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

**JOLEE ROGELSTAD,** ***Applicant***

**vs.**

**BRIAN SILVER; UNINSURED EMPLOYERS BENEFITS TRUST FUND,** ***Defendants***

**Adjudication Number: ADJ14132796**
**Santa Rosa District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant has filed a petition titled "Defendant's Request for Authorization to Acquire [*sic*] The Reporter's Transcript of The Trials and Reconsideration of The Findings and Award, Based Upon New Facts and Evidence Since the Trials."

On May 7, 2026, the workers' compensation administrative law judge (WCJ) issued an Order denying defendant's request for a transcript without prejudice. On July 25, 2025, we issued our Opinion and Decision After Reconsideration (Opinion), wherein we rescinded the WCJ's January 24, 2023 Findings and Award (F&A) and substituted a new F&A, which found that applicant was an employee of defendant at the time of her claimed injury on June 21, 2020, and that defendant failed to meet his burden of proof to show that applicant was an independent contractor.

Defendant contends that the transcript of the trial of October 11, 2022 will provide evidence that contradicts the facts that were described in the Minutes of Hearing and Summary of Evidence (MOH/SOE) dated October 11, 2022. Applicant requests a stay of any additional medical evaluations so that the transcript may be received and the court can reconsider the matter apparently based on the transcript and "additional evidence" relevant to applicant's activities in the last four years.

Applicant did not file an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration recommending denial of the Petition.

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record and as discussed below, we will grant the Petition to issue an order pursuant to WCAB Rule 10800 (Cal. Code Regs., tit. 8, § 10800) that the proceedings and testimony from the October 11, 2022 trial in this matter be transcribed and promptly filed in the Electronic Adjudication Management System (EAMS), with simultaneous notice of the filing to all active parties and the Workers' Compensation Appeals Board, Office of the Commissioners. Thereafter, the parties shall have twenty days from receipt of the trial transcript, plus any applicable days for mailing, in which to file supplemental responses in EAMS.

Our order granting the Petition for Reconsideration/Removal is not a final order, and we will order that a final decision is deferred pending further review of the merits and further consideration of the entire record in light of the applicable statutory and decisional law, to include any supplemental responses filed by the parties following receipt of the trial transcript. 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[1] section 5950 et seq.

**FACTS**

Applicant, while employed on June 21, 2020, by defendant claims injury arising out of and in the course of employment to her head, brain, neck, bilateral upper extremities, wrist, trunk, back, shoulders, left lower extremity, and nervous system.

On January 25, 2025, we issued our Opinion. Since no person sought appellate review, that decision is now final. (See Lab. Code, § 5950.)

On July 29, 2025, applicant filed a Declaration of Readiness to Proceed (DOR) to obtain a panel medical evaluation. On November 4, 2025, by way of a letter to the WCJ, applicant requested that the matter be taken off calendar as the parties obtained a replacement panel and completed strikes.

On March 13, 2026, applicant filed a "Petition for Order Directing Medical Unit to Issue Multiple QME Panels" requesting additional panels.

Although defendant did not respond to applicant's petition for additional panels, on May 4, 2026, defendant filed a handwritten request to the WCJ requesting a continuance of a status conference to obtain a copy of the transcript of the trial.

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

The WCJ issued the Order denying the transcript request on May 7, 2026. The WCJ stated:

> **IT IS ORDERED THAT** the request is denied without prejudice for the following reasons: (1) The explanation of the basis for the request ("it would be helpful") is insufficient to enable the undersigned judge to determine if the request is proper and consistent with Policy and Procedure Manual §1.135; and (2) The requesting party did not explain why the Minutes of Hearing and Summary of Evidence is not sufficient.

On May 19, 2026, a status conference took place. The WCJ issued a notice of intent in the Minutes indicating that an order for additional panels would be granted absent written objection. Defendant did not file a written objection to this order.

On July 16, 2026, the WCJ issued an order for additional panels in the specialties of neurology and psychiatry.

In his Petition, defendant alleges that the transcript will show additional evidence that either supports that applicant was not his employee or that there was a breach of contract which would have terminated any employment contract. He requests that the court delay further medical evaluations so that he may receive the reporter's transcript and then file briefs so that the court can "reconsider the matter with more information, allowing additional evidence to be introduced that is relevant to show [applicant's] activities in the last four years." (Petition, 4:20-24.)

## 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.
>
> (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 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 10, 2026 and 60 days from the date of transmission is October 9, 2026. This decision is issued by or on October 9, 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 10, 2026 and the case was transmitted to the Appeals Board on August 10, 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 10, 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.

