

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

MIKE RAPOSO, *Applicant*

vs.

**JJR CONSTRUCTION, INC.; CYPRESS INSURANCE COMPANY
administered by BERKSHIRE HATHAWAY HOMESTATE COMPANIES;
EVEREST NATIONAL INSURANCE COMPANY administered by
AMERICAN CLAIMS MANAGEMENT, INC., *Defendants***

**Adjudication Number: ADJ10872713
San Francisco District Office**

**OPINION AND ORDER
GRANTING PETITIONS FOR
RECONSIDERATION AND
DECISION AFTER RECONSIDERATION**

Defendants, Cypress Insurance Company administered by Berkshire Hathaway Homestate Companies (Cypress) and Everest National Insurance Company administered by American Claims Management, Inc. (Everest), both seek reconsideration of the January 23, 2026, Findings of Fact, Orders, and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that as a result of the injury through September 25, 2015, applicant is entitled to additional temporary disability indemnity, before attorney fees; Everest paid compensation of permanent partial disability at the weekly rate of \$290.00 for the period from July 17, 2020 through October 8, 2020; and defendants are not entitled to credit against the indemnity awarded herein for the amounts reimbursable to EDD for the period from July 17, 2014 until February 28, 2015 and for the period March 27, 2017 through September 13, 2017. The WCJ then made an award in favor of applicant against Cypress and Everest for additional temporary disability less attorney fees; and permanent partial disability of 73 percent starting February 5, 2017, less credit to defendants for all sums heretofore paid on account thereof, and less attorney fees; and a life pension beginning 481.25 weeks after February 5, 2017 subject to increases required under Labor Code section 4659(c), less 15 percent as attorney fees with jurisdiction reserved as to any commutation.

Cypress contends that the F&A failed to designate which defendant is responsible for administering the claim including payments of permanent disability indemnity and temporary disability indemnity to satisfy the award, and for medical treatment to cure or relieve from the effects of the industrial injuries. Cypress further contends contribution rights between co-defendants were not preserved.

Everest contends that reimbursement payments to EDD must be credited against temporary disability and permanent disability payments to applicant, and the F&A should reflect credit for all permanent disability advances paid and the applicant's attorney's fees.

We have not received an answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that defendants' Petitions be granted to amend the award to reflect that outstanding temporary disability be paid to applicant less amounts reimbursable to EDD and temporary disability benefits already paid; Everest's permanent partial disability continued from January 18, 2024 through ongoing day of trial; and defendants are entitled to credit against the indemnity awarded for amounts reimbursable to EDD, at the rate of \$684.00 per week for the period from July 17, 2014 until February 28, 2015 and at the rate of \$290 per week for the period March 27, 2017 through September 13, 2017.

We have considered the allegations of the Petitions for Reconsideration and the contents of the report of the WCJ with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, we will grant both Petitions for Reconsideration, amend the WCJ's decision as recommended in the Report and to find that Everest shall administer applicant's medical treatment, and otherwise affirm the decision of January 23, 2026.

DISCUSSION

I.

Preliminarily, we note that former Labor Code¹ 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.

¹ All further references are to the Labor Code unless otherwise noted.

(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 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 February 20, 2026 and 60 days from the date of transmission is April 21 2026. This decision was issued by or on April 21, 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 WCJ, the Report was served on February 20, 2026, and the case was transmitted to the Appeals Board on February 20, 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 February 20, 2026.

II.

The WCJ's Report states the facts of the case as follows:

II. BACKGROUND

This matter proceeded to trial, and was submitted for decision, on October 29, 2025. The issues for trial were temporary disability, permanent disability, liability on the lien of EDD and whether defendant is entitled to credit for the EDD lien, whether Cypress Insurance Company has liability under Labor Code section 5500.5, the applicant's petition for evidentiary sanctions, and attorney fees.

