WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MICHAEL BARNES, *Applicant*

vs.

STATE OF CALIFORNIA, OH CLOSE YOUTH CF NCYCC ADMIN BLDG; Legally Unisured; STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Numbers: ADJ11214895; ADJ11111878
Lodi District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact, Orders and Award issued by the workers' compensation administrative law judge (WCJ) on April 6, 2026. Therein, the WCJ found that:

1. Applicants sustained 73% P.D
2. Apportionment to other factors is substantial evidence.
3. Applicant's claim of addition pursuant to Vigil v. Kern Co. 89 CCC 686; Kite - 78 CCC 213 is not valid.
4. Apportionment to each injury per "Benson" is appropriate.
5. Attorney fees are to be established by SCIF.

Based on these findings, the WCJ awarded 73% permanent disability in Case No. ADJ11214895 and 13% permanent disability in Case No. ADJ11111878. The WCJ did not make jurisdictional Findings of Fact based on the parties' stipulations at trial as required by Labor Code[1] section 5903.[2] Pursuant to those stipulations, (1) in Case No. ADJ11111878, applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to his low back while employed as a Captain during the period August 18, 2008 to August 18, 2019; and (2) in Case No.

[1] All further statutory references are to the Labor Code, unless otherwise noted.
[2] In relevant part, section 5903, subsection (e), requires that an "order, decision, or award" be supported by "findings of fact."

ADJ11214895, applicant sustained injury AOE/COE to his neck, back, and hips while employed as a peace officer during the period of September 27, 2016 to September 27, 2017.

Applicant contends that the WCJ should have issued a joint award of 100% permanent disability. Applicant argues that there is no substantial evidence supporting apportionment and that the disability in each case should have been added pursuant to the holdings of *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ den.) and *Vigil v. County of Kern (Vigil)* (2024) 89 Cal.Comp.Cases 686 (Appeals Board en banc).

Defendant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration be denied.

We have considered the Petition for Reconsideration, 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 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[3] section 5950 et seq.

I.

Preliminarily, we note that 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.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

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

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 May 18, 2026 and 60 days from the date of transmission is July 17, 2026. This decision is issued by or on July 17, 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 May 18, 2026, and the case was transmitted to the Appeals Board on May 18, 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 May 18, 2026.

II.

The WCJ provided the following discussion in the Report:

> **INTRODUCTION**
>
> This is timely filed and verified petition for reconsideration by Applicant (Petitioner)
>
> **ADJ11111878**
> Applicant Michael Barnes, born [], while employed during the period 8-18-2008 to 8-18-2009, as a Captain, Occupational Group No. 420, at Elk Grove, California, by OH Close School, sustained injury arising out of and in the course of employment to his low back.

ADJ11214895
Applicant Michael Barnes, born [], while employed during the period of 9-27-16 to 9-27-17, as a peace officer, Occupational Group 490, at Sacramento, California, by CDCR Office of Employment Management, Attention Workers' Comp Section, the Applicant has sustained an injury arising out of and in the course of employment to his neck, back, and hips.

Both injuries were tried together with separate Orders and Awards issuing.

Applicant is seeking reconsideration of the Findings, Orders and Award dated 4-4-26 in both injuries ADJ11111878 CT 8-18-2008 to 8-18-2009 and CT ADJ11214895 9-27-16 to 9-27-17.

Applicant is challenging Findings of fact

(1) Applicant has 73% PD;

(2) Apportionment to other factors is supported by substantial evidence.

(3) Applicant's claim of addition pursuant to Vigil v. Kem Co. 89 CCC 686; Kite - 78 CCC 213 is not valid.

(4) Apportionment to each injury per "Benson" is appropriate.

Inexplicably intertwined is not supported by substantial evidence between the 2 injuries herein in. No joint findings in the case at hand.

Applicant believes there should be no apportionment pursuant LC4663, joint award for both cases should be issued because the cases are inexplicably intertwined. Vigil/Kite should be found as to these 2 injuries and PD.

