WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

LUIS TREJO, *Applicant*

vs.

GARROD TRUST; STAR INSURANCE COMPANY, administered by AMERITRUST (MEADOWBROOK), *Defendants*

Adjudication Numbers: ADJ14019875; ADJ14019876
Oakland District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings, Award, and Order (FA&O) and Notice of Intention (NOI) issued on October 6, 2025, by the workers' compensation administrative law judge (WCJ) in cases ADJ14019875 and ADJ14019876.

The WCJ found, in pertinent part, that applicant, while employed by defendant on February 9, 2019 as a vineyard worker, sustained an injury arising out of and in the course of his employment (AOE/COE) to his left knee, causing the need for further medical treatment. (ADJ14019875).

The WCJ further found that, while employed by defendant as a vineyard worker during the period ending July 19, 2017, applicant sustained an injury AOE/CO to his low back. (ADJ14019876). In both cases, the WCJ found that Exhibit 18 was not admissible, and issued an Order and Notice of Intent (NIT) that the parties are to meet and confer about the use of an Agreed Medical Evaluator (AME) to address both claims. The NIT advised that an Independent Medical Evaluator (IME) shall be appointed per Lab. Code Section 5701[1] unless "the parties provide notification that they have selected an agreed medical evaluator to address both claims." All other issues were deferred. (FA&O, pp. 1-2.)

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

Applicant contends that the Trial Judge erred in (1) finding that the reporting of Don. Williams, M.D. does not constitute substantial evidence, (2) ordering the parties to attempt to agree on an AME to replace Dr. Williams, (3) issuing the NIT to appoint an IME in the event that parties cannot agree on an AME, (4) not admitting vocational expert Jeff Malmuth's June 5, 2025 report into evidence (Ex. 18), (5) failing to find that applicant properly rebutted the Permanent Disability Rating Schedule (PDRS) based upon the vocational reports of Jeff Malmuth that established 100% permanent disability, and (6) failing to disregard Dr. Williams' apportionment, as it does not constitute substantial medical evidence.

We received an Answer from defendants.

The WCJ issued a Report and Recommendation (Report) recommending that the Petition be denied.

We have considered the Petition and the contents of the Report. Based upon our preliminary review of the record, we will grant applicant's Petition for Reconsideration.

Our order granting 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 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.

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.
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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. (Lab. Code, § 5909.)

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 November 12, 2025, and 60 days from the date of transmission is Sunday, January 11, 2026. The next business day that is 60 days from the date of transmission is Monday, January 12, 2026. (See Cal. Code Regs., tit. 8 § 10600(b).)[2] This decision is issued by or on, January 12, 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, the Report was served on November 12, 2025, and the case was transmitted to the Appeals Board on November 12, 2025. 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 November 12, 2025.

II.

Preliminarily, we note the following:

On March 31, 2025, defendants filed a Declaration of Readiness to Proceed (DOR) for a Mandatory Settlement Conference (MSC) on both cases, requesting a hearing date of May 22, 2025, on the issues of permanent disability and future medical treatment. The DOR states

[2] 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.

"Defendant's vocational discovery is finally complete. Report served upon applicant's attorney on March 12, 2025. Parties ready for Trial Regarding PD. WCAB assistance is requested." (DOR, 3/31/25, p. 7.) Applicant did not file an objection to the DOR but listed an objection on the Pre Trial Conference Statement (PTCS), citing a need for additional discovery, and specifically requesting a supplemental reporting of Mr. Malmuth be admitted into evidence if the matter is set for trial. (PTCS, 5/22/25, p. 3.)

On September 23, 2025, the parties proceeded to trial. At trial, the parties stipulated that in ADJ14019875, applicant sustained injury AOE/COE while employed by defendant on February 9, 2019 to his left knee, and claims to have sustained injury to his lumbar spine. The issues included whether applicant sustained injury to the lumbar spine, permanent disability, future medical care, attorney fees, whether applicant rebutted the PDRS and is 100 percent disabled, and whether Mr. Malmuth's supplemental report is admissible in evidence. (MOH/SOE, 9/23/25, pp. 2-3.)

In ADJ14019876, the parties stipulated that applicant sustained injury AOE/COE to his low back, and claims to have sustained injury to his left knee. The issues included whether applicant sustained injury to the left knee, permanent disability, future medical fare, attorney fees, and whether applicant rebutted the PDRS and is 100 percent disabled, and whether Mr. Malmuth's supplemental report is admissible in evidence.

At trial, applicant testified, and evidence in the form of medical reporting from Dr. Williams, two reports from Jeff Malmuth, and one report from Scott Simon were admitted into evidence. The June 4, 2025 report from vocational expert Jeff Malmuth, listed as Exhibit 18, was marked for identification only.

