WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARIA ANGELICA HERNANDEZ, *Applicant*

vs.

FIVE JS FAMILY ENTERPRISES, LP DBA MCDONALD'S RESTAURANT; SAFETY NATIONAL INSURANCE, administered by LWP CLAIMS SOLUTIONS, *Defendants*

Adjudication Number: ADJ8331091
San Bernardino District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Supreme Copy Service (cost petitioner) seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on July 22, 2026, wherein the WCJ found that: the Non-IBR Medical-Legal Petition, filed by Supreme Copy Service on September 26, 2025, is barred by the doctrine of laches and all other issues are moot.

Cost petitioner contends that the WCJ failed to rule on the admissibility of their proposed Exhibits 27, 28, 29, 31 and 34 which were marked for identification only. Cost petitioner further contends that the defendant failed to establish the element of prejudice required for a successful laches defense.

We received an Answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) in response to cost petitioner's Petition, recommending that it be denied.

We have considered the allegations in 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 cost petitioner'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.

I.

Preliminarily, we note that petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section[1] 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.
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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."

Here, according to Events, the case was transmitted to the Appeals Board on August 28, 2026, and 60 days from the date of transmission is October 27, 2026. This decision is issued by or on October 27, 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 28, 2026, and the case was transmitted to the Appeals Board on August 28, 2026. Service

[1] All statutory references are to the Labor Code unless otherwise stated.

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 28, 2026.

II.

The WCJ's Report states as follows:

> Defendant offered no exhibits other than requesting judicial notice be taken of documents already contained in the WCAB EAMS file. This is because, per the testimony of defense witness, Sudha Deane, the administration of the claim changed hands multiple times and she, as a claims examiner for LWP Claims, did not have access to any of the records of the prior claims administrator, American Claims Management. She also testified that claims files were required to be retained for five years from the provision of workers' compensation benefits. She had no information if the file was destroyed after the legally-required retention period. She testified that LWP Claims did not receive any of the demands dated in 2019 or 2020.
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> Ms. Deane testified that at the time of injury through settlement, the claim was handled by California Restaurant Mutual Benefit Corporation, permissibly self-insured and the claims were administered by American Claims Management. It was in July of 2022 when Safety National Insurance purchased the liability from California Restaurant Mutual Benefit Corporation and that when a claim is transferred from another administrator, portions of the file may be lost or destroyed. She explained that there may be different computer systems and the systems may not talk to each other when the cases are transferred and that records that previously existed may no longer be available for review or production.
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> Ms. Dean testified that she did not find any 2nd bill review requests in the file, she didn't find any objections or correspondence asserting the amounts paid were insufficient until recently, when this case came to their attention. There were no such documents dating back to when the payments or notices issued. She doesn't know when the bills that Supreme Copy is pursuing were received by American Claims Management. She first got notice through LWP Claims when they started hearing from them in 2025, and back then, she was out on medical leave. The date range for the bills being pursued are from 11/2013 – 4/4/2014. Between April of 2014 to March 2025, she has no records that show Supreme Copy was not satisfied with the payments previously made and there were no requests for 2nd bill review.
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> Ms. Deane testified that she has no access to any EORs that may have been sent by American Claims Management to Supreme Copy in this claim. Ms. Deane testified that defendant has been prejudiced because too much time has elapsed. She cannot go back to American Claims Management and there are no adjusters from back then that she can reach out to because it has been too long.

The doctrine of laches is an equitable defense by which an unreasonable delay by a party may bar the party's right to any benefits claimed or defenses asserted. It is noted that delay alone ordinarily does not constitute laches, as lapse of time is separately embodied in statutes of limitation. However, there is no statute of limitations for Non-IBR Medical-Legal petitions. What makes the delay unreasonable in the case of laches is that it results in prejudice (*Lam v Bureau of Security & Investigative Services* (1995) 34 Cal.App.4th 29, 36).

In the instant case, we have no way of knowing whether the prior claims administrator issued all the necessary EORs and objections to the bills purportedly sent to them by Supreme Copy Service, and whether Supreme Copy Service ever timely requested 2nd bill review because the claims records of American Claims Management are not available to the current claims examiner. This is significant prejudice to defendant. Under *Latta v. Western Inv. Company* (1949) 173 F.2d 99, the Court stated that equity frowns upon stale demands and declines to aide those who have slept on their rights.

While there currently exists no statute of limitations for the filing of a Non-IBR Medical-Legal Petition, in this case, the delay in seeking payment has resulted in significant prejudice to the current claims administrator (LWP Claims), who has no access to the claims file and documents that issued from the prior claims administrator, American Claims Management, and cannot properly defend the assertion of additional payment due to Supreme Copy Service insofar as the services were sought and charges were allegedly incurred in 2013 and 2014, yet not the subject of a Petition for Non-IBR Medical-Legal Dispute until September 26, 2025, when the petition was filed. By that time, the legal time requirement to keep a claims file had been exhausted and the current defendant does not have access to information it would need to properly dispute the charges asserted.

