WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JUAN GARCIALARA, ***Applicant***

vs.

SISTONE, INC.;
INSURANCE COMPANY OF THE WEST and
REPUBLIC INDEMNITY COMPANY, ***Defendants***

Adjudication Number: ADJ20538666
Los Angeles District Office

OPINION AND ORDER DISMISSING PETITION FOR RECONSIDERATION AND DENYING PETITION FOR REMOVAL

Defendant Republic Indemnity Company (Republic) seeks reconsideration of the Order Vacating the June 16, 2026 Order Approving Compromise and Release (OACR) issued on July 22, 2026[1] (Order). The workers' compensation administrative law judge (WCJ) issued the Order in response to two petitions filed on applicant's behalf, a Petition for Reconsideration filed by applicant himself on July 17, 2026 and a 'Petition to Set Aside or in the alternative Petition for Reconsideration,' also dated July 17, 2026, by applicant's newly appointed counsel. It is from defendant's Petition objecting to the Order that we address review in this matter.

Republic contends that it has been denied due process because the Order was issued without opportunity to respond or be heard. Republic contends that WCAB Rule 10961 (b) (Cal. Code Regs., tit. 8 § 10961(b)) required a timely filed petition for reconsideration to set aside an award or order and that neither of applicant's petitions were timely; and that applicant did not show good case to set aside the OACR.

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

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[1] In the alternative defendant sought a stay of the order vacating the OACR.

We have considered the allegations of the Petition, the Answer, and the contents of the Report. Based on our review of the record and as discussed below, we will dismiss the Petition to the extent it seeks reconsideration and deny the Petition to the extent it seeks removal.

FACTS

On March 18, 2025, applicant filed an Application for Adjudication of Claim alleging a cumulative injury from February 9, 2024 through February 9, 2025 to the neck, back, shoulders, feet, and eyes. The Application was filed against Republic. Insurance Company of the West (ICW) was joined by order on April 4, 2025 for coverage for the employer from February 9, 2024 through June 30, 2024.

On January 12, 2026, applicant filed an amended Application adding as a body part "Silicosis."

On June 16, 2026, an executed Compromise and Release (C&R) was filed with the district office and served on all parties except applicant. The C&R totaling $40,000.00 purports to resolve injury to the neck, back, spine, shoulders, arms, elbows, wrists, hands, hips, legs, knees, ankles, feet, eyes, vision, headaches, silicosis, lungs, and respiratory system.

Also on June 16, 2026, the C&R was walked through pursuant to WCAB Rule 10789 (Cal. Code Regs., tit. 8 § 10789). Only defense counsel for Republic was present. Two Orthopedic Qualified Medical Evaluator (QME) reports were filed dated September 4, 2025 and March 31, 2026. Neither report discussed body parts beyond the neck, left shoulder, right hand, low back, and left leg. The remaining body parts resolved in the C&R, including silicosis, were not addressed. The reports did not assign a maximum medical improvement date or discuss permanent disability impairment.

The WCJ approved the C&R on June 16, 2026. On the walk through sheet there is a notation of June 17, 2026 and defense counsel's email address. It is not clear what that date represents. On the OACR itself, in regard to service it stated, "per §10628 Gina Hartson DA was personally served and shall serve all parties on WCAB official address list." There is no proof of service filed by defense counsel for service of the OACR.

On July 17, 2026, applicant filed a dismissal and a substitution of attorney to represent applicant. Applicant also filed a Petition for Reconsideration. His new attorney, also on July 17, 2026, filed a "Petition to Set Aside or in the Alternative Petition for Reconsideration." The Petition alleged that despite advising his prior attorney of a silicosis diagnosis and requesting a medical

evaluation, he was advised to sign settlement documents that he did not understand. Applicant also contends that the C&R was inadequate.

On July 21, 2026, the WCJ vacated the OACR citing WCAB Rule 10961(b).

On July 22, 2026, defendants filed an Objection and Response to Petition to Set Aside or in the Alternative Petition for Reconsideration (Objection). The Objection contended that applicant has not demonstrated good cause to set aside the C&R as he has not made a showing that he suffers from silicosis and thus, the C&R is adequate as determined by the WCJ. It alleged that it sent an email to applicant's former counsel on June 18, 2026, attaching a copy of the OACR.[2]

Applicant's petition for reconsideration was filed on July 17, 2026.