Here, it is unclear from which order or set of findings defendant seeks redress. Defendant's primary concern, however, seems to challenge the order denying his request for the transcript of the trial. This is an order that would ordinarily be subject to removal as an interlocutory order.

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, as explained below, we are persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

In this matter, the findings as to the transcript and the QME were interlocutory procedural findings, and none addressed a threshold issue. However, since the substance of the petition seems to be challenging the findings of employment which are final, in an abundance of caution, we will grant the Petition as one for Reconsideration/Removal so that the transcript can be issued. The parties will be given time to respond, and in our Decision After Reconsideration, we will then consider whether the Petition should have been dismissed as one for reconsideration as untimely or dismissed as one for reconsideration on the basis that it did not challenge a final order; we will issue the appropriate orders at that time.

**III**

It is a longstanding principle that all parties to workers' compensation proceedings 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 includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, *supra*, at pp. 157-158.)

Section 5313 provides:

> The appeals board or the workers' compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.

(Lab. Code, § 5313.)

Thus, the statutory framework provided by the Legislature for adjudicating workers' compensation claims utilizes a summary of the proceedings, rather than a transcript.

However, WCAB Rule 10800 provides:

> Testimony taken at hearings will not be transcribed except upon the written request of a party accompanied by the fee prescribed in the Rules of the Administrative Director, or unless ordered by a commissioner, a deputy commissioner or presiding workers' compensation judge. Any written request shall be served on all parties.

(Cal. Code Regs., tit. 8, § 10800.)

Here, the WCJ denied defendant's request, referring to the Policy and Procedure Manual section 1.135, and stating that defendant's basis for his request was insufficient to determine whether the request was proper. This particular guidance is inconsistent with the minimal requirements for requesting a transcript pursuant to WCAB Rule 10800. The only requirement is a written request accompanied by a check as a deposit for the transcript, which here defendant provided. In nearly all instances, any person may request a transcript at any time in compliance with WCAB Rule 10800, and they will be entitled to obtain it.

Accordingly, we will grant the Petition to issue an order pursuant to WCAB Rule 10800 that the proceedings and testimony from the October 11, 2022 trial in this matter be transcribed and promptly filed in EAMS, with simultaneous notice of the filing to all active parties and the Workers' Compensation Appeals Board, Office of the Commissioners.

Thereafter, all parties shall have twenty days from receipt of the transcript plus additional days for mailing as set forth in WCAB Rule 10605 (Cal. Code Regs., tit. 8, § 10605) in which to file supplemental responses, at the parties' discretion.

We emphasize that this is not a final decision on the merits, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

**IV**

We remind defendant of certain basic tenets that might instruct any supplemental briefing.

First, our decision of July 25, 2025 included a final finding on the issue of employment. The current Petition reiterates many of the same basic claims regarding breach of contract and fraud that were rejected in the first petition. We emphasize the following analysis from our prior opinion:

> California has a no-fault workers' compensation system. With few exceptions, all California employers are liable for the compensation provided by the system to employees injured or disabled in the course of and arising out of their employment, "irrespective of the fault of either party." (Cal. Const., art. XIV, § 4.) The protective goal of California's no-fault workers' compensation legislation is manifested "by defining 'employment' broadly in terms of 'service to an employer' and by including a general presumption that any person 'in service to another' is a covered 'employee.'" (Lab. Code, §§ 3351, 5705(a); *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80].) Any person rendering service for another, other than as an independent contractor or other excluded classification, is legally presumed to be an employee. (Lab. Code, § 3357.)
>
> While we disagree with defendant's contention that an employment contract was not in effect, common law rules for creation of employment contracts have been rejected in favor of liberal interpretation to extend the benefits of California's workers compensation laws (*Laeng v WCAB* (*Laeng)* (1972) 6 Cal.3d 771). As defendant argues in this case, in *Laeng* the applicant suffered a compensable injury while participating in a tryout and before an offer of work was made. To the extent that the applicant here was "trying out" for the job, she too was brought into the scope of employment. It is irrelevant unsatisfactory employee. Further, in *Barragan v. Workers' Comp. Appeals Bd.* (*Barragan*) (1987) 195 Cal.App.3d 637 [52 Cal.Comp.Cases 467], the Court of Appeal explicitly held that "there is a long line of case law establishing the rule that one need not receive actual payment of money or wages in order to be an employee for purposes of the Workers Compensation Act." (*Id*. at p. 649.) While it is unclear whether applicant was actually paid, she was in the service of the employer training for at least two months

> and was living on the premises at the time of injury. Pursuant to the agreement, part of her remuneration was housing. As a result, defendant's argument fails.

