

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

**JONATHAN VILLALTA, *Applicant***

**vs.**

**ROBERT DAVIES ENTERPRISES INC;  
CYPRESS INSURANCE COMPANY dba BERKSHIRE HATHAWAY HOMESTATE  
COMPANIES, *Defendants***

**Adjudication Number: ADJ13042541  
San Francisco District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact and Award issued by the workers' compensation administrative law judge (WCJ) on February 13, 2026. Therein, the WCJ found that applicant sustained industrial injury to his lumbar spine, cervical spine, thoracic spine, right ankle, right hip, right foot, right toes, complex regional pain syndrome, bilateral shoulders, bilateral wrists and right leg resulting in permanent total disability.

Defendant contends that the WCJ erred in finding permanent total disability arguing that the parties' previous stipulation to a 69% partial permanent disability precludes the WCJ from adding the disabilities from those stipulations and that the disabilities must be combined because there is a collateral estoppel effect.

Applicant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant defendant's 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<sup>1</sup> section 5950 et seq.

## 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 March 17, 2026 and 60 days from the date of transmission is Saturday, May 16, 2026. The next business day that is 60 days from the date of transmission is Monday, May 18, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on May 18, 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

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

<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.

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 March 12, 2026, and the case was transmitted to the Appeals Board on March 12, 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 March 12, 2026.

## II.

The WCJ provided the following discussion in the Report:

### INTRODUCTION

Applicant sustained an accepted injury to multiple body parts, including lower extremity complex regional pain syndrome. He resolved his case by Stipulations with Request for Award at 69% partial permanent disability. He filed a petition to reopen. After a trial on the petition to reopen, I awarded 100% permanent total disability. Defendant seeks reconsideration of my award.

### FACTS

#### 1. Procedural background.

[] On February 13, 2026, I awarded applicant 100% permanent total disability. On March 4, 2026, defendant filed a timely verified petition for reconsideration. On March 13, 2026, applicant filed an answer.

#### 2. Evidence at trial and decision.

At trial, the only evidence on the issue of permanent disability, was the reports and deposition transcripts of the panel QME, Christopher Chen, M.D. Dr. Chen described impairment and disability to multiple body parts. He opined that many of the disabilities should be added.

The prior stipulated award was for the LUMBAR SPINE, CERVICAL SPINE, THORACIC SPINE, RIGHT ANKLE, RIGHT HIP, RIGHT FOOT TOES. At trial on the petition to reopen, applicant alleged injury to additional body parts:

SHOULDERS, WRISTS and RIGHT LEG. Based on Dr. Chen's opinions, I found injury to these additional body parts.

Dr. Chen opined that most of the disabilities should be added rather than combined using the combined values chart. In accord with *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686, Dr. Chen explained that the effects on activities of daily living from the various disabilities overlapped, and the overlap increased or amplified the impact on the affected activities of daily living. He described the overlapping effects between the original stipulated spine and lower extremity body parts and the new upper extremity injuries. (Joint Exhibit 107 – Dr. Chen's June 21, 2025 supplemental QME report).

I relied upon Dr. Chen's opinions, which I found to be substantial evidence. I obtained a formal rating of the disabilities described by Dr. Chen, asking the DEU rater to add many of the disabilities, including those body parts from the original stipulated award. The DEU rating was 100% permanent total disability. I adopted the rating and issued my award.

### 3. Contentions on reconsideration.

Defendants seek reconsideration on the basis that I acted without or in excess of my powers, the evidence does not justify the findings of fact, and the findings of fact do not support the award. Defendants' contend that the parties' stipulation to a 69% partial permanent disability precludes the court from adding the disabilities/body parts from those stipulations; defendants argue they must be combined because there is a collateral estoppel effect.

## DISCUSSION

### Introduction

Applicant stipulated to 69% partial permanent disability award for the following disability and body parts:

- Lumbar spine
- Cervical spine
- Thoracic spine
- Right ankle
- Right hip
- Right foot toes

After a trial on applicant's petition for reconsideration, I found 100% disability to the following body parts:

- Complex regional pain syndrome
- Bilateral shoulders

- Bilateral wrists
- Right leg
- Lumbar spine
- Cervical spine
- Thoracic spine
- Right ankle
- Right hip
- Right foot and right toes

The body parts are different. The disability is different. The law has changed. I added all the disabilities according to the opinions of the primary treating physician.

Defendants rely upon a line of cases that provide that a party may not attempt to relitigate the original award.

