WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

KATHERINE MULDER, *Applicant*

vs.

LAUSD;
permissibly self-insured, administered by SEDWICK, CMS, *Defendants*

Adjudication Numbers: ADJ7968728; ADJ10451461
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant, in pro per, seeks reconsideration of the Findings of Fact & Award & Order issued by the workers' compensation administrative law judge (WCJ) on July 16, 2026. Therein, the WCJ found that applicant sustained admitted injury arising out of and during the course of employment (AOE/COE) to her neck and low back while employed as a teacher on March 5, 2010. The WCJ further found that applicant failed to prove industrial injury to her psyche and that the injury herein caused 19% permanent disability.

We have considered the Petition for Reconsideration, and the contents of the Report and Recommendation on Petition for Reconsideration (Report), and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant the 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[1] section 5950 et seq.

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

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 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 17, 2026 and 60 days from the date of transmission is October 16, 2026. This decision is issued by or on October 16, 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 17, 2026, and the case was transmitted to the Appeals Board on August 17, 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 17, 2026.

II.

The WCJ provided the following discussion in the Report:

FACTS

The applicant, Katherine Mulder, while employed as a teacher by the Los Angeles Unified School District filed Applications for Adjudication of Claim ("Application") for two injuries arising out of and in the course of employment ("AOE/COE").

The first injury occurred on March 5, 2010 to her neck and low back resulting from falling down a flight of stairs while on a field trip at El Capitan theater (See exhibit "A", medical report of Ali Dini dated March 6, 2017). She also claimed injury AOE/COE to her psyche. Because injury was admitted to her neck and low back, the applicant underwent treatment and was also paid temporary disability ("TD") from March 9, 2010 through March 5, 2015 at the weekly rate of $1,001.83 in the total amount of $96,047.00. Permanent disability ("PD") benefits were thereafter paid at the weekly rate of $230.00 from March 19, 2015 through June 23, 2016 in the total amount of $16,911.00.

The second claimed injury is alleged to have occurred during the period from January 1, 2009 through March 26, 2013 to her psyche, low back, and neck resulting from "repetitive job duties and improper treatment by supervisor(s)" (See "Application"). The injury was disputed by the defendant, and thus the defendant paid no benefits and furnished no medical treatment.

Throughout the history of this claim, the applicant has been represented by six law firms, some of which were dismissed and some of which were substituted out. Her most recent attorney was Mark Feuer who passed in February 2026.

In terms of relevant discovery, Dr. Ali Dini acted in the capacity of a panel qualified medical evaluator ("PQME") in the field of orthopedics. Dr. Dini issued one report dated March 6, 2017, and he was cross-examined on October 26, 2017. For the psyche allegation, the applicant was ordered to attend a PQME with Dr. Marina Lesky on August 16, 2023 at 11:00 a.m. There is no evidence that she ever attended an evaluation with Dr. Lesky.

On May 2, 2024 the defendant filed a Declaration of Readiness to Proceed ("DOR"), resulting in a Mandatory Settlement Conference ("MSC") on August 11, 2025 where the parties agreed to set the matter for trial, and where the parties completed a Pre-Trial Conference Statement ("PTCS") for each injury. The first day of trial was held on October 22, 2025 where the record was opened, stipulations were provided, and issues were framed for both injuries. Although represented by her attorney, the applicant herself was not present.

The next trial day on January 21, 2026 again resulted in the applicant not appearing. Her attorney appeared telephonically, stating he was ill, and as such, the matter was continued to day three of trial with the applicant ordered to appear in person at that time and the parties ordered to meet and confer before then. On April 15, 2026 the applicant herself was again not present. The court was advised, however, that her attorney had passed in February 2026, and there was no indication that the applicant had contacted either defense counsel or the Information and Assistance ("I&A") office since 2025. Given the circumstances, the matter was again continued, and the applicant was ordered to appear at the next trial either in person or over CourtCall, either by way of video or telephone. The court reflected on the Minutes of Hearing ("MOH") that failure to appear would result in either a Notice of Intention ("NOI") to dismiss her case or an actual order of dismissal.

