

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

KELSI FITZGERALD, *Applicant*

vs.

**RABOBANK OPERATIONS CENTER; SOMPO AMERICA FIRE & MARINE
INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ13114280
Goleta District Office**

**OPINION AND ORDER
GRANTING PETITIONS FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

Defendant seeks reconsideration and applicant has filed a Petition for Removal with regard to a workers' compensation administrative law judge's (WCJ) Findings and Order of April 16, 2026, wherein it was found that while employed as a data entry clerk during a cumulative period ending January 31, 2019, applicant sustained industrial injury to her upper extremities, knees and in the forms of "internal conditions," rheumatoid arthritis, sarcoidosis, and fibromyalgia. The decision included a finding that "the medical reporting and deposition testimony of Melvin Britton, M.D. shall not be provided to Jeffrey Hirsch, M.D., reporting in the capacity of a Labor Code § 5701 'regular physician'." [sic]

Defendant contends that the WCJ erred in finding that applicant sustained industrial injury to the various body parts, arguing that it denied injury and that the only issue at trial was "Whether PQME Melvin Britton, M.D.'s medical reports should be transmitted to Jeffrey Hirsch, M.D., court appointed pursuant to [Labor Code section] 5701." Applicant contends that the WCJ erred in ordering that Dr. Britton's reports and deposition testimony not be transmitted to Dr. Hirsch. Defendant has filed an Answer to applicant's Petition, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report). In the Report, the WCJ admits error in finding industrial injury and recommends that we grant reconsideration and amend the decision to reflect that the issue of industrial injury is still at issue.

As explained below, we will grant the petitions and amend the decision to reflect that applicant “claims” injury and to reflect that the parties be allowed to transmit Dr. Britton’s reporting and deposition testimony to Dr. Hirsch.

Preliminarily, we note that former Labor Code 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, Labor Code 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 Labor Code 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 April 29, 2026 and 60 days from the date of transmission is Sunday, June 28, 2026. The next business day that is 60 days from the date of transmission is Monday, June 29, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on June 29, 2026, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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

¹ 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.

parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code 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 April 29, 2026, and the case was transmitted to the Appeals Board on April 29, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 29, 2026.

With regard to defendant's Petition, as acknowledged in the Report, the issue of industrial injury to the various body parts was not at issue, defendant did not stipulate to industrial injury, and, according to the WCJ, the record does not currently contain sufficient evidence to support a finding of industrial injury. Accordingly, we will grant reconsideration and amend the decision to reflect that applicant "claims" injury to the various body parts, deferring this issue for future adjudication.

With regard to applicant's contention regarding transmitting Dr. Britton's reporting and testimony to Dr. Hirsch, Dr. Hirsch was appointed by the WCJ as a Labor Code section 5701 independent medical evaluator on August 28, 2025 after various reports and deposition sessions of Dr. Britton. Dr. Britton's reporting was deemed by us to not constitute substantial evidence of industrial injury in an Opinion and Decision of June 23, 2023, and the WCJ felt that Dr. Britton's subsequent reporting also did not constitute substantial medical evidence. Additionally, Dr. Britton advised the parties that he was contemplating retirement.

Applicant's petition is captioned as a petition for removal. However, A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. Here, because the WCJ's decision found industrial injury, it contained a final order. Even though applicant only challenges the non-final order regarding the transmittal of Dr. Britton's medical records, because review is sought of a "hybrid" decision, we treat applicant's Petition as one for reconsideration despite it being captioned as one for removal.

Ordinarily, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions. Here, however, because defendant challenged a final order and, as explained above, we granted reconsideration with regard to this final order, "it is settled law that 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. [Citations.]" (*Pasquotto v. Hayward Lumber* (2006) 71 Cal.Comp.Cases 223, 229, fn. 7 [Appeals Bd. en banc].)

Turning to the merits of applicant's Petition, in *Woods v. Liv Home, Inc.* (2025) 2025 Cal. Wrk. Comp. P.D. LEXIS 143, *7-9 (Appeals Bd. panel), a panel stated:

Generally, the Appeals Board is broadly authorized to consider the reports of attending or examining physicians. (Lab. Code, § 5703(a)(1); *Valdez v. Workers' Comp. Appeals Bd.* (2013) 57 Cal. 4th 1231, 1239 [164 Cal. Rptr. 3d 184, 312 P.3d 102, 78 Cal.Comp.Cases 1209] (*Valdez*.) The weight accorded the evidence, including the weighing of medical-legal reporting in evidence, is a matter to be determined by the WCJ and by the Appeals Board. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312. 317 [35 Cal.Comp.Cases 500]; *Lundberg v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 436, 440 [33 Cal.Comp.Cases 656].) All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law. (Lab. Code, § 3202.5.)

