

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

JULIE VIOR, *Applicant*

vs.

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA;
SELF-INSURED; SEDGWICK CMS, *Defendants***

**Adjudication Numbers: ADJ8555784; ADJ9828972
Goleta District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award issued by the workers' compensation administrative law judge (WCJ) on February 20, 2026, in Case No. ADJ9828972. Therein, the WCJ found that applicant sustained injury arising out of and in the course of employment to her right shoulder while employed as a painter during the period of February 20, 1996 through February 25, 2015. The WCJ further found that applicant had a prior date of injury on a continuous trauma basis during the period of March 1, 1995 through February 29, 1996; that the prior injury involved the bilateral wrists, bilateral thumbs, and bilateral elbows; that this prior injury was resolved by way of a Stipulated Findings & Award dated September 21, 2019, resulting in an Award of 68.5% permanent disability; that the permanent disability was based upon the medical reporting of Michael Behrman, M.D., reporting in the capacity of a primary treating physician and was rated under the 1997 Permanent Disability Rating Schedule (PDRS); that the last day applicant physically worked for defendant employer was February 25, 2015; that applicant was totally temporally disable for the period of April 17, 2014 through March 22, 2016; that applicant is entitled to a permanent disability award of 100% and that there is no legal basis for apportionment. In his Opinion on Decision, the WCJ stated "it is reasonable to find one long continuous trauma period due to Applicant returning to the same job- not a modified position- and her condition continuing to deteriorate. [¶] As Dr. Newton explained, the little time off between surgeries and the ongoing progression of her injuries support the determination that Applicant

sustained one long continuous trauma for the period of February 20, 1996, through February 25, 2015.”

Defendant contends that the WCJ erred in finding one cumulative trauma ending on February 25, 2015. Defendant further contends that the WCJ should have relied on the opinion of Labor Code¹ section 5701 regular physician Peter Newton, M.D., to find apportionment to the prior cumulative trauma ending on February 29, 1996.

Applicant filed an Answer. The WCJ issued a Joint Report and Recommendation on Petition for Reconsideration recommending that the Petition for Reconsideration be denied.

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 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.

¹ All further statutory references are to the Labor Code, unless otherwise noted.

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 27, 2026 and 60 days from the date of transmission is May 26, 2026. This decision is issued by or on May 26, 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 March 27, 2026, and the case was transmitted to the Appeals Board on March 27, 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 27, 2026.

II.

The WCJ provided the following discussion in the April 28, 2026 Report:

FACTUAL HISTORY

Two claims were presented in the instant matter: a specific injury (ADJ8555784) and a continuous trauma claim filed under ADJ9828972.

Prior to the two claims filed by Applicant herein, at a time when she was unrepresented, Applicant filed a claim under ADJ5521632 alleging a continuous trauma claim that occurred during the period March 1, 1995, through February 29, 1996. This claim alleged injury to Applicant's bilateral wrists, bilateral thumbs, and bilateral elbows and an Award issued finding 68.5% permanent disability.

This instant matter originally proceeded to trial, submitted for decision, and a Joint Findings & Award issued on January 19, 2021, finding Applicant to be 100% permanently disabled due to the continuous trauma claim; and 13% permanent disability associated with the specific injury.

Following a Petition for Reconsideration being filed, the WCAB upheld the WCJ's decision on ADJ8555784 as to the specific injury. Based on the WCAB's decision, there is only one claim for this court to adjudicate.

The WCAB remanded the matter to the trial judge to determine if there were one or two continuous trauma periods. Subsequent to the Petition for Reconsideration being filed, the WCAB decided and issued the En Banc decision of Vigil, which also necessitated the record being developed.

Following remand, Peter Newton, M.D., wrote three additional reports (Exhibits O, P and S) and was subsequently deposed twice (Exhibit N and R).

(Report, at p. 4.)

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.)

The issue of how many cumulative injuries an employee sustained is a question of fact for the Workers' Compensation Appeals Board. (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 234-235 [58 Cal.Comp.Cases 323]; *Aetna Casualty & Surety Co. v. Workmen's Comp. Appeals Bd. (Coltharp)* (1973) 35 Cal.App.3d 329, 341 [38 Cal.Comp.Cases 720].) In *Coltharp*, the applicant's initial work duties, which he

described as “heavy labor,” caused cumulative trauma resulting in disability and a need for medical treatment, including back surgery. After the applicant returned to work, he was assigned “lighter work,” but he still had to do some lifting as well as crawling through pipe. He said of his post-return work duties, “regardless of everything I did, it was aggravating on my back.” A physician stated that applicant’s post-return cumulative work activities were “the immediate precipitating factor that necessitated” another back surgery. Based on these facts, the *Coltharp* Court found that the applicant had sustained two separate cumulative injuries, i.e., one before and one after the initial period of disability and need for treatment, and that to conclude, otherwise would violate the anti-merger provisions of sections 3208.2 and 5303.

In *Austin*, the applicant's increasing work responsibilities precipitated a major depression, resulting in temporary disability and a need for treatment, including psychiatric hospitalization. After receiving psychiatric treatment and being off work for a period of time, the applicant returned to work. However, when the applicant returned to work, he had not fully recovered from his depressive episode, he remained under a doctor’s care and on medication, and he became progressively worse. It was the same stress that resulted in the initial hospitalization that further exacerbated applicant’s problem after he returned to work. Based on these facts, the *Austin* Court concluded the applicant had only one continuous compensable injury because, unlike *Coltharp*, his two periods of temporary disability were linked by the continued need for medical treatment and the two periods were not “distinct.”

When the holdings of *Austin* and *Coltharp* are harmonized and read in conjunction with the section 3208.1 definition of “cumulative injury” and the anti-merger provisions of sections 3208.2 and 5303, the following principles are revealed:

(1) if, after returning to work from a period of industrially-caused disability and a need for medical treatment, the employee’s repetitive work activities again result in injurious trauma—i.e., if the employee’s occupational activities after returning to work from a period of temporary disability cause or contribute to a new period of temporary disability, to a new or an increased level of permanent disability, or to a new or increased need for medical treatment—then there are two separate and distinct cumulative injuries that cannot be merged into a single injury (Lab. Code, §§ 3208.1, 3208.2, 5303; *Coltharp, supra*, 35 Cal.App.3d at p. 342); and

(2) if, however, the employee’s occupational activities after returning to work from a period of industrially-caused disability are not injurious—i.e., if any new period of temporary disability,

new or increased level of permanent disability, or new or increased need for medical treatment result solely from an exacerbation of the original injury—then there is only a single cumulative injury and no impermissible merger occurs. (Lab. Code, ² §§ 3208.1, 3208.2, 5303; *Austin, supra*, 16 Cal.App.4th at p. 235.)

Here, it is unclear from our preliminary review that the record has been sufficiently developed as to whether there is one or two cumulative traumas. 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

² All further statutory references are to the Labor Code, unless otherwise noted.

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.*

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/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 26, 2026

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

**JULIE VIOR
STOUT, KAUFMAN, HOLZMAN & SPRAGUE
TOBIN LUCKS LLP**

PAG/mt

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