On the most recent trial date of July 13, 2026 (the fourth such hearing), the applicant again failed to appear. Defense counsel represented that he did not see the applicant, and that she did not answer when he called her name throughout the building's public areas. The court remained logged in to CourtCall since 8:25 a.m. that morning, and the applicant did not appear. By 10:45 a.m. the court had changed its mind and felt that a NOI to dismiss her case or an actual order of same was unwarranted and would be an improper route; the applicant did not deserve such a draconian result. Rather, because it was felt by the court that the applicant had no means to appear either in person or remotely, that the best result would be to provide her with an award of benefits and order future medical care in her favor. Continuing the case to a fifth trial day did not seem to be the best route. The record was opened again, the PQME report and deposition transcript of Dr. Dini were admitted, and the Order Compelling Attendance at PQME with psychiatrist Marina Lensky was subject to judicial notice.

The court issued its Findings of Fact & Award & Order (ADJ7968728), its Findings of Fact & Order (ADJ10451461), and its Joint Opinions on Decision, all dated July 15, 2026 and all served on July 16, 2026. It is from these two findings that the applicant seeks her remedies. On August 13, 2026 the applicant directed an email to the Department of Industrial Relations' WCAB Control Unit. The email is not on file with the court. The subject line is exactly "Subject: EMERGENCY ADA REQUEST: APPEAL, A BRAND NEW JUDGE, AND AN INDEPENDENT REPRESENTATIVE - CASE ADJ10451461 & ADJ7968728"….

* * *

<u>The Issues Raised by the Applicant Do Not Afford Her the Remedies Sought</u>

The court identified six issues, as set forth above, raised in the applicant's email.

The first is whether the Presiding Judge should appoint an independent public attorney to handle the applicant's case, or in the alternative, that a central headquarters supervisor step in. The court is unaware of any such remedy that may be afforded the applicant. The workers' compensation system, to the best of this court's knowledge, does not maintain any kind of public attorney to appoint and does not have any kind of supervisor at the applicant's disposal. The applicant admits in her email that she refuses to work with "…a local Van Nuys I&A Officer" and needs representation, even though she has had six law firms in the past. The applicant's right and remedy is to appeal by filing, for example, a Petition for Reconsideration. The specific remedy she prays for is not available.

The second issue is whether the court failed to adhere to an ADA mail accommodation. The ADA Coordinator has been referred to the applicant, but this court has been provided no kind of order or instruction whatsoever, including the manner of any appearance, manner in serving documents, or anything else for that matter. There has been no denial of any accommodation.

The third contention is whether the court denied the applicant due process by issuing its Findings of Fact & Award & Order (ADJ7968728), its Findings of Fact & Order (ADJ10451461), and its Joint Opinions on Decision, all dated July 15, 2026 and all served on July 16, 2026. Her email specifically states that she "…checked in and called the board three separate times." But, and most importantly, the three phone calls she references all took place *before* the July 13, 2026 day of trial. She describes the "first two calls" and then that the "third call" was on the "Friday before Monday" (meaning the Monday trial date). Simply put, the applicant did not check in, as she claims. She did not call into CourtCall, log in to CourtCall, or appear in person. The court left every viable option available to her. Additionally, her position that the first two phone calls resulted in someone telling her that the hearing would be postponed is contradicted by the MOHs that issued. Although true that her attorney passed in February 2026, the applicant failed to appear at the two trial dates thereafter. Although the applicant argues that she was left in the dark, it was actually the court that was left in the dark. Given that the specific injury was admitted with disability benefits paid and medical treatment afforded, the court felt that any kind of dismissal or NOI to dismiss was unwarranted. The struggle for the court was based upon 14 prior hearings, multiple prior counsel, and the applicant's continued failure to attend the trial dates, even when her most recent attorney was alive. The court changed its mind and felt that awarding her the monetary benefits and medical treatment consistent with the record was in her best interest and achieved substantial justice under the circumstances presented.

The fourth question raised is whether the court refused to "review the case file". The applicant argues in favor of a psychiatric medical report of Dr. Mary Watts. None was presented at trial, but even getting past that fact, each party has due

process rights. The applicant failed to attend a PQME examination with psychiatrist Marina Lensky, M.D. Such failure denies the defendant due process.