In ADJ10872713, Mike Raposo, while employed during the period through September 25, 2015, as a construction worker, Occupation Group Number 480, at San Mateo, California, by JJR Construction, sustained injury arising out of and in the course of employment to his bilateral hips, bilateral shoulders, and bilateral wrists. At the time of injury, the employee's earnings were \$1,740.00 per week, warranting indemnity rates of \$1,103.29 for total disability and \$290.00 per week for permanent partial disability. Everest National Insurance Company has paid compensation of temporary disability at the rate of \$1,103.29 for the period from January 21, 2020 through July 16, 2020, and permanent disability at the rate of \$290.00 per week for the period from July 17, 2020 through October 8, 2020, and again from January 18, 2024 through October 20, 2025 with payments ongoing at the time of trial.

Everest National Insurance Company, administered by ACM, provided workers' compensation coverage for JJR Construction for the period January 1, 2015 through September 25, 2015, and Cypress Insurance Company, administered by Berkshire Hathaway Homestate Companies, provided coverage for the employer from January 1, 2014 through December 31, 2014.

The parties also stipulated that EDD paid benefits from July 17, 2014 through February 28, 2015 at the rate of \$684.00 per week, in the total amount of \$22,181.15, and that EDD additionally paid for the period March 27, 2017 through September 13, 2017 at the rate of \$847.00 per week, in the total amount of \$20,685.00.

This case was previously tried, along with two other cases, and a decision was issued on November 27, 2024. In that decision I found that the applicant did not suffer separate injuries in either case number ADJ11701186 or ADJ11701190.

For the case at issue, a cumulative trauma through September 25, 2015 in ADJ10872713, I found the legal date of injury under Labor Code section 5412 is May 17, 2017. The applicant's disability became permanent and stationary on January 18, 2024, and the injury caused permanent partial disability of 73%. The period of liability pursuant to Labor Code section 5500.5 for the injury is September 26, 2014 through September 25, 2015. I found a need for, and issued an Award for, future medical care[.]

There was a need to develop the record regarding periods of temporary total disability and temporary partial disability, and wage loss. Because of the need to develop the record on those issues, a permanent disability start date could not be determined. Therefore, I deferred determinations on retroactive temporary disability, the permanent disability indemnity start date, the lien of EDD, credit for payments made by EDD, attorney fees, and the finalization of an award of permanent disability with appropriate start date and credits. There was no removal or reconsideration of the November 27, 2024 decision.

(Report at pp. 2-3.)

Concerning the issues of temporary disability and permanent disability owed less what has already been paid by Everest, and whether defendants get credit for payments reimbursed to EDD as temporary disability and permanent disability, the WCJ's Report updates his decision and makes recommendations as follows:

CREDIT FOR PERMANENT DISABILITY ADVANCES.

Defendant [Everest] again correctly points out that I erred in failing to list all periods of permanent disability advanced in the January 23, 2026 Findings of Fact. Although all periods were noted in the January 23, 2026 Opinion, this omission in the Findings of Fact led to ambiguity in what would be allowed as credit against the permanent partial disability indemnity now owing. I therefore recommend that Finding of Fact No. 11 be amended to read, "11. EVEREST NATIONAL INSURANCE paid compensation of permanent partial disability at the weekly rate of \$290.00 per week for the period from July 17, 2020 through October 8, 2020 and again from January 18, 2024 through October 20, 2025 with payments ongoing at the time of trial." Finding of Fact No. 16 allows defendants to take credit for the advances identified in Finding of Fact No. 11, against the permanent partial disability indemnity awarded.

CREDIT FOR AMOUNTS REIMBURSABLE TO EDD.

In my January 23, 2026 decision I determined that defendants were not entitled to credit for amounts reimbursable to EDD because no payments had been made

to EDD. I am not persuaded that the non-binding panel decision in *Salazar v. WTS Int'l, Inc.*, 2014 Cal. Wrk. Comp. P.D. LEXIS 160, cited in the Everest Petition, calls on its own for a different finding since the facts in that case are distinguishable from those in the case at issue. However, the decision in *Salazar* does persuasively state[]:

“When a defendant reimburses EDD for SDI, it is as if EDD never paid those benefits and, instead, the payments were actually made to applicant by defendant, i.e., the reimbursement effectively converts the SDI payments into workers' compensation disability indemnity. (See Lab. Code, §§ 4903(f), 4904(b)(1) & (2); see also Unemp. Ins. Code, §§ 2629, 2629.1.)” *Salazar v. WTS Int'l, Inc.*, 2014 Cal. Wrk. Comp. P.D. LEXIS 160, *5; see also *Garcia v. Industrial Acci. Com.* (1953) 41 Cal.2d 689, 692-693 [263 P.2d 8]; *California Compensation Ins. Co. v. Industrial Acci. Com.* (1954) 128 Cal.App.2d 797, 806 [276 P.2d 148].)