On October 6, 2025, the WCJ issued her FA&O on both cases, in which it was found that 1) on February 9, 2019, applicant sustained injury AOE/COE while employed by the defendant to his left knee, and that 2) while employed by defendant during the period ending July 19, 2017, applicant sustained injury AOE/COE to his low back. The WCJ further found Exhibit 18 inadmissible, and issued an Order and Notice of Intent (NIT) that the parties are to meet and confer about the use of an Agreed Medical Evaluator (AME) to address both claims. The NIT advised that an Independent Medical Evaluator (IME) shall be appointed per section 5701 unless the parties provide notification that they have selected an AME to address both claims.

It is from this FA&O that applicant seeks reconsideration.

III.

In support of the Order that the parties agree upon an AME to address both claims of injury or a 5701 doctor will be appointed, the WCJ states in the Opinion:

> …
> Here, there are numerous issues with Dr. Williams' reporting. First, it appears he only reviewed medical reports at the time he performed his initial evaluation in May of 2020, and in fact, some of those reports were viewed on applicant's phone. (Exhibit 15 at p. 4.) Further, the few records he reviewed only addressed the thoracic spine, and the most recent report was dated December of 2018. (*Id*. at pp. 4-5.) Aside from some x-rays, it is unclear whether applicant received any medical treatment to his knee or lumbar spine.
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> Additionally, the entire basis for Dr. Williams's determination that there was a specific injury to the left knee appears to have been a letter from defendant advising him that there had been such an injury. (See generally Exhibit 13.) This is because Dr. Williams believed that the knee injury was a result of the cumulative injury until he received defendant's letter. (See Exhibits 15 and 14.)
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> Second, Dr. Williams's reports are incomplete. For example, in his initial report, he stated that applicant had diabetes and was taking gabapentin for foot numbness, but he did not explore whether applicant had diabetic neuropathy or whether diabetes was contributing towards applicant's difficulty with ambulation.
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> Similarly, Dr. Williams did not explore or explain why applicant's difficulty with ambulation continued to progress despite being off work for years. For example, when applicant was first seen, applicant could tiptoe and walk on his heels without pain, but at his most recent evaluation, those abilities were compromised. (See Exhibit 15 at p. 4, Exhibit 19 at p. 4.)
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> Likewise, Dr. Williams did not address or explore the frozen shoulder or ankylosing spondylitis in the neck and thoracic spine. (See Exhibit 19.) Third, Dr. Williams's determinations are conclusory. For example, he initially stated that the lumbar spine had a whole person impairment of 10% with apportionment of 15%. (Exhibit 15 at pp. 6-7.) However, in his May 29, 2020 report, he stated that the lumbar impairment was 12% with no explanation as to why he would increase that value. (Exhibit 14 at p. 2.)
>
> Then, in his April 20, 2021 report, he increased the lumbar impairment to 13% and increased the apportionment to 20% with no explanation to support his reasoning. (Exhibit 13 at p. 5.)
>
> He also did not provide any substantive reasoning in support of why he would change applicant's work restrictions or address whether applicant's non-industrial

> conditions, such as cancer, would have affected those restrictions. Similarly, Dr. Williams' apportionment determinations are unsupported and unintelligible. For example, he stated that the "left knee arthritis is 80% from the specific injury and 20% due to the non-industrial arthritis." (Exhibit 12 at p. 5.)
>
> Dr. Williams also provided confusing opinions as to which of the injuries caused impairment. For example, in his November 4, 2020 report, he stated that applicant had an injury to the left knee, another to the low back and that there was "evidence of a cumulative trauma," but he failed to explain how he determined which of those injuries caused the impairment. (See Exhibit 13 at p. 2; Exhibit 12 at p. 5; Exhibit 19 at p. 7.)
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> Fourth, Dr. Williams acknowledges that the Guides preclude combining [sic] gait derangement with other impairments, but recommends combining the lumbar impairment with the gait derangement. (Exhibit 19 at p. 7.)
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> In short, the reports issued by Dr. Williams are not substantial evidence, and they cannot form the basis of an award. Further, since his reports formed the basis of Mr. Malmuth's opinions, Mr. Malmuth's reports also cannot form the basis of an award.

(Opinion, at pp. 9-10.)

IV.

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].)

In this regard, it has been long established that, in order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. (*McAllister v. Workmen's Comp. Appeals Bd*. (1968) 69 Cal.2d 408, 413, 416-417, 419 [33 Cal.Comp.Cases 660]; *Travelers Ins. Co. v. Industrial Acc. Com. (Odello)* (1949) 33 Cal.2d 685, 687-688 [14 Cal.Comp.Cases 54]; *Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692 [58 Cal.Comp.Cases 313].)

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) evidence on an issue.

Based upon the existing record, it is unclear whether the existing record is sufficient to support the decision, order, and legal conclusions of the WCJ; and/or whether further development of the record may be necessary.

We make no determination at this time as to any of the issues or findings presented.

V.

Finally, we observe that 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 *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 also 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 therefore.].)

"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 [62 Cal.Rptr. 757, 432 P.2d 365]; *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.

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.

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 applicant's Petition for Reconsideration of the Findings of Fact Award and Order issued on October 6, 2025, 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/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 12, 2026

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

LUIS TREJO
KNOPP PISTIOLAS
GILSON DAUB

VC/bp

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