On July 27, 2026, defendant filed its Petition. In the Petition, it alleged that the OACR was served on applicant's former counsel on June 18, 2026, and that consequently the petition for reconsideration by applicant was untimely. Defendant requested that the OACR be reinstated or in the alternative the Order be stayed until the matter could be set for hearing.

On August 24, 2026 a status conference was taken off calendar indicating: "petition for recon re order vacating compromise and release from D.A was not seen by WCJ. Petition for recon or in alternative to stay or vacate. A.A. has submitted a response. Order to vacate was submitted by WCJ after I&A involvement as applicant dismissed attorney that was involved in the original compromise and release for which applicant submitted his own pro per recon petition."

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909[3], 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.
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> (b)
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> (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] We accept defendant's admission that it sent the OACR by email to applicant's former counsel. However, since the email is not in evidence, we do not consider the email itself.

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

> (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 August 31, 2026, and 60 days from the date of transmission is Friday, October 30, 2026. This decision is issued by or on October 30, 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 31, 2026 and the case was transmitted to the Appeals Board on August 31, 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 31, 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, the WCJ's decision solely resolves an intermediate procedural or evidentiary issue or issues. The decision does not determine any substantive right or liability and does not determine a threshold issue. According to the Report, the WCJ rescinded the OACR so that applicant's petition to set aside could be heard. Once the WCJ has issued a new decision, either party may seek reconsideration. Accordingly, it is not a "final" decision, and the Petition will be dismissed to the extent it seeks reconsideration.

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 substantial 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, after the WCJ issues a new decision, any person will have the opportunity to seek reconsideration. To the extent that defendant alleges that proceeds have already been paid to applicant, defendant has a remedy pursuant to section 4909. Thus, we are not persuaded that substantial prejudice or irreparable harm will result if removal is denied or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

III.

WCAB Rule 10961 (Cal. Code Regs., tit. 8, § 10961) provides that the district office may

still act on a case for 15 days after the timely filing of a petition for reconsideration and sets forth the following actions that a WCJ may take in response: (1) The WCJ may prepare a report and transfer jurisdiction to the Appeals Board to address the merits of the petition (Cal. Code Regs., tit. 8, § 10961(a); see Cal. Code Regs., tit. 8, § 10962); (2) The WCJ may rescind the entire order, decision or award and initiate proceedings within 30 days (Cal. Code Regs., tit. 8, § 10961(b)); or (3) The WCJ may rescind the order, decision or award and issue an amended order, decision or award, and a new petition for reconsideration must be filed in response to the amended order, decision or award (Cal. Code Regs., tit. 8, § 10961(c)).

Defendant argued that applicant's petitions were not timely as they were filed 29 days after the email service on applicant's counsel of the OACR on June 18, 2026. However, an email is not "service" if it does not contain a fully executed proof of service. More importantly, it appears that service was never properly completed. Here, the OACR was given to defense counsel by the WCJ on June 16, 2026 to serve it and pursuant to WCAB Rule 10628 (b) (Cal. Code Regs., tit. 8, § 10628 (b)), defense counsel was designated to serve all parties on the official address record. There is no proof of service reflecting that this was ever done. Further, not only was defendant required to serve everyone on the address record, but WCAB Rule 10629 (c) (Cal. Code Regs., tit. 8, § 10629) specifically requires, "service shall also be made on the injured employee… *whether or not the employee or dependent is represented.*" Not only is there no evidence that the injured worker was ever served, but defendant failed to file a proof of service in violation of WCAB Rule 10629 (d). As a result, there is no evidence that any party was served.

Section 5903 states, in pertinent part, that a petition for reconsideration may only be filed "within 20 days after the service of any final order, decision, or award made and filed by the appeals board or a workers' compensation judge." However, there is no evidence to indicate that the OACR was served properly by the WCJ or defense counsel. Where an order can be shown to have been defectively served, the time limit begins to run as of the date of receipt of the order. (*Hartford Accident & Indemnity Co. v. Workers' Comp. Appeals Bd. (Phillips)* (1978) 86 Cal.App.3d 1 [43 Cal.Comp.Cases 1193].) Here, since defendant admitted that the order was not properly served, the time for applicant to file a petition was upon receipt of the OACR.

As a result, based on the record before us, which continues to lack a proper proof of service, applicant's petition was timely. Moreover, as pointed out by the WCJ, under sections 5803 and 5804, the WCJ retains the authority to vacate the OACR. Thus, the Order was appropriate.

IV.

