WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARIA LORENA PATINO, ***Applicant***

vs.

SALINAS FARM LABOR CONTRACTOR, INC.;
ZENITH INSURANCE COMPANY, ***Defendants***

Adjudication Number: ADJ20388475
Lodi District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact issued by the workers' compensation administrative law judge (WCJ) on August 4, 2026, wherein the WCJ found that: applicant was not employed on June 6, 2024, "the stipulated to date of injury"; the "threshold issue of employment obviates the need for further QME reporting"; and the "amended application is invalid based upon the stipulated to injury date."

Applicant contends in pertinent part that the pleadings should be amended according to proof.

We received an Answer from defendant.

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

We have considered the Petition for Reconsideration, the Answer, 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.

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 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 19, 2026, and 60 days from the date of transmission is Sunday, October 18, 2026. The next business day that is 60 days from the date of transmission is Monday, October 19, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, October 19, 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

---

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

[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.

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 19, 2026, and the case was transmitted to the Appeals Board on August 19, 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 19, 2026.

II.

FACTS

We will briefly review the relevant facts.

As stated in the WCJ's Opinion:

> As the applicant admittedly struggles to remember the specific date she was injured, and admittedly does not remember her last day, she was a credible witness appearing to answer questions directly. She states the day after her injury she showed up for work (MOH/SOE pg. 4:22). She later testified she worked four additional days after the injury (MOH/SOE pg. 5:16). She did verify her signature on the initial application as well as claim form that was completed in January 2025 (Joint 104, Joint 105; MOH/SOE pg. 5:9). She did not verify her signature when asked on the later amended application, testifying she was in Fresno on Saturday and did not believe she signed anything Friday or Saturday prior to the trial (MOH/SOE pg. 5:17).

(Opinion, at p. 4.)

As stated in the WCJ's Report:

> This matter proceeded to MSC June 22, 2026 before Judge Arendt. The parties explicitly stipulated in the PTCS, pg. 2 item 7 Other Stipulations "Applicant to Maintain Date of Injury as 06/06/2024 at Trial." (EAMS doc. 80474969) An Amended Application was filed July 25, 2026, received into EAMS/FileNet the following Monday, the date of trial, July 27, 2026. (EAMS doc. 65636900). The parties went on the record, and testimony was given by the applicant at that time. Minutes of Hearing/Summary of Evidence issued, and the matter stood submitted at that time.

Findings of Fact, Order and Opinion on Decision issued August 4, 2026. At that time it was determined there was no employment June 6, 2024; that the amended application which was attempting to changing the date of injury from June 6, 2024 to May 31, 2024, contra the stipulation both in the PTCS and at the stipulation at time of trial, was denied; and that bifurcation of further QME reporting was appropriate.

Petition for Reconsideration was filed timely by the applicant through counsel, seeking to reverse the finding that the Amended Application is invalid; that there is good cause to relieve the applicant from the prior stipulation of June 6, 2024 date of injury; to recognize the date of injury as May 31, 2024 on the basis of conforming to pleadings; rescind that the claim fails due to not being employed on June 6, 2024, and return the matter to trail level of further adjudication and development of the record; or in the alternative return the matter for further proceedings to determine whether good cause exists to relieve Applicant from the prior date of injury stipulation. This Report & Recommendation on Petition for Reconsideration follows.

DISCUSSION

The applicant was not employed on June 6, 2024.

By the applicant's own admission, she does not remember the date of injury (MOH/SOE pg. 5:2). She was a credible witness. Joint Exhibits 102 & 103 also do not document any employment on that date. This was the date explicitly stipulated to in setting this matter for trial. Generally, stipulations are binding upon the parties. Unless the trial court, in its discretion, permits a party to withdraw from a stipulation, it is conclusive upon the parties, and the truth of the facts contained therein cannot be contradicted. A stipulation is also binding on the court where the stipulation is not contrary to law, court rule or policy. (Robinson v. Workers' Comp. Appeals Bd. (1987) 194 Cal.App.3d 784, 790). The workers' compensation laws must be liberally construed with the purpose of extending their benefits for the protection of injured workers. (Id. at 790-791). In this instance, even in attempting to extend benefits to the injured worker, the available evidence does support the setting aside of the stipulation based upon the applicant testimony as well as the available documentary evidence (discussed more fully below) but does support a finding the applicant was not employed on June 6, 2024.

MSC stipulations are enforceable absent good cause to withdraw, and no good cause has been demonstrated.

At the time of MSC, the parties entered stipulations documented on the pre-trial conference statement ("PTCS") (EAMS Doc 80474969), with item 7 on page 2 of the PTCS indicating "Applicant to maintain date of injury as 06/06/2024 at trial." An amended application dated July 25, 2026, and uploaded in EAMS July 27, 2026 (the date of trial) (EAMS Doc 65636900) was then filed, changing the date of injury from June 6, 2024, to May 31, 2024, noting that the date of injury was being

amended per payroll records. It also purported to be electronically signed by the applicant on July 25, 2026, which would have been the Saturday immediately before the Monday trial.

Where a stipulation has been entered into through inadvertence, excusable neglect, fraud, mistake of fact or law, where the facts stipulated have changed or there has been a change in the underlying conditions that could not have been anticipated, or where special circumstances exist rendering it unjust to enforce the stipulation, a court may exercise its sound discretion and set the stipulation aside. But, when there is no mistake but merely a lack of full knowledge of the facts, which is due to the failure of a party to exercise due diligence to ascertain them, there is no proper ground for relief. (Robinson v. Workers' Comp. Appeals Bd. (1987) 194 Cal.App.3d 784, 791).