Upon review of *Salazar, supra*, the panel decision in *Richter v. Frontier Communications*, 2024 Cal. Wrk. Comp. P.D. LEXIS 20, that was cited in my January 23, 2026 decision, and the Labor Code, I am persuaded I reached the wrong conclusion in my decision regarding credit for amounts reimbursable to EDD.

Labor Code section 4903(f) states in relevant part:

“The appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (i). If more than one lien is allowed, the appeals board may determine the priorities, if any, between the liens allowed. The liens that may be allowed hereunder are as follows:

[...]

(f) The amount of unemployment compensation disability benefits that have been paid under or pursuant to the Unemployment Insurance Code in those cases where, pending a determination under this division there was uncertainty whether the benefits were payable under the Unemployment Insurance Code or payable hereunder; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.” (Labor Code § 4903.)

Labor Code section 4904 states in relevant part:

“(a) If notice is given in writing to the insurer, or to the employer if uninsured, setting forth the nature and extent of any claim that is allowable as a lien in favor of the Employment Development Department, *the claim is a lien against any amount thereafter payable as temporary or permanent disability compensation,*

subject to the determination of the amount and approval of the lien by the appeals board.

[...]

(b)(1) In determining the amount of lien to be allowed for unemployment compensation disability benefits under subdivision (f) of Section 4903, the appeals board shall allow the lien in the amount of benefits which it finds were paid for the same day or days of disability for which an award of compensation for any permanent disability indemnity resulting solely from the same injury or illness or temporary disability indemnity, or both, is made and for which the employer has not reimbursed the Employment Development Department pursuant to Section 2629.1 of the Unemployment Insurance Code....” (Lab. Code, § 4904, *emphasis added*.)

...

In *Richter v. Frontier Communications*, 2024 Cal. Wrk. Comp. P.D. LEXIS 20, the case I cited in denying defendant a right to credit for amounts reimbursable to EDD, the facts are distinguishable to a degree I did not sufficiently consider in my January 23, 2026 decision. In *Richter*, defendant issued a temporary disability notice stating:

“Payments are ending because you have received a maximum 104 weeks of TTD benefits (including EDD payment from 8/25/18–8/24/19). Benefits paid to you total [\$61,234.68.] Benefits were paid to you as temporary total disability: Period(s) paid were from 08/25/19 through 08/23/20 at \$1,177.59 per week.” (*Richter, supra*, at p. 3.)

Therefore, in *Richter*, the defendant was not disputing the period of temporary disability nor the rate of temporary disability indemnity. Having no apparent temporary disability issue in dispute, the defendant in *Richter* proceeded to take credit against known temporary disability indemnity liability for the amounts paid by EDD. (*Ibid.*) There was no evidence presented at trial in *Richter* that EDD had ever been repaid. (*Id.* at p. 4.) It appears that the lien of EDD was not at issue in the trial in *Richter*.

In this case, the facts are different in a number of ways. First is that there were issues as to the periods of temporary disability indemnity, whether the temporary disability was total or partial, and also an unclear record on the periods of applicant’s subsequent employment. There was a need to develop the record to resolve these issues following the initial trial in this case. (See the November 17, 2024 Findings of Fact, Orders, Award, and Notice of Hearing, as well as the November 17, 2024 Opinion on Decision.) Having re-analyzed the issue of credit following the Everest Petition, I am persuaded that the need to develop the record on these issues surrounding temporary disability indemnity liability distinguishes the present case from *Richter, supra*.