(Opinion, pp. 8-9.)

We remind defendant that:

> The WCAB is bound by the basic rules of law and procedure. (Citation.) These basic rules of procedure require the board to give res judicata effect to its final decisions. (Citations.) The fact that the WCAB "is not bound by common law or statutory rules of evidence and procedure, may receive hearsay evidence, may proceed informally, and may adopt less stringent rules and regulations than those applicable in court does not alter the applicability of the doctrine of res judicata to its findings." (Citation.)

(*Dow Chemical Co. v. Workers' Comp. Appeals Bd.* (*Quick*) (1967) 67 Cal.2d. 483, 491 (citations omitted).)

Res judicata refers to both claim preclusion and issue preclusion. "Claim preclusion, the 'primary aspect' of res judicata, acts to bar claims that were, or should have been, advanced in a previous suit involving the same parties. Issue preclusion, the 'secondary aspect' historically called collateral estoppel, describes the bar on relitigating issues that were argued and decided in the first suit." (*Hudson v. Foster* (2021) 68 Cal.App.5th 640, fn. 10.)

When our decision regarding employment issued, defendant's recourse at that time was to file a Petition for Writ of Review. (See Lab. Code, § 5950 et seq.) He did not, and the decision became final. To the extent that the current Petition seeks to relitigate the employment issue using the same legal arguments and general facts, defendant is reminded of the doctrine of res judicata and collateral estoppel when filing supplemental briefings. The decision may not be set aside without a showing of good cause and a new opportunity to be heard. (Lab. Code, § 5803.)

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

Defendant contends that he should be able to provide additional evidence, though the purpose and substance of the evidence is not immediately clear. He insinuates that there is additional evidence regarding "applicant's activities in the last four years," but that would likely only be relevant to the nature and extent of her injury, and not her employment status on the date of the claimed injury in 2020. A finding of injury was deferred, and the issue has not been re-set for trial. Evidence that pertains to nature and extent of injury should be reviewed by the medical

evaluators in this matter where relevant and when compliant with section 4062.2 disclosure requirements. This evidence cannot and should not be presented to the Appeals Board in any supplemental briefings.

Ultimately, at this point, the issue of employment cannot be raised by a petition for reconsideration and any new evidence of activity after the date of injury cannot be submitted to the Appeals Board without being entered into evidence, nor does it appear that any issue has been set for which this evidence would be relevant. We urge defendant to limit any supplemental pleadings to issues that are ripe for decision.

However, with respect to the issue of the trial transcript, we believe that provision of the trial transcript with the option to file supplemental pleadings responsive to the transcript will afford the parties additional due process and provide for a just and reasoned decision based on the entire evidentiary record. (*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].)

Accordingly, we grant the Petition for Reconsideration/Removal to issue an order pursuant to WCAB Rule 10800 that the proceedings and testimony from the October 11, 2022 trial in this matter be transcribed and promptly filed in the EAMS, with simultaneous notice of the filing to all active parties and the Workers' Compensation Appeals Board, Office of the Commissioners.

Thereafter, all parties shall have twenty days from receipt of the transcript plus additional days for mailing as set forth in WCAB Rule 10605 (Cal. Code Regs., tit. 8, § 10605) in which to file supplemental responses, at the parties' discretion.

We emphasize that this is not a final decision on the merits of the Petition, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration / Removal is **GRANTED**.

**IT IS FURTHER ORDERED** that the proceedings and testimony from the October 11, 2022 trial in this matter be transcribed pursuant to WCAB Rule 10800 and promptly filed in the

Electronic Adjudication Management System (EAMS), with simultaneous notice of the filing to all active parties and the Workers' Compensation Appeals Board, Office of the Commissioners.

**IT IS FURTHER ORDERED** that all parties shall have twenty days from receipt of the transcript plus additional days for mailing as set forth in WCAB Rule 10605 (Cal. Code Regs., tit. 8, § 10605) in which to file supplemental responses, at the parties' discretion. Supplemental responses shall only be filed in EAMS. Untimely or misfiled responses will not be accepted or considered.

**IT IS FURTHER ORDERED** that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration/Removal and further consideration of the entire record in light of the applicable statutory and decisional law.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

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

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

**OCTOBER 7, 2026**

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

**JOLEE ROGELSTAD**
**LEVITZ LEGAL GROUP**
**BRIAN SILVER**
**OFFICE OF THE DIRECTOR – LEGAL UNIT**

**TF/md**

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