The fifth matter is whether defense counsel committed "ADA violations and verbal abuse". The allegation is deferred to the defendant to answer. That said, the court has neither seen nor been made aware of any such instances.

The sixth and final issue is whether the court should or must comply with the applicant's following request: "I am requesting that a central headquarters ADA Coordinator contact me by phone at [] as soon as possible to act as my telephone scribe, process this appeal, assign an independent representative to my case, and **transfer my files completely away from the biased Van Nuys floor judge to a brand-new judge at a different venue**." It is the court's understanding that the ADA Coordinator was referred to the applicant. But that is the extent of the court's knowledge. Nothing further has been provided or conveyed. The court also is unaware of the remedy sought in terms of an ADA Coordinator acting as the applicant's scribe, processing her appeal, or assigning an independent representative to her case.

As to the allegation of bias and the transfer of the file (i.e., disqualification), it is one that the court takes seriously. Among the grounds for disqualification under *Code of Civil Procedure*, § 641 are that a judge has "…formed or expressed an unqualified opinion or belief as to the merits of the action" (Code Civ. Proc., § 641(f)) or that a judge has demonstrated "[t]he existence of a state of mind … evincing enmity against or bias toward either party" (Code Civ. Proc., § 641(g); see also, Cal. Code Regs., tit. 8, § 10960). Neither ground is present here. The undersigned actually had the case set for trial on four different occasions. Although much leeway is given when an applicant's attorney passes away, in this case the applicant remained unresponsive. The undersigned provided the applicant every means to contact the court on the day of the April 15, 2026 trial as well as that on July 13, 2026. She failed to appear, and the defense attorney had not been in contact with her. The undersigned did not feel it proper to continue the case for a fifth day or to even suggest dismissing her case by issuing a NOI to that effect. It was felt that the best route would be to award her the monetary and medical benefits to which she was entitled from an injury that had occurred 16 years earlier, and to order the defendant to administer such benefits thereafter. The undersigned expressed no opinion or belief over the merits whatsoever, and the undersigned has no enmity or bias towards the applicant.

IV
RECOMMENDATION

It is respectfully recommended that the applicant's Petition for Reconsideration in the form of an email dated August 13, 2026 be dismissed as untimely, unverified, or on both grounds. It is also respectfully recommended that the

applicant's Petition for Reconsideration in the form of an email dated August 13, 2026 be denied. (Report, at p. 2-9.)

III.

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

All parties to a workers' compensation proceeding 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].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd*. (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) 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. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, *supra*, at pp. 157-158 citing *Kaiser Co. v. I.A.C.* (*Baskin*) (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 [57 Cal.Comp.Cases 230].) As stated by the Court of Appeal:

> A denial of due process to a party ordinarily compels annulment of the Board's decision only if it is reasonably probable that, absent the procedural error, the party would have attained a more favorable result. However, if the denial of due process prevents a party from having a fair hearing, the denial of due process is reversible per se.

(*Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd*. (*Pinkney*) (1994) 26 Cal.App.4th 789, 806 [59 Cal.Comp.Cases 461], citations omitted.)

It is the policy of the law to favor, whenever possible, a hearing on the merits. (*Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205 [57 Cal.Comp.Cases 149]; see also *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478 ("when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default.") As we stated in *Chicago Dogs*: "This is particularly true in workers' compensation cases, where there is a constitutional mandate 'to accomplish substantial justice in all cases.'" (*Chicago Dogs*, *supra*, 90 Cal.Comp.Cases at p. 837, quoting Cal. Const., art. XIV, § 4.)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].)

Here, it appears from our preliminary review that the record is not clear as to whether adequate due process was afforded to applicant in relation to her claim of medical blackouts. 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 sections 5950 et seq.

V.

Accordingly, we grant applicant'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.

For the foregoing reasons,

IT IS ORDERED that applicant'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/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 16, 2026

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

KATHERINE MULDER
LAW OFFICE OF MARK FEUER
TOBIN LUCKS, LLP

PAG/cm

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