WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

LEROY COX, *Applicant*

vs.

ROBERTSON'S READY MIX, permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ931866 (SBR 0332303)
San Bernardino District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings, Award, and Order issued on March 16, 2026. The workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant sustained an injury to the lumbar spine, right shoulder, right wrist, ribs, thoracic spine, head, teeth, jaw (clenching), nose, right clavicle, left lung, sexual dysfunction, bowel dysfunction, urinary dysfunction, sleep, hearing, nervous system, psyche and esophagus (upper GI); and that applicant's injury caused permanent total disability of 100%.

Defendant disputes the finding of permanent total disability alleging that the opinion of applicant's vocational expert is not substantial because the expert did not consider work restrictions standing alone; and that the WCJ erred in her calculation of the permanent disability attributable to psychiatric injury and did not apply the apportionment analysis provided by the agreed medical evaluator (AME).

Applicant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending denial of defendant's Petition, except as to the rating for applicant's injury to psyche.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, 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 section 5950 et seq.

FACTS

Applicant, while working as a cement truck driver on January 31, 2006, sustained injury to his lumbar spine, right shoulder, right wrist, and ribs and claimed injury to his head, jaw, teeth, nose, right clavicle, lungs, thoracic spine, hips, pelvis, knees, sexual disfunction, ankles, bowel disfunction, urinary disfunction, sleep, hearing, skin, nervous system, psyche and esophagus.

There are several AMEs who have issued reports in this case. As relevant here, following is a brief summary of each.

The AME in orthopedics is Jaime Contreras, M.D. Dr. Contreras issued several reports, the most recent of which is dated June 14, 2017, following his evaluation of applicant. (Joint Exh. T1.) He found that applicant sustained injury to his low back, right shoulder, right wrist, and neck. He opined that applicant had lost 50% of pre-injury capacity for lifting, bending, reaching, and grasping, as well as a 25% loss in the low back for standing, walking, and climbing and a 25% loss in the neck for sitting and standing. (*Id.* at p. 11.) He provided work restrictions that restricted heavy lifting, repetitive bending, prolonged standing, prolonged walking, and repetitive climbing, and pushing, pulling, grasping, and gripping with the right upper extremity. He concluded that applicant would be precluded from his customary work as a truck driver. (*Id.* at p. 12.)

Ronald Kent, M.D., Ph.D., was selected as the AME in neurology. His most recent report was dated May 7, 2010 (Joint Exh. X2), but his last evaluation of applicant was March 2, 2010 (Joint Exh. X3). He found applicant was at maximum medical improvement from a neurological standpoint on May 5, 2009. (Joint Exh. X6.) He concluded that applicant had whole person impairment (WPI) of 14%, including 8% due to residual difficulty with recent memory and impairment for headaches. He also noted that, "based on the occasional incidence of dizziness or imbalance, it would be appropriate to avoid activities requiring exposure to hazardous machinery or unprotected heights." (*Id.* at p. 25.) His later reports did not change any of these opinions.

On November 22, 2016, Dr. Kent was deposed. (Joint Exh. X1.) He was questioned about applicant's opiate use, particularly the use of Fentanyl and Percocet, in addition to several other medications. Dr. Kent opined based on counsel's hypothetical enumeration of the medications

applicant was taking at the time of the deposition that applicant would not be precluded from returning to work. (*Id.* at p. 20:25-21:2.) He did not change any of his prior opinions.

James Jennison, Ph.D., was the AME for neuropsyche. He issued one report dated May 28, 2009. (Joint Exh. Z1.) There was no comment on work restrictions.

Stanley J. Majcher, M.D., acted as the AME in internal medicine. He last evaluated applicant on May 5, 2017. From an internal medicine standpoint, he found impairment for a lung disorder, gastritis, lower digestive problems, sexual disfunction, and a sleep disorder.