FACTS

Applicant has two cumulative trauma injuries.

ADJ11214895 Applicant was working during the period of 9-27-16 to 9-27-17, as a peace officer, by CDCR Office of Employment Management, Attention Workers' Comp Section. Applicant sustained injury AOE/COE to his neck, back, and hips.

ADJ11111878 Applicant then began working during the period 8-18-2008 to 8-18-2009, as a Captain, Occupational by OH Close School, sustaining injury AOE/COE to his to his low back.

Applicant's last day of work was 8-18-2019.

DISCUSSION

PD

Applicant contends that the AMA Guides based PD ratings in ADJ11214895 is 94% PD, This 94% is using Vigil (regarding "adding" impairments), based on PQME Dr. Sclafani's reports and deposition testimony, see page 7 of the 6-21-2024 Report of QME Dr. Joseph Sclafani, Joint Exhibit 100 and the deposition testimony of Dr. Sclafani, Joint Exhibit 109 on pages 18-21), and Escobedo (regarding the lack of substantial evidence to prove valid apportionment) st issue

ADJ11214895 Rating Strings

• Spine - Cervical - Range of Motion - Soft Tissue Lesion
100%- (15.01.02.02-26- [1.4] 36 - 4901 -45 - 49%) 49%

• Spine - Lumbar - Range of Motion - Nerve Root/Spinal Cord- Sensory 50% - (15.03.02.05 - 19- [1.4] 27-4901-35-39%) 20%

• Right Lower Extremities - Hip - Diagnosis-based Estimate - Trochanteric bursitis
100% - (17.03.10.04-3- [1.4] 4-4901-7-8%) 8%

• Left Lower Extremities - Hip - Diagnosis-based Estimate - Trochanteric bursitis 100% - (17.03.10.04-3-[l.4] 4-4901-7-8%) 8%

• 49+20 = 69C8C8 = 73% PD

ADJ11111878 Rating String

• Lumbar spine
40%(15.03.02.05-19-[5]-24-490l-32-32%) 13%

The court has followed Defendant's rating formula with apportionment, no Vigil/Kite, Not inextricability intertwined.

Kite/Vigil.

Dr. Scalfani has not established "Vigil/Kite" applies.
Vigil clarified the analysis that must be undertaken with the addition of PD vs combined.

Rule per Vigil (En Banc) Vigil v. Kern Co. 89 CCC 686; Kite - 78 CCC 213

The term 'synergy' is not a "magic word" that immediately rebuts the use of the CVC. Instead, a physician must set forth a reasoned analysis explaining how and why synergistic ADL overlap exists. If parties are searching for a magic word to use during a doctor's deposition, that word is "Why?". Rather than focusing on whether a specific term, including the term synergy, was used, it is imperative that parties focus on an analysis that applies critical thinking based on the principles articulated in Escobedo to support a conclusion based on the facts of the case. Such an analysis must include a detailed description of the

impact of ADLs and how those ADLs interact. **Vigil v. Kern Co. 89 CCC 686; 693**

Above is what I found with QME's Scalfani opinion. QME Dr. Scalfani did not include a detailed description of the impact of ADLs and how those ADLs interact.

My review of his opinions revealed some answers in his deposition indicating the confusion Vigil is trying to clear up. Ex. J-109 Scalfani deposition page 18-21.

Accordingly, when an applicant seeks to rebut the CVC, they must establish the following:
1) The ADLs impacted by each impairment to be added, and
2) Either:
a) The ADLs do not overlap, or
b) The ADLs overlap in a way that increases or amplifies the impact on the overlapping
ADLs. Vigil. supra. At page 693

• *We believe that one significant point of confusion on the issue of overlap is that the analysis should focus on overlapping ADLs, not body parts.*

• *Instead, a physician must set forth a reasoned analysis explaining how and why synergistic ADL overlap exists. If parties are searching for a magic word to use during a doctor's deposition, that word is "Why?"*

• " *... parties focus on an analysis that applies critical thinking based on the principles articulated in Escobedo to support a conclusion based on the facts of the case. Such an analysis must include a detailed description of the impact of AD Ls and how those AD Ls interact.*
Dr Scalfani has not complied with the above questions and directions in applying Vigil/Kite Vigil at page 692-693.