I additionally find that the language of Labor Codes sections 4903(f) and 4904 make clear that the EDD liens are against compensation due the applicant. This is clear in the language of Labor Code section 4904(a) that "... the claim is a lien against any amount thereafter payable as temporary or permanent disability compensation." Reinforcing that the EDD lien reimbursement should be paid with credit against the applicant's compensation is the longstanding caselaw against double recovery. (See for example, *Garcia v. Industrial Acci. Com.* (1953) 41 Cal.2d 689 [263 P.2d 8].)

...

Based on the discussion above, I am persuaded that, pursuant to Labor Code sections 4903(f) and 4904, and the holding in cases such as *Garcia v. Industrial Acci. Com.* (1953) 41 Cal.2d 689, that defendants should be entitled to credit against the temporary disability award for the amounts reimbursable to EDD for the period July 17, 2014 until February 28, 2015. Based on the same rationale, the defendants should be entitled to credit against permanent partial disability liability for the amounts reimbursable to EDD for the period from March 27, 2017 through September 13, 2017 at \$290.00 per week. For clarity, I will recommend that the award for permanent partial disability be amended for clarity. Because the applicant would thus be entitled to a lower retro-temporary disability award, the applicant's attorney's fee on that will also be reduced.

I recommend that Findings of Fact No. 10 be amended to, "10 . As a result of the injury identified in Finding of Fact No. 1, the applicant is entitled to temporary disability indemnity of \$114,742.16 before attorney fees, less amounts reimbursable to EDD as indicated in Findings of Fact No. 7, and less amounts already paid to applicant for temporary disability indemnity as indicated in Findings of Fact No. 6."

To clarify that defendants are entitled to credit, it is further recommended that Finding of Fact No. 15 be amended to, "Defendants are entitled to credit against the indemnity awarded herein for the amounts reimbursable to EDD in Findings of Fact Nos. 7 and 8."

The Awards (a) and (b) should therefore also be amended to read, "(a) **temporary disability indemnity** in accordance with Finding of Fact No. 10, in the total amount of \$114,742.16, less amounts reimbursable to EDD as indicated in Finding of Fact No. 7, less amounts already paid to applicant for temporary disability indemnity as indicated in Finding of Fact No. 6, and less \$10,337.86 payable to **LAW OFFICES OF DAVID LOWE**, in accordance with Finding of Fact No. 14, as attorney fees; and

(b) **permanent partial disability** of 73 percent in accordance with Finding of Fact No. 13, entitling applicant to 481.25 weeks of disability indemnity at the rate of \$290 per week in accordance with Findings of Fact No. 5, starting

February 5, 2017 in accordance with finding of Fact No. 12, in the total sum of \$139,532.50 less credit to defendants for all sums heretofore paid on account thereof in accordance with Finding of Fact No. 16, less credit for amounts reimbursable to EDD pursuant to Finding of Fact No. 8, and less \$20,934.38 payable to **LAW OFFICES OF DAVID LOWE**, in accordance with Finding of Fact No. 14, as attorney fees.”

(*Id.* at pp. 6-11.)

Regarding Cypress’ contentions that the F&A failed to designate which defendant is responsible for administering the claim including indemnity payments to applicant and providing future medical treatment, and that contribution rights were not preserved, the WCJ recommended the following clarifying order:

“Defendant EVEREST NATIONAL INSURANCE COMPANY pay the sums awarded to the applicant and applicant’s attorney herein, with contribution from CYPRESS INSURANCE COMPANY subject to supplemental proceedings pursuant to Labor Code section 5500.5(e) pursuant to Finding of Fact No. 4.”

(*Id.* at pp. 5-6.)

As to which defendant is responsible for the provision of future medical treatment, the WCJ observed that the award for future medical care was made in the November 27, 2024 decision and there was no petition for removal or reconsideration of that decision. Hence, the defendants are “jointly and severally liable” for providing future medical care and this finding is not subject to reconsideration. We disagree.

A petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) 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. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Id.* at p. 1075 [“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”].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

Here, the WCJ’s decision finding that Everest and Cypress were jointly and severally liable was not a final finding as to who was to administer. That is, the decision did not determine any substantive right or liability as between Everest and Cypress, so that it was not a “final” decision as to administration.

A grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. I.A.C. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. I.A.C. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it.

When this matter proceeded to trial on September 11, 2024, applicant’s left hip was an accepted industrial injury and defendant Everest had provided benefits to applicant. (Minutes of Hearing, September 11, 2024, at p. 2:40-47; Everest’s Exhibit A.) Everest seeks contribution for medical and indemnity benefits that it provided to applicant on a pro rata share from Cypress. (Everest’s Petition for Reimbursement, November 24, 2025, at p. 2:1-2.) Ongoing, and for practical purposes including the convenience of applicant, defendant Everest shall provide further medical treatment as may be required to cure or relieve from the effects of the industrial injury herein, subject to contribution from Cypress.

Accordingly, we grant both Petitions for Reconsideration, amend the decision to reflect the WCJ’s suggested changes and to find that Everest shall administer applicant’s medical treatment and otherwise affirm the decision of January 23, 2026.

For the foregoing reasons,

IT IS ORDERED that Everest National Insurance Company's Petition for Reconsideration of the Findings of Fact, Orders and Award issued on January 23, 2026 by the WCJ is **GRANTED**.

IT IS ORDERED that Cypress Insurance Company's Petition for Reconsideration of the Findings of Fact, Orders and Award issued on January 23, 2026 by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact, Orders, and Award of January 23, 2026, is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

10. As a result of the injury identified in Finding of Fact No. 1, the applicant is entitled to temporary disability indemnity of \$114,742.16 before attorney fees, less amounts reimbursable to EDD as indicated in Findings of Fact No. 7, and less amounts already paid to applicant for temporary disability indemnity as indicated in Findings of Fact No. 6.

11. EVEREST NATIONAL INSURANCE paid compensation of permanent partial disability at the weekly rate of \$290.00 per week for the period from July 17, 2020 through October 8, 2020 and again from January 18, 2024 through October 20, 2025 with payments ongoing at the time of trial.

15. Defendants are entitled to credit against the indemnity awarded herein for the amounts reimbursable to EDD in Findings of Fact Nos. 7 and 8.

ORDERS

d) Defendant EVEREST NATIONAL INSURANCE COMPANY to pay the sums awarded to the applicant and applicant's attorney herein, with contribution from CYPRESS INSURANCE COMPANY subject to supplemental proceedings pursuant to Labor Code section 5500.5(e) pursuant to Finding of Fact No. 4.

AWARD

b) Pursuant to Finding of Fact No. 7, defendant **EVEREST NATIONAL INSURANCE COMPANY** pay reimbursement to EDD for the period July 17, 2014 until February 28, 2015, at the rate of \$684.00 per week, in the total amount of \$22,181.15 for that period, with contribution from **CYPRESS INSURANCE COMPANY** subject to supplemental proceedings pursuant to Labor Code section 5500.5(e) pursuant to Finding of Fact No. 4;

c) Pursuant to Finding of Fact No. 8, defendant **EVEREST NATIONAL INSURANCE COMPANY** pay reimbursement to EDD for the period March 27, 2017 through September 13, 2017, at the rate of \$290.00 per week, in the total amount of \$7,084.29 for that period, with contribution from **CYPRESS INSURANCE COMPANY** subject to supplemental proceedings pursuant to Labor Code section 5500.5(e) pursuant to Finding of Fact No. 4.

d) Such further medical treatment as may be required to cure or relieve from the effects of the industrial injury herein to be provided by **EVEREST NATIONAL INSURANCE COMPANY** with contribution from **CYPRESS INSURANCE COMPANY** subject to supplemental proceedings pursuant to Labor Code section 5500.5(e) pursuant to Finding of Fact No. 4.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 21, 2026

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

**MIKE RAPOSO
LAW OFFICES OF DAVID LOWE
ALBERT AND MACKENZIE
FINNEGAN, MARKS, DESMOND & JONES**

SL/abs

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