WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

NORMA TERRAZAS, *Applicant*

vs.

RIALTO UNIFIED SCHOOL DISTRICT,
permissibly self-insured, administered by
KEENAN & ASSOCIATES, *Defendants*

Adjudication Number: ADJ19966511
Pomona District Office

OPINION AND ORDER DENYING PETITIONS FOR RECONSIDERATION

Applicant and defendant each seek review of the Findings and Order issued by the workers' compensation administrative law judge (WCJ) on July 30, 2026, wherein the WCJ found in pertinent part that applicant claims to have sustained a cumulative injury from April 4, 2022 through October 8, 2024 while working as a Clerk Typist II for defendant to her neck, shoulders, knees, jaw, stomach, psyche/depression, and headaches/migraines; that applicant did not meet her burden to prove that she sustained an injury to her psyche/depression; and that further development of the record is necessary to address whether applicant sustained injury to her neck, shoulders, knees, headaches/migraines, jaw, and stomach.

Applicant in her Petition for Reconsideration contends that the WCJ should have allowed further development of the record regarding injury to applicant's psyche.

Defendant in the Petition for Removal contends that the WCJ should not have allowed further development of the record regarding injury to applicant's other body parts.

We received an Answer from defendant.[1] We received a request from applicant to file and received a supplemental pleading. We have accepted and considered the supplemental pleading. (Cal. Code Regs., tit. 8, § 10964.)

We received a Report and Recommendation from the WCJ, which recommends that we deny applicant's Petition and grant defendant's Petition.

Based on our review of the record and as discussed below, we will deny the Petitions.

I.

Petitions for reconsideration filed on or after July 14, 2026, are subject to Labor Code 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 Labor Code 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 17, 2026, and 60 days from the date of transmission is October 16, 2026. This decision is issued by or on October 16, 2026, so that we have timely acted on the Petition as required by Labor Code section 5909(a).

Labor Code 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

[1] Defendant's Answer exceeded the page limit in WCAB Rule 10940. (Cal. Code Regs., tit. §, 10940.) Defendant then sought permission to exceed the page limit. We accept the Answer for filing and have considered in its entirety.

parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code 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 17, 2026, and the case was transmitted to the Appeals Board on August 17, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 17, 2026.

II.

Preliminarily, we observe that if a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd*. (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ's decision includes a finding regarding a threshold issue. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains a finding that is final, defendant is only challenging an interlocutory finding/order in the decision. Therefore, we will apply the removal standard to our review of defendant's Petition. (See *Gaona, supra*.)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd*. (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).) Here, we are not persuaded that significant prejudice, or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

III.

We emphasize the following:

An employee bears the burden of proving injury arising out of and in the course of employment (AOE/COE) by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.)

With respect to psychiatric injuries, section 3208.3(b) provides, in relevant part, as follows:

> (1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.
>
> (2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.

(Lab. Code, § 3208.3(b)(1)-(2).)

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].) 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, we agree with the WCJ's finding that applicant did not sustain injury in the form of psyche, and that it is not appropriate to develop the record further as to that claimed body part. Thus, we deny applicant's Petition.

The general rule is that when an employee suffers contemporaneous injury to different body parts over an extended period of employment, the employee has suffered one cumulative injury. (*Norton v. Workers' Comp. Appeals Bd.* (1980) 111 Cal.App.3d 618 [45 Cal.Comp.Cases 1098]; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Hurley*) (1977) 70 Cal.App.3d 599 [42 Cal.Comp.Cases 481].) The California Supreme Court long ago confirmed the "Constitution, in our opinion, authorizes compensation for injury to the body of the workman, including every part thereof, natural or artificial, which is essential to its proper functioning." (*Pacific Indem. Co. v. I.A.C.* (*Driscoll*) (1932) 215 Cal. 461, 465, emphasis added.)

Here, the parties and the WCJ appear to be laboring under a misconception as to what constitutes a denial of injury to a body part in contrast to what constitutes injury arising out of and in the course of employment. It is true that we cannot find injury AOE/COE without identifying a body part. But it is also true that a finding of no injury to an individual body part does not mean that there is no cumulative injury whatsoever.

Here, defendant pushed for a trial on the issue of AOE/COE to applicant's psyche. When applicant attempted to proceed with an orthopedic qualified medical evaluator (QME) on the issue of injury to applicant's orthopedic body parts, defendant sought and obtained an order on January 29, 2026, which effectively blocked applicant from proceeding with the evaluation.

It is a maxim of jurisprudence that "[n]o one can take advantage of their own wrong." (Civ. Code, § 3517.) Defendant's argument that applicant did not present evidence as to their orthopedic body parts is not well taken in that it was defendant who blocked applicant from proceeding to the QME. It is clear that evidence was not submitted with respect to the claimed orthopedic injuries,

and the WCJ appropriately found that there was no evidence on which to base a decision as to those body parts. Thus, we deny defendant's Petition.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DENIED**.

IT IS FURTHER ORDERED that defendant's Petition for Removal/Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,



/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 16, 2026

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

NORMA TERRAZAS
SOLIMON ROGERS, P.C.
MICHAEL SULLIVAN & ASSOCIATES, LLP

AS/mc

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