The principle of reopening for “good cause” does not permit an attempt to simply relitigate the original award. A petition to reopen may not be used to litigate issues which should have been raised by a timely petition for reconsideration. (See *Young v. Industrial Acc. Com.* (1944) 63 Cal.App.2d 286 [146 P.2d 693]; *Royster v. Workmen's Comp. Appeals Bd.* (1974) 40 Cal.App.3d 412 [115 Cal.Rptr. 210].) “Good cause” to reopen does not consist of medical evidence obtained subsequent to the original decision which merely disagrees with the medical opinion relied upon by the Board at the time of the original decision. (See *Consolidated Western Steel Div. v. Industrial Acc. Com.* (1962) 205 Cal.App.2d 275, 277-278 [23 Cal.Rptr.147]; *Clark v. W.C.A.B.* (1980) 45 Cal.Comp.Cases 499.)

*Nicky Blair's Rest. v. Workers' Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 876.

In *Nicky Blair's*, applicant did not establish grounds to re-open her award. Her back condition, which was the subject of the original award, was unchanged from the time of the original award. The case involved a single body part. There was no change in condition.

In the instant case, applicant's petition to reopen is based on a worsening of his condition. His complex regional pain syndrome in his right lower extremity, which affected his ability to ambulate, caused a need for crutches. Use of the crutches caused injury and disability in both shoulders and wrists. In addition to the disability in his spine and lower extremity, I found additional disability in the shoulders and wrists. There were significant changes in the facts and circumstances of applicant's disability. The instant case involves an actual change in condition. There are multiple body parts involved. The *Nicky Blair's* case is distinguishable.

*Royster v. WCAB* (1974) 39 Cal.Comp.Cases 513, *Polach v. American Smelting & Refining Co.* (1969) and *Young v. IAC* (1944) 9 Cal.Comp.Cases 79 are similarly distinguishable. In *Royster*, applicant stipulated to a 30 1/2 percent award for the back and heart. Later applicant obtained a 69 percent award for his heart. The 69% award was based on 100 percent disability for the heart, minus the prior 30 1/2 percent award, which was for the heart *and the back*. Applicant reopened the 69% award arguing that the subtraction should have only been for the portion of the award relating to the heart. The *Royster* court held that there were no new facts or circumstances not known at the time of the original award. Here there are new facts and circumstances - the addition of new and different body parts and new and different effects on activities of daily living alone and in combination with the originally stipulated body parts. The *Young* and *Polach* courts also held that there were no new facts or circumstances presented on the petition to reopen.

Petitioner cites a panel decision, *Ayala v. Fulton Processors, Inc.* 2009 Cal.Wrk.Comp. P.D. Lexis 480 for support. *Ayala* involved an apportionment issue on petition for reconsideration, under Labor Code sections 4663 and 4664. *Ayala* involved a single body part, the back. Mr. Ayala's back injury resulted from two separate injuries. The parties settled the case by joint award at 50% partial permanent disability. After he had back surgery, Mr. Ayala reopened his case. The *Ayala* court held that the WCJ could only apply apportionment to the new and further disability. There were no new body parts involved. The issue was apportionment under Labor Code 4663 and 4664. There were no new facts or circumstances other than a worsening of applicant's back condition. There was no change in the law. I am not persuaded that *Ayala* is applicable. Additionally, here, there was a significant change in the law which occurred after the original award. In 2024 the WCAB issued its en banc decision in *Vigil v. Count of Kern* (2024) 89 Cal.Comp.Cases 686.

Here, the disability after the petition to reopen was significantly different. There were new body parts and different effects on activities of daily living. Dr. Chen could not have provided an opinion on whether the lower extremities, spine and upper extremities should be added or combined prior to the petition to reopen. This group of disabilities and effects on activities of daily did not exist. There were significant changes in the facts and circumstances that could not have been considered. Accordingly, it was appropriate to add all of the disabilities, based on Dr. Chen's opinions.

(Report at pp. 1-6.)

### III.

We highlight the following legal principles that may be relevant to our review of this matter:

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) “The term ‘substantial evidence’ means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value.” (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Medical evidence is required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c)(d), 4061(i), 4062.3(l).) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. en banc).) “Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board’s findings if it is based on surmise, speculation, conjecture or guess.” (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