As the applicant admittedly struggles to remember the specific date she was injured, and admittedly does not remember her last day, she was a credible witness appearing to answer questions directly. She states the day after her injury she showed up for work (MOH/SOE pg. 4:22). She later testified she worked four additional days after the injury (MOH/SOE pg. 5:16). She did verify her signature on the initial application as well as claim form that was completed in January 2025 (Joint 104, Joint 105; MOH/SOE pg. 5:9). She did not verify her signature on the later amended application, testifying she was in Fresno on Saturday and did not believe she signed anything Friday or Saturday prior to the trial (MOH/SOE pg. 5:17).

In review of Joint 2, which covers payroll earnings between January 1, 2024, through December 31, 2024, it indicates the applicants' last day worked was May 31, 2024. There is no evidence that the applicant worked on June 6, 2024. Most significantly, there is no evidence that the applicant returned to work after May 31, 2024, in any capacity, let alone four more days as she testified to, per the payroll earnings records. Joint 3, timecard records, show the applicant worked May 31, 2024, but there is no evidence of any further employment after that date. Based on the applicant's testimony of having worked after the injury this would not be the date of injury either.

In the Petition for Reconsideration, Applicant boldly claims that the sole reason the May 31, 2024 Amended Application was invalidated was due to the stipulation in the parties' pre-trial conference statement (Petition, pg. 1 ,I 4). This is not accurate. While the stipulation to the date is one the undersigned believes the applicant should have been held to at trial, the duty to develop the record is also recognized and has been taken into consideration. The applicant as mentioned previously did seem a credible witness. That is why, even if leave to amend the application were permitted, it would not have changed the result. The applicant testified credibly that after her alleged date of injury, she later worked four additional days after the injury (MOH/SOE pg. 5:16).

> Therefore the alleged May 31, 2024 date of injury also could not have been the date of injury either, as there is no evidence in the record she returned to work after that time. However, as mentioned, the applicant testified credibly that she did.
> In the present instance, at trial-level there was raised no explicit allegation of inadvertence, neglect, fraud, mistake of fact or law where the facts stipulated to have or there has been a change that could have been anticipated, or where it would be unjust to enforce the stipulation. If anything, counsel should have challenged the stipulation previously entered on the pre-trial conference statement at the time of trial, instead of agreeing to the stipulation itself. Additionally, mistake of fact at that time was not raised as an issue as to why the amended injury date should be allowed. If anything, the alleged mistake of fact would appear to represent a lack of diligence given it was not amended until the eve of trial and fails to account for the credible applicant's testimony of several days worked after the date of injury. Therefore, the stipulation was determined not to be set-aside and the amended application changing the date of injury invalidated. Had there been evidence that existed showing that the applicant had worked on May 31, 2024, and then returned to work for a time near consistent with that testified to by the applicant, a different result likely would have been reached.
> Testimony was provided as to whether the applicant recalled signing the application changing the date of injury to May 31, 2024. However, despite claims to the contrary in the Petition for Reconsideration, while this was noted in the record for completeness it did not form the basis of any portion of the decision.
>
> If the applicant was a credible witness, and the undersigned believes she was, May 31, 2024 cannot be the date of injury in any event since she testified she worked after her date of injury. The available evidence does not establish that, and the date of injury could not be the applicants final date of employment, which the evidence does establish as May 31, 2024. The available evidence is simply not consistent to allow the amended date of injury considering the applicants credible testimony regarding days worked post-injury.

(Report, at pp. 2-6.)

III.

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

WCAB Rule 10517 states that:

> Pleadings shall be deemed amended to conform to the stipulations and statement of issues agreed to by the parties on the record. Pleadings may be amended by the Workers' Compensation Appeals Board to conform to proof.

In our en banc decision in *Perez v. Chicago Dogs* (2025) 90 Cal.Comp.Cases 830 (Appeals Board en banc) (*Chicago Dogs*), we stated that:

> In conducting our preliminary review, we observe that in addition to our constitutional mandate to accomplish substantial justice, the following fundamental legal principles must guide us:
>
> (A) Only the Appeals Board has statutory authority to establish procedures in workers' compensation proceedings and to promulgate rules.
>
> (B) Parties have a due process right to a fair hearing and a determination based on the merits.
>
> (C) In workers' compensation proceedings, pleadings are liberally construed and may be amended to conform to proof.

(*Id.* at p. 836.)

Exclusive statutory authority is granted by section 5500.3 to the Appeals Board to establish procedures, and in addition, the Appeals Board has statutory authority under sections 5307 and 5708 to promulgate regulations regarding the adjudicatory process. (*Chicago Dogs*, *supra*, 90 Cal.Comp.Cases at p. 836.)

Further, 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 regard 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].)All parties in workers' compensation proceedings retain their 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 guarantees all parties the right to notice and an opportunity to be heard. (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (*McKernan*) (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].)

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 existing record, evidence, and stipulations presented in this matter may require further development with respect to the date of applicant's claimed injury as well as circumstances surrounding this claim. 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. Appeal 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/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

PAUL F. KELLY, COMMISSIONER
CONCURRING, NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 19, 2026

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

MARIA LORENA PATINO
THE LAW OFFICES OF ROBERT OZERAN
CHERNOW, PINE AND WILLIAMS

LAS/mc

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