Apportionment
Escobedo. LC 4663
Apportionment between injuries is appropriate.

• **The Rule- Escobedo**
Escobedo vs. Marshalls (2005) 70 Cal. Comp. Cases 604
Pertinent Findings Escobedo supra page 607

"l) Section 4663(a)'s statement that the apportionment of permanent disability shall be based on "causation" refers to the causation of the permanent disability, not causation of the injury, and the analysis of the causal factors of permanent disability for purposes of apportionment may be different from the analysis of the causal factors of the injury itself."

4) Apportionment of permanent disability caused by "other factors both before and subsequent to the industrial injury, including prior industrial

injuries," may include not only disability that could have been apportioned prior to SB 899, but it also may include disability that formerly could not have been apportioned (e.g., pathology, asymptomatic prior conditions, and retroactive prophylactic work preclusions), provided there is substantial medical evidence establishing that these other factors have caused permanent disability ... "

The quote from Escobedo supra. allows the parties to assess apportionment between injuries which would include separate and distinct injuries. Additional guidance is provided in Benson v. Workers' Compensation Appeals Board (2009) 170 Cal.App.4th 1535 also at page 1559.

• If an injured employee suffers multiple injuries the permanent disability must be assessed and apportioned separately for each event.

• Wilkinson Doctrine is done. Benson supra at page 1545 That doctrine allowed multiple injuries to be combined to award a higher PD percentage if the injuries became P&S at the same time.

Joint Awards

Joint Awards were greatly restricted. There was one exception allowed.
"We also agree that there may be limited circumstances, not present here, when the evaluating physician cannot parcel out, with reasonable medical probability, the approximate percentages to which each distinct industrial injury causally contributed to the employee's overall permanent disability. In such limited circumstances, when the employer has failed to meet its burden of proof, a combined award of permanent disability may still be justified".
"Inexplicably intertwined "Benson supra. Page 1560

We agree with amicus curiae Zenith that the only relevant inquiry is whether separate and distinct industrial injuries have been sustained. If so, "then each injury must stand on its own." Benson

Substantial evidence
Its most common definition has been said to be evidence which, if true and correct, is sufficient to support a reasonable mind to accept and support a conclusion on a given issue. Reasonable in nature credible and of solid value. Braewood Hospital v. WCAB (Bolton) (1983) 48 CCC 566, 568

When assessing medical opinions of a reporting Doctor (QME/AME/Treating doctor) the standards developed in these cases are:
1) Did the Doctor get a complete and accurate history from the Applicant on the issue presented.
2) Did the Doctor review and summarize all medical and non-medical records relevant to the issues presented.
3) Did the Doctor do a complete and thorough examination of Applicant.

4) Did the Docter express opinions on the issues presented including apportionment.
5) Did the Doctor explain the opinions thoroughly.
6) Did the Doctor express or demonstrate familiarity with the issue and legal requirements thereof.

QME Dr. Scalfani did hit the mark in establishing substantial evidence. Some issues within the 'case he did not. see joint 101 report 11-11-23 QME Dr. Scalfani whole report for history, exam, review of records, render opinions with apportionment mandate and explanation.

Dr. Scalfani did apportion between the two injuries. Joint 109 see page 7 lines 22-25; page 8 lines 10-25; page 9 lines 1-6. Dr. Scalfani was able to parcel out the PD between both injuries and explain it.