Joseph Schames, D.M.D, acted as the AME for dentistry. He evaluated applicant on October 28, 2010 (Joint Exh. Y6) and issued five reports. He found impairment for mastication, speech, trigeminal neuropathic disorder. He provided the following work restrictions:

> Since the patient suffers from Myofascial Pain of the facial musculature, activities should be prophylactically restricted so as not to aggravate the musculature. The activities include: cradling a phone between the facial, neck, and shoulder musculature; avoidance of extensive talking of 20 minutes straight without taking a 10-minute rest; an improper posture due to a non-ergonomically designed environment; and comparable physical activities. The patient must also be restricted in the open labor market from cold temperatures and environments such as refrigeration coolers and direct drafts of air-conditioning, as this will increase myofascial pain.
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> Since the patient is clenching/grinding his teeth and bracing his facial musculature, restrictions involving emotional stress must be given consideration. This restriction contemplates the individual avoiding undue emotional distress.

(*Id.* at p. 36.)

He later found that applicant's malocclusion was not industrial, but that his impairment findings and his opinion that the dental injuries were 100% industrial did not change. (Joint Exh. Y8.)

The parties also utilized Geoffrey Smith, M.D., as an AME in Otolaryngologist (ENT), and he last evaluated applicant on July 10, 2017. He opined that applicant would benefit from hearing aids due to hearing loss in both ears. He did not provide work restrictions and deferred to orthopedics. (Joint Exh. V2.)

The AME in psychiatry was David Davis, M.D., and he last evaluated applicant on October 24, 2019. (Joint Exh. W2.) He had some concerns about applicant's credibility but ultimately found that his depressive symptoms and difficulty with concentration were in the very mild range. He provided a number of diagnoses, including an opioid related disorder as well as a learning

disorder.[1] He concluded that 35% of applicant's impairment was caused by the industrial injury, and that applicant had a Global Assessment of Functioning score (GAF) of 63. He opined that applicant probably cannot return to work as a cement truck driver since he is under the influence of three opioid medications which would impair his reaction time. From a psychological perspective, he further opined that there are a number of jobs that applicant would still be able to perform even with the opioid disorder.

Additionally, applicant utilized a vocational expert in this matter, Roderick Stoneburner, who issued two reports. Mr. Stoneburner primarily relied on the reporting of Dr. Contreras, the AME in orthopedics, and the treating physician, Saeed Nick, M.D., a pain specialist. In short, Mr. Stoneburner concluded:

> Based on the findings and conclusions of this vocational evaluation, I concluded that, as a result of his industrial injury of 1/3l/2006, Mr. Cox is not employable and has no earning capacity. He is unable to compete in the open labor market.
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> Mr. Cox's orthopedic medical impairments to his cervical spine, right shoulder and hand, thoracic, and lumbar spine, when combined with the consequences of medical treatment (pain and use of pain medication) render him 100% vocationally disabled.
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> Mr. Cox is not amenable to rehabilitation, given the vocational impact of his industrial injury of 1/31/2006.

(Applicant's Exh. 13A, at p. 29.)

Defendant sought an opinion in rebuttal from vocational expert Howard Goldfarb, who found that applicant could engage in light and sedentary work activity with the ability to sit and stand at both semi-skilled and unskilled work levels. He also found that applicant is amenable to vocational rehabilitation starting with part time work and moving to full time work. (Defendant's Exh. D2.)

The matter was set for trial and was first submitted in July of 2025. The WCJ vacated the submission requesting further development of the AME report in dentistry as medical records were pending to the AME. On December 18, 2025, the matter was re-submitted.

On March 16, 2026, the WCJ issued the F&A. With regard to impairment, she concluded that applicant has 93% impairment after adjustment for occupation, age, and apportionment. In her rating, she assigned 23% WPI for the psyche injury based on a GAF score of 55.

[1] The exhibit is out of order and the report itself does not include page numbers. The cited portions are from the first page as it is organized in the exhibit.