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.) Issue preclusion, applies to bar a party from relitigating an issue if the following requirements are met: (1) “the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding”; (2) “this issue must have been actually litigated in the former proceeding”; (3) “it must have been necessarily decided in the former proceeding”; (4) “the decision in the former proceeding must be final and on the merits”; and (5) “the party against whom preclusion is sought must be the same

as, or in privity with, the party to the former proceeding.” *Branson v. Sun-Diamond Growers of California*, 24 Cal.App.4th 327 (1994) (quoting *Lucido v. Superior Court*, 51 Cal.3d 335, 341, 272 Cal.Rptr. 767, 795 P.2d 1223, (1990), cert. denied, 500 U.S. 920, 111 S.Ct. 2021, 114 L.Ed.2d 107 (1991).) Claim preclusion (res judicata) and issue preclusion (collateral estoppel) are affirmative defenses to applicant’s current claim, and it is therefore defendant’s burden to establish their elements. (Lab. Code, § 5705 [“The burden of proof rests upon the party or lien claimant holding the affirmative of the issue.”]; *Johnson v. Workers’ Comp. Appeals Bd.* (1970) 2 Cal.3d 964 [35 Cal.Comp.Cases 362]; see *Morales v. Universal Furniture, American Home Assur. Co.*, 2017 Cal. Wrk. Comp. P.D. LEXIS 591.)

“An approved workers’ compensation compromise and release rests ‘upon a higher plane than a private contractual release; it is a judgment, with “the same force and effect as an award made after a full hearing.”’” (*Smith v. Workers’ Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1169 [50 Cal. Comp. Cases 311], quoting *Johnson v. Workmen’s Comp. App. Bd.* (1970) 2 Cal.3d 964, 973.) Consequently, after the five-year period has expired, an order approving a compromise and release constitutes a final judgement with the full effect of res judicata. (*Smith v. Workers’ Comp. Appeals Bd.*, *supra*, 168 Cal.App.3d at p. 1169.)

Contract principles apply to settlements of workers’ compensation disputes. The legal principles governing compromise and release agreements are the same as those governing other contracts. (*Burbank Studios v. Workers’ Co. Appeals Bd. (Yount)* (1982) 134 Cal.App.3d 929, 935 [47 Cal.Comp.Cases 432].) For a compromise and release agreement to be effective, the necessary elements of a contract must exist, which includes the mutual consent of the parties. (Civ. Code, §§ 1550, 1565, 1580; *Yount, supra.*) There can be no contract unless there is a meeting of the minds and the parties mutually agree upon the same thing. (Civ. Code, §§ 1550, 1565, 1580; *Sackett v. Starr* (1949) 95 Cal.App.2d 128, 212 P.2d 535; *Sieck v. Hall* (1934) 139 Cal.App. 279, 291, 34 P.2d 844; *American Can Co. v. Agricultural Ins. Co.* (1909) 12 Cal.App.133, 137, 106 P. 720.)

Since a compromise and release is a written contract, the parties’ intention should be ascertained from the writing alone and, unless an absurdity is involved, the clear language of the contract governs its interpretation. (Civ. Code, §§ 1638, 1639; *TRB Investments, Inc. v. Fireman’s Fund Ins. Co.* (2006) 40 Cal. 4th 19, 27, 50 Cal. Rptr. 3d 597, 145 P.3d 472.) A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful. (Civ. Code, § 1636; *TRB Investments,*

*supra*, at 27; *County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal. App. 4th 1180, 1184 [69 Cal. Comp. Cases 193].) The court has limited the settlement to the express terms, body parts, or conditions of the C&R as outlined in paragraph 1 of the C&R, and has allowed adjudication of later filed claims that arose out of the same injurious exposure. (*Mansville v. Workers' Comp. Appeals Bd. (Cooper)* (2016) 81 Cal.Comp.Cases 2016 (writ denied).)

Here, it is unclear from our preliminary review that the record has been sufficiently developed as to the issue of permanent disability. Where the medical evidence or opinion on an issue is incomplete, stale, and no longer germane, or is based on an inaccurate history, or speculation, it does not constitute substantial evidence. (*Place v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Based on our review, we are not persuaded that the record is properly developed. 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 the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

#### IV.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal.2d 360, 364.) “[t]here is no provision in chapter 7, dealing with

proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied.”]; see generally Lab. Code, § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”].)

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) 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. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) [“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”].)

Section 5901 states in relevant part that:

No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers’ compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. . . .

Thus, this is not a final decision on the merits of the Petition for Reconsideration, 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 Labor Code sections 5950 et seq.

V.

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 for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. *While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to [WCABmediation@dir.ca.gov](mailto:WCABmediation@dir.ca.gov).*

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration 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 A. ZALEWSKI, CHAIR**

**I CONCUR,**

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

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



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

**MAY 18, 2026**

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

**JONATHAN VILLALTA  
LAW OFFICES OF NADEEM MAKADA  
LAW OFFICE OF JANET A. ZAMECKI, P.C.**

**PAG/kl**

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