A. Yes. It's my understanding that I was selected to evaluate a continuous trauma claim with an end date of September 29th, 2017. However, there was also a prior continuous trauma claim with an end date of August 18th,
Ex 109 j-109 page 8
A. Cont. 2009, that involved overlapping body parts.
Q. Between both claims? (see Applicant's Exhibit 3 on page 25)
A. Correct.
This apportionment is legal and based on substantial evidence

Vocational Expert Evidence

Scott Simon VE found Mr. Barnes to be 100% permanently disabled on a vocational basis relying on the work restrictions found by the PQME Dr. Sclafani. This would prove that Mr. Barnes is 100% PD and Mr. Barnes should receive a joint Award, establishing 100% PD in these cases. Applicant trial Brief page 2 lns 17-21.

There were two injuries, not one. VE Scott Simon and FCE failed to address that. FCE Cary Caulfield renders opinion on reasonable medical probabilities without explanation why he believes he can do that. The roles are QMEs and other Doctors make that determination because they are medical experts. VE and FCE cannot. They are not Doctors, they are vocational experts (Scott Simon) and FCE-functional capacity experts (Cary Caulfield) On June 22, 2023, the WCAB issued an en bane decision to resolve the issue affirmatively. In Nunes v. State of California, Dept. of Motor Vehicles, the WCAB held that:

LC 4663 requires a reporting physician to make an apportionment determination and prescribe the standard for apportionment. The Labor Code makes no statutory provision for "vocational apportionment."
Vocational evidence may be used to address issues relevant to the determination of permanent disability.

Vocational evidence must address apportionment, and may not substitute impermissible "vocational apportionment" in place of otherwise valid medical apportionment.

Turning to applicant's stated contentions, we begin with our holding that vocational evidence must address apportionment and may not substitute impermissible "vocational apportionment" in place of otherwise valid medical apportionment. (Opinion, at p. 13.) Applicant contends our use of the term "valid" to describe the apportionment that must be considered by the vocational expert presupposes a prior legal determination as to the validity of the medical apportionment. (Petition, at p.3-21.) However, in order to constitute substantial evidence, the opinions of both the evaluating physician as well as the vocational expert must detail the history and evidence in support of their respective conclusions, including "how and why" a condition or factor is causing permanent disability.
Nunes v. State of California, Dept. of Motor Vehicles (2023) 88 Cal. Comp. Cases 741 [2023 Cal. Wrk. Comp. LEXIS 301] (Appeals Board en banc).Nunes II: Nunes v. State of California, Dept. of Motor Vehicles (2023) 88 Cal. Comp. Cases 894 (Appeals Board En Banc).

Conclusion

Separate rating strings
The two ratings strings at have come down to I did find apportionment LC4663, I found no Vigil/Kite and no [sic]

Vigil/Kite
A discussion about ADLs and how they increase impairment beyond what an unrebutted PDRS outcome would be.

Substantial evidence
QME Dr. Scalfani obtained a complete and accurate history, examination thorough and complete review and summary and opinions and explanations. See joint 101 the report of 11-11-23 record review, page 9 to page 16 see Physical Exam page 9 to page 16. Opinions and explanation page 24 to 28.

Inexplicably intertwined.
Dr. Scalfani was able at all times to separate his medical opinions on PD and apportionment between the two cases. Joint 109 page 8. Joint 101 pages 24-28. Benson supra.

RECOMMENDATION
Applicant's petition for reconsideration should be denied.

(Report, at pp. 1-8, emphasis in original.)

III.

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

Apportionment is the process utilized to segregate permanent disability or the residuals caused by an industrial injury from those attributable to other industrial injuries or to nonindustrial factors, to allocate legal responsibility fairly. (*Brodie v. Workers' Comp. Appeals Bd*. (2007) 40 Cal.4th 1313, 1321 [72 Cal.Comp.Cases 565]; *Marsh v. Workers' Comp. Appeals Bd*. (2005) 130 Cal.App.4th 906, 911 [70 Cal.Comp.Cases 787.].)