However, she also found that applicant was 100% disabled based on the vocational evidence, stating:

> Additionally, the parties utilized the services of separate vocational specialists. Applicant's vocational evaluator, Roderick Stoneburner, found that based upon the myriad complaints and impairments, applicant is not amenable to work in the open labor market and is 100% permanently totally disabled. Defendant's vocational evaluator,
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> Howard Goldfarb, found that applicant could engage in light and sedentary work activity with the ability to sit and stand at will at both semi-skilled and unskilled work levels and is amenable to vocational rehabilitation services, starting with part time and moving to full time work. He suggested positions such as in-office survey worker, information clerk and gate attendant. However, after considering the neuropsych reporting of Dr. Jennison, I do not feel that those positions are available to the applicant. I find, that based upon the vocational reporting of Mr. Stoneburner, applicant is 100% permanently and totally disabled.

I.

Former Labor Code section 5909[2] 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.
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> (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."

[2] All further statutory references will be to the Labor Code unless otherwise indicated.

Here, according to Events, the case was transmitted to the Appeals Board on April 15, 2026 and 60 days from the date of transmission is Sunday June 14, 2026. The next business day that is 60 days from the date of transmission is Monday, June 15, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision issued by or on Monday, June 15, 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 April 15, 2026 and the case was transmitted to the Appeals Board on April 15, 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 April 15, 2026.

II.

In the en banc decision in *Nunes v. State of California, Dept. of Motor Vehicles* (June 22, 2023) 2023 Cal. Wrk. Comp. LEXIS 30 [88 Cal.Comp.Cases 741] ("*Nunes I*"), the Appeals Board held that section 4663 requires a **reporting physician** to make medical determinations in a case, including determinations on the issue of apportionment. The Board further held that vocational evidence may be used to address issues relevant to the determination of permanent disability, and that vocational evidence must address apportionment, but that a vocational evaluator may not opine on issues that require expert medical evidence. The Board affirmed these holdings in *Nunes v. State of California, Dept. of Motor Vehicles* (August 29, 2023) 23 Cal. Wrk. Comp. LEXIS 46 [88 Cal.Comp.Cases 894] ("*Nunes II*").

[3] 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.

The role of a vocational evaluator is to review the medical record created by the physicians and reach conclusions as to applicant's vocational feasibility based upon that record. Applicant's physical work restrictions are medical issues, which require medical evidence. A vocational expert cannot opine on vocational feasibility without an adequate assignment of restrictions on the open labor market.

As our Supreme Court has explained:

> Permanent disability is understood as the irreversible residual of an injury. (Citation.) A permanent disability is one which causes impairment of earning capacity, impairment of the normal use of a member, or a competitive handicap in the open labor market. (Citation.) Thus, permanent disability payments are intended to compensate workers for both physical loss and the loss of some or all of their future earning capacity.

(*Brodie v. Workers' Comp. Appeals Bd*. (2007) 40 Cal.4th 1313, 1320.)

In *Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262, the Supreme Court explained that the Permanent Disability Rating Schedule (PDRS) may be rebutted as follows:

> Thus, we conclude that an employee may challenge the presumptive scheduled percentage of permanent disability prescribed to an injury by showing a factual error in the calculation of a factor in the rating formula or application of the formula, the omission of medical complications aggravating the employee's disability in preparation of the rating schedule, or by demonstrating that due to industrial injury the employee is not amenable to rehabilitation and therefore has suffered a greater loss of future earning capacity than reflected in the scheduled rating.

(*Id.* at p. 1277.)

Applying *Ogilvie*, the standard for finding permanent total disability via rebuttal is:

> The proper legal standard for determining whether applicant is permanently and totally disabled is whether applicant's industrial injury has resulted in applicant sustaining a complete loss of future earning capacity. (§§ 4660.1, 4662(b); see also 2005 PDRS, pp. 1–2, 1–3.) …
>
> A finding of permanent total disability in accordance with the fact (that is complete loss of future earnings) can be based upon medical evidence, vocational evidence, or both. Medical evidence of permanent total disability could consist of a doctor opining on complete medical preclusion from returning to work. For example, in cases of severe stroke, the Appeals Board has found that applicant was precluded from work based solely upon medical evidence. (See i.e., *Reyes v. CVS Pharmacy*, (2016) 81 Cal. Comp. Cases 388 (writ den.); see also, *Hudson v. County of San*

Diego, 2010 Cal. Wrk. Comp. P.D. LEXIS 479.)