In *Camacho v. Target Corp.* (2018) 24 Cal.App.5th 291 [83 Cal.Comp.Cases 1014], the Court of Appeal observed that:

> Given the more informal nature of workers' compensation proceedings, there are certain safeguards in place to protect workers from unknowingly releasing their rights. For example, "[t]o safeguard the injured worker from entering into unfortunate or improvident releases as a result of, for instance, economic pressure or bad advice, the worker's knowledge of and intent to release particular benefits must be established separately from the standard release language of the form. [Citation.]" (*Ibid*.) Further, "[e]ven with respect to claims within the workers' compensation system, execution of the form does not release certain claims unless specific findings are made. [Citations.]" (*Ibid*.)
>
> The board or referee must inquire into the fairness and adequacy of a settlement and may set the matter for hearing to take evidence when necessary to determine whether to approve the settlement. [Citations.] "These safeguards against improvident releases place a workmen's compensation release 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.' [Citation.]" (*Johnson v. Workmen's Comp. App. Bd*. (1970) 2 Cal.3d 964, 973 [88 Cal.Rptr. 202, 471 P.2d 1002]; see also Steller, at p. 181.)

(*Id.* at pp. 301-302.)

The "Workers' Compensation Appeals Board shall inquire into the adequacy of all Compromise and Release agreements and Stipulations with Request for Award and may set the matter for hearing to take evidence when necessary to determine whether the agreement should be approved or disapproved, or issue findings and awards." (Cal. Code Regs., tit. 8, § 10700(b).) We observe that contract principles apply to settlements of workers' compensation disputes. Stipulations between the parties must be interpreted to give effect to the mutual intention of the parties it existed at the time of contracting, so far as the same is ascertainable and lawful. (*County of San Joaquin v. Workers' Compensation Appeals Bd.* (*Sepulveda*) (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193], citing Civ. Code, § 1636.)

Additionally, there must be a complete record for our review of the case. "[A] proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc).) The Appeals Board's record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary

of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator's file, if any. Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, § 10803.)

Finally, all parties in workers' compensation proceedings retain their fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker*, *supra*, 82 Cal.App.4th at pp. 157-158.) 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*, 82 Cal.App.4th at pp. 157-158, citing *Kaiser Co. v. I.A.C.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710-712 [57 Cal.Comp.Cases 230].)

In the June 24, 2026 en banc decision in *Gaines, et al. v. ABM Aviation Inc., et al.,* (2026) 91 Cal.Comp.Cases __, the Appeals Board discussed the WCJ's role in determining adequacy of settlements. We held that:

> 1. A workers' compensation settlement is only enforceable after approval by the Workers' Compensation Appeals Board. In approving a settlement, a WCJ must consider whether the agreement is valid and must determine whether the settlement is adequate in order to protect the injured worker and the public interest.
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> 2. Where the terms of the settlement are inconsistent, do not comply with the Labor Code, and / or are inadequate, the WCJ may investigate by issuing an order suspending action, and if the parties do not provide sufficient information, the WCJ may hold a hearing to create an evidentiary record that establishes the adequacy of a settlement.

(*Id.* at p. __.)

In this matter, there are a few concerns with the C&R. The medical record consists of two orthopedic QME reports, but the C&R resolves far more body parts than were included in those reports. With regard to silicosis specifically, the date of injury, exposure, or period of liability may not be the same as the orthopedic cumulative injury and in any event, the claim of injury to this body part should have been separately evaluated. In addition, it is unlikely that it is properly resolved in this claim as there is no medical evidence for this period of injury. Equally concerning

is the lack of evidence to support resolution of a multitude of body parts that may require additional specialties to comment. Though a date of injury pursuant to section 5412 is not established in this record, applicant still has five years to obtain a full 104 weeks of temporary disability benefits as none have ever been paid according to the C&R. Though there are indications that applicant continues to work and continues to require care, there is no evidence in the record. On a practical level, the record does not contain reports from primary treating physicians, benefit printouts, benefit notices, or a wage statement to support the stipulations. Ultimately, there is no record upon which to determine whether the C&R was adequate.

As a result, the parties must create a record on the issues of whether the settlement is adequate; should be enforced; or whether further discovery should take place. At that time, they will have an opportunity to raise any other issues and make any objections. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration filed by defendant on July 21, 2026 is **DISMISSED** and the Petition for Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 30, 2026

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

JUAN GARCIALARA
LAW OFFICES OF VICKEN HAGOPIAN
LAW OFFICES OF GARY RODICH
GREENUP, HARTSTON, AND ROSENFELD, LLP
LAW OFFICE OF JEFFERI HAMILTON

TF/md

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