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Defendant, Safety National Insurance (**not** American Claims Management), more than adequately presented credible and persuasive evidence in the testimony of Sudha Deane, as to why laches was a proper defense. Laches, as a defense, is difficult for a defendant to meet and there is a two-prong test under California law. There must be unreasonable delay and actual prejudice to defendant. Both prongs are met in this matter. SCS's sitting on purportedly unpaid or underpaid invoices for over 10 years without filing a lien or filing a non-IBR Med-Legal Petition sooner than 11 – 12 years after incurring the charges is inherently an unreasonable delay. The statute of limitations for filing a lien for disputed charges is 18 months after the charges have been incurred. While there is presently no statute of limitation for a Non-IBR Medical-Legal Petition, as noted above, it goes against the spirit and intent of the law in allowing such petitions during the pendency of litigation so medical-legal providers could pursue payment before the case-in- chief

finalized, unlike lien claimants, who have to wait until the case is finalized or is abandoned.

Defendant in this matter has shown actual prejudice. The current claims examiner testified that the records of the prior claims administrator (American Claims Management) were not available to the current claims administrator (LWP Claims Solutions). Ms. Deane testified that claims files are required to be maintained for 5 years. Rule 10102 states claims files are to be maintained for five years from the date of injury, one year from the date compensation was last provided, or all compensation due or which may be due has been paid or an audit of a file has become final. This case settled via Compromise and Release at $3,500.00 on 6/24/2015. The last lien in this case resolved on 6/6/2016. The Petition for Non-IBR Med-Legal Dispute was not filed until 9/26/2025, more than 9 years after the last lien was resolved. The current claims administrator persuasively and effectively testified as to their lack of access to the prior administrator's file and how they could not properly defend the assertion of additional payment due to SCS because the legal time for maintaining a claim file had been exhausted under the prior claims administrator, and when the current administrator assumed the handling of the matter, they didn't have access to the information it needed to properly dispute the charges asserted. This is clearly a case where laches is a valid defense, and the undersigned found that defendant had met its burden of proof for a laches defense. It was not error to find laches as a bar to SCS's petition herein.

(Report, at pp. 5-6, 8-9.)

III.

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

The appeals board has broad equitable powers with respect to matters within its jurisdiction. (*Dyer v. Workers' Comp. Appeals Bd.* (1994) 22 Cal. App. 4th 1376, 1382 [28 Cal. Rptr. 2d 30].) Thus, equitable doctrines such as laches are applicable in workers' compensation proceedings. (*Truck Ins. Exchange v. Workers' Comp. Appeals Bd.* (*Kwok*) (2016) 2 Cal. App. 5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers' Comp. Appeals Bd.* (*Lutz*) (2013) 218 Cal. App. 4th 258, 268 [159 Cal. Rptr. 3d 779]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Martin)* (1985) 39 Cal.App.3d 57, 68, fn. 11 [50 Cal.Comp.Cases 411]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Valencia)* (1976) 41 Cal.Comp.Cases 730, writ denied.) Laches is a question of fact to be determined by the trier of fact. (*Kwok, supra,* 2 Cal. App. 5th at p. 402.) "The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." (*Conti v. Board of Civil Service Commissioners* (1969) 1 Cal. App. 3d

351, 359, 360, see also *Johnson v. City of Loma Linda* (2000) 24 Cal. 4th 61, 77.) Once an unreasonable delay has been found, there must also be evidence of prejudice to the defendant caused by that unreasonable delay. (*Ragan v. City of Hawthorne* (1989) 212 Cal. App. 3d 1361, 1367.) Prejudice is never presumed; rather it must be affirmatively demonstrated by the party asserting the defense in order to sustain its burden of proof. (*Piscioneri v. City of Ontario* (2002) 95 Cal. App. 4th 1037, 1050.) Thus, laches will apply only upon a showing of prejudice. (See, e.g., *New York Yankees v. Workers' Comp. Appeals Bd. (Montefusco)* (2001) 66 Cal.Comp.Cases 291, 2949 (writ den.); *McDonald's Corp. v. Workers' Comp. Appeals Bd. (George)* (2006) 71 Cal.Comp.Cases 674 (writ den.); *Wright v. Workers' Comp. Appeals Bd.* (2005) 70 Cal.Comp.Cases 95 (writ den.); *New Century Chamber Orchestra v. Workers' Comp. Appeals Bd. (Simonds)* (2003) 69 Cal.Comp.Cases 421, 424 (writ den.).)

Furthermore, 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.)

Based on our review, we are not persuaded that there is substantial evidence to support the WCJ's decision as to whether or not defendant has met its burden of proof regarding the applicability of laches here, without additional development of the record.

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 Labor Code sections 5950 et seq.

V.

Accordingly, we grant cost petitioner'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 cost petitioner'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/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 27, 2026

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

SUPREME COPY SERVICE, INC.
WORK COMP RESOLUTIONS, INC.

SL/abs

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