> A finding of permanent total disability can also be based upon vocational evidence. In such cases, applicant is not precluded from working on a medical basis, per se, but is instead given permanent work restrictions. Depending on the facts of each case, the effects of such work restrictions can cause applicant to lose the ability to compete for jobs on the open labor market, which results in total loss of earning capacity. Whether work restrictions preclude applicant from further employment requires vocational expert testimony.
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> * * *
> … [P]er *Ogilvie* and as described further in *Dahl*, the non-amenability to vocational rehabilitation must be due to industrial factors. (*Contra Costa County v. Workers' Comp. Appeals Bd*., (*Dahl*) 240 Cal. App. 4th 746, 193 Cal. Rptr. 3d 7.)

(*Soormi v. Foster Farms*, 2023 Cal. Wrk. Comp. P.D. LEXIS 170, *11-12, citing *Wilson v. Kohls Dep't Store*, 2021 Cal. Wrk. Comp. P.D. LEXIS 322, *20–23.)

Where an applicant seeks to rebut the PDRS and prove permanent total disability, applicant must prove the following:

1) Applicant has been assigned (a) work restriction(s), which requires substantial medical evidence.

2) The work restriction(s) precludes applicant from rehabilitation into another career field, which requires vocational expert evidence.

3) The work restriction(s) precludes applicant from competing on the open labor market, which requires vocational expert evidence.

4) The cause of the work restriction(s) is 100% industrial, which requires substantial medical evidence

(*Valdovinos v. Universal Site Services, Inc.* [2025 Cal. Wrk. Comp. P.D. LEXIS 76, *14].)

Finally, the law requires the Appeals Board to base its decisions on 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].) To constitute substantial evidence, a medical or vocational opinion must state its conclusions in terms of reasonable probability, avoid speculation, rely on pertinent facts and an adequate examination and history, and explain the reasoning supporting its conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) Medical

or vocational reports and opinions do not constitute substantial evidence when they contain known errors or rely on facts that are no longer germane, inadequate medical histories or examinations, or incorrect legal theories. Likewise, a medical or vocational opinion cannot support the Board's findings if it rests on surmise, speculation, conjecture, or guesswork. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].) Accordingly, the Board may reweigh the evidence and reach a decision different from the WCJ's determination when other evidence of substantial probative value supports a contrary conclusion. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.2d 312, 318-319 [35 Cal.Comp.Cases 500].)

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].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).)

Here, Mr. Stoneburger relies on only the orthopedic restrictions from Dr. Contreras as well as his own finding that applicant's pain complaints and opioid use preclude applicant from participating in the open labor market and prevent him from being amenable to rehabilitation. There is no medical opinion to support this analysis. Dr. Contreras was never asked to comment on the vocational reporting, which found that applicant's restrictions, including the additional pain component, rendered applicant not amenable to rehabilitation. Dr. Contreras provided no opinion as to whether applicant could work but provided restrictions tantamount to a sedentary position. This is not substantial for finding that applicant is 100% and that the PDRS is rebutted. The fact that the AME has since passed does not make the record substantial, and it will need to be developed.

Moreover, there is no opinion from any doctor that the applicant has a pain condition. Most of the evaluators last saw applicant about 10 years ago, apart from the psyche AME, Dr. Davis. Dr. Davis did not diagnose a pain condition at that time. Dr. Davis did suggest that the opioid

disorder he found would not have precluded applicant from employment or even a tiered vocational rehabilitation program. Likewise, there are fairly significant restrictions provided by Dr. Schames that may support Mr. Stoneburner's findings, however those restrictions were not discussed by Dr. Stoneburner.

The aforementioned issues require further review of the record and study before we will be able to render a final decision on the merits.

III.

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. I.A.C.* (*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. I.A.C.* (*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. I.A.C.* (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 14 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; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593.) 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.

IV.

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 of the Findings and Award issued on March 16, 2026, by the workers' compensation administrative law judge 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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 15, 2026

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

LEROY COX
LAW OFFICES OF RICHARD W. SMITH
FAMIGLIETTI & VOLPE

TF/md

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