1) case since May 19, 2019." However, the WCJ did address applicant's failure to demonstrate that a violation of Labor Code section 132(A) occurred.
Applicant would only be entitled to the application of Labor Code section 132A(1) if he had *met his burden of establishing a violation of Labor Code section 132(A).* Here, he did not.

The WCJ will not address the applicant's conclusion, as noted above, the conclusion is without merit and is, in its entirety, argument.

## Recommendation

Therefore, based on the above, the WCJ recommends that reconsideration be denied.

Dated: April 2, 2026

**WADE D. DICOSMO**
**WORKERS' COMPENSATION JUDGE**