The mere fact that a medical report assigns approximate percentages of industrial and nonindustrial causation does not make the report reliable medical evidence by itself. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 927–928 [71 Cal.Comp.Cases 1687].) Instead, apportionment of permanent disability is "based on causation" and the "employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment." (Lab. Code, §§ 4663(a) and 4664(a).) "The plain reading of 'causation' in this context is causation of the permanent disability." (*Escobedo v. Marshalls* (*Escobedo*) (2005) 70 Cal.Comp.Cases 604, 611 (Appeals Board en banc).) Apportionment now includes pathology, asymptomatic prior conditions, and retroactive prophylactic work preclusions, provided there is substantial evidence establishing that these other factors have caused permanent disability. Pursuant to *Escobedo*, a physician's opinion must rely on reasonable medical probability, cannot be speculative, must rely on pertinent facts and/or an adequate examination and history, and must set forth the reasoning in support of its conclusions. (*Id*. at p. 621.) That is, a physician must explain the "how and why" of their apportionment opinion (*Ibid*.) and consider all potential causes of disability, whether from a current, prior or subsequent industrial or nonindustrial injury or condition. (*Benson v. The Permanente Medical Group* (2007) 72 Cal.Comp.Cases 1620, 1622 (Appeals Board en banc .)

The burden of proof to establish apportionment falls on defendant. (*Pullman Kellogg v. Workers' Comp. Appeals Bd. (Normand)* (1980) 26 Cal.3d 450, 456 [45 Cal.Comp.Cases 170]; *Kopping v. Workers' Comp. Appeals Bd*. (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229].) In other words, an employee does not have the burden of disproving apportionment while defendant remains passive. (*Alcantar v. Martinez* [2025 Cal. Wrk. Comp. P.D. LEXIS 231, *9]; *Moraido v. County of San Diego* [2024 Cal. Wrk. Comp. P.D. LEXIS 375, *13, fn. 3]; *Arias v.*

William Roofing Co. [2024 Cal. Wrk. Comp. P.D. LEXIS 29. *5]; *Matias v. Naturipe Berry Growers* [2024 Cal. Wrk. Comp. P.D. LEXIS 52, *4]; *Herrera v. Maple Leaf Foods* [2018 Cal. Wrk. Comp. P.D. LEXIS 430, *15].)

In *Benson*, we explained that limited situations may justify a joint and several award of permanent disability across multiple dates of injury. (*Benson, supra*, 72 Cal.Comp.Cases at p. 1634.) Where the reporting physician cannot parcel out, with reasonable medical probability, the approximate percentages to which each distinct industrial injury causally contributed to the overall permanent disability, the employee may be entitled to a combined award. (*Id*. at pp. 1622–1623.)

With respect to vocational expert evidence, pursuant to *Nunes v. State of California, Dept. of Motor Vehicles* (*Nunes I*) (2023) 88 Cal.Comp.Cases 741 (Appeals Board en banc), the Appeals Board held as follows:

> 1. Section 4663 requires a reporting physician to make an apportionment determination and prescribes the standard for apportionment. The Labor Code makes no statutory provision for "vocational apportionment."
>
> 2. Vocational evidence may address issues relevant to the determination of permanent disability.
>
> 3. Vocational evidence must address apportionment, and may not substitute impermissible "vocational apportionment" in place of otherwise valid medical apportionment.

(*Id*. at pp. 743–744.)

In addition, "The same considerations used to evaluate whether a medical expert's opinion constitutes substantial evidence are equally applicable to vocational reporting. In order to constitute substantial evidence, a vocational expert' opinion must detail the history and evidence in support of its conclusions, as well as "how and why" any specific condition or factor is causing permanent disability. (*Escobedo, supra*, at p. 611; see also *E.L. Yeager v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922 [71 Cal.Comp.Cases 1687].)"

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, supra*; *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 Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) To constitute substantial evidence "… a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Here, it appears from our preliminary review that the record may not be complete regarding the issue of apportionment and further development of the record may be necessary. 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 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 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/ JOSÉ H. RAZO, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
CONCURING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 17, 2026

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

MICHAEL BARNES
EASON & TAMBORNINI
STATE COMPENSATION INSURANCE FUND

PAG/cm

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