Even in instances where a WCJ or the Appeals Board has determined that a report has limited or no evidentiary weight with respect to the medical-legal conclusions reached by the evaluating physician, or because of other procedural or substantive deficiencies, the report may nonetheless contain information relevant to the determination of issues necessary to the adjudication of the claim. Examples of relevant information may include a record of presenting symptoms, medical histories, a review of medical records that later become lost or otherwise unavailable, records of diagnostic testing, and clinical observations.

Allowing deficient medical-legal reporting to remain in evidence while assigning it the appropriate evidentiary weight is consonant with well-

established principles favoring the broad admissibility of evidence in workers' compensation proceedings. Indeed, "the Appeals Board is accorded generous flexibility by sections 5708 and 5709 to achieve substantial justice with relaxed rules of procedure and evidence." (*Barr v. Workers' Comp. Appeals Bd.* (2008) 164 Cal.App.4th 173, 178 [73 Cal.Comp.Cases 763].) Similarly, the Appeals Board is broadly authorized to consider "[r]eports of attending or examining physicians." (§ 5703, subd. (a); *Valdez, supra*, at p. 1239.) Section 4064(d) provides the no party is prohibited from obtaining *any* medical evaluation or consultation at the party's own expense, and that *all* comprehensive medical evaluations obtained by any party shall be admissible in any proceeding before the appeals board except as provided in specified statutes. (Lab. Code, § 4064(d); *Valdez, supra*, at p. 1239.) Section 4062.3(a) further provides that any party may provide to the QME, subject to the restrictions set forth in the statute, any records prepared or maintained by the employee's treating physician or physicians and medical and nonmedical records relevant to determination of the medical issue. (Lab. Code, § 4062.3(a).) Taken together, these case law and statutory prescriptions underscore the importance of allowing for the full consideration of the entire evidentiary record, in furtherance of the substantial justice required in workers' compensation proceedings. Accordingly, even in those instances where a report does not meet minimum standards, it should generally remain in evidence and be accorded its appropriate evidentiary weight. (See also Cal. Code Regs., tit. 8, § 10682(c).)

Based on the above, we find it appropriate for Dr. Britton's testimony and reporting to be transmitted to Dr. Hirsch. Dr. Hirsch's reporting will be judged on its own merit and must constitute substantial medical evidence to be relied upon. As a professional physician and evaluator exercising his own medical judgement, we see little risk that Dr. Hirsch will be unduly swayed or prejudiced by Dr. Britton's previous reporting and testimony in this matter.

Accordingly, we grant reconsideration and amend the WCJ's decision to reflect that applicant "claims" injury to the various body parts, and to reflect that the parties are to transmit Dr. Britton's testimony and reporting to Dr. Hirsch. We express no opinion on any other outstanding issue in this matter.

For the foregoing reasons,

IT IS ORDERED that Applicant and defendant's respective Petitions for Reconsideration of the Findings and Order of April 16, 2026 are **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of April 16, 2026 is **AMENDED** as follows:

FINDINGS OF FACT

1. Kelsi Fitzgerald, age 45 on the date of the alleged injury, while employed during the period of January 1, 2018, through January 31, 2019, as a data entry clerk – Electronic Wire Department, Occupational group No. 112, at Santa Maria, California, by Rabobank – Operations Center, claims injury arising out of and within the course of employment in the form of internal conditions, rheumatoid arthritis, sarcoidosis, fibromyalgia, and to her upper extremities, and knees.

2. At the time of the injury, the employer's workers' compensation was Sampo America Fire & Marine Insurance Company.

3. The employer has furnished no medical treatment.

4. No attorney fees have been paid, and no attorney fee arrangements have been made.

5. It is found the medical reporting and the deposition testimony of Melvin Britton, M.D., shall be provided to Jeffrey Hirsch, M.D., reporting in the capacity of a Labor Code §5701 "regular physician."

ORDER

IT IS HEREBY ORDERED that the medical records and deposition testimony of Melvin Britton, M.D., shall be provided to Jeffrey Hirsch, M.D., as provided in Findings number 5.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 29, 2026

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

**KELSI FITZGERALD
GHITTERMAN, GHITTERMAN & FELD
TOBIN LUCKS
WAI, CONNOR & HAMIDZADEH**

DW/oo

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