

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

PARIS ANDERSON, *Applicant*

vs.

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY,
CITY AND COUNTY OF SAN FRANCISCO, permissibly self-insured,
administered by INTERCARE, *Defendants***

**Adjudication Number: ADJ20868523
Oakland District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND NOTICE OF INTENTION**

Defendant seeks reconsideration of the Findings and Award and Opinion on Decision (FA&O) issued on May 14, 2026, by the workers' compensation administrative law judge (WCJ). By the FA&O, as relevant here, the WCJ found that applicant, while employed by defendant on March 25, 2025 as a Transit Operator, Occupational Group Number 250, sustained injury arising out of and occurring in the course of employment to his right elbow, right wrist, and right hand. The issue of injury to the psyche required development and was deferred.

Defendant contends in relevant part that the WCJ denied defendant due process by taking trial testimony without a court reporter, then ordering the testimony to be retaken, and exercising an excess of power by asking the parties to appear the next business day to review video evidence; and that the decision is not based on substantial evidence.

We received an Answer from applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the WCJ's Report. Based on our preliminary review of the record, we will grant defendant's Petition for Reconsideration and we will issue a notice of intention and order defendant to file Joint Exhibit

101, Coach Video of Incident, dated March 25, 2025, in the Electronic Adjudication Management System (EAMS) in a format that is accessible directly through EAMS pursuant to WCAB Rule 10677. (Cal. Code Regs., tit. 8, § 10677.) Such evidence shall be filed within twenty (20) days after service of this Order, plus additional days for mailing per WCAB Rule 10605. (Cal. Code Regs., tit. 8, § 10605.) If Joint Exhibit 101 is not timely filed and is not accessible, defendant's Petition is subject to dismissal.

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 section Labor Code section 5950 et seq.

FACTS

We will briefly review the relevant facts.

Applicant, while employed as a transit operator, claimed injury to the right elbow, right wrist, right hand, and psyche arising out of and occurring in the course of employment by defendant on March 25, 2025.

Panel Qualified Medical Evaluator (PQME), Anuj Gupta, M.D., opined that he anticipated there was industrial causation for the right wrist and hand and right elbow due to the industrial injury which occurred on March 25, 2025. (App. Exh. 1, June 28, 2025, p. 13, ¶ 6.)

Defendant denied applicant's claim, finding no evidence that an injury occurred as reported; applicant abandoned his job by leaving the bus to pursue the passenger; and applicant's claim is barred by the initial aggressor rule. (Def. Exh. B, April 18, 2025, p. 1, ¶ 1; Pre-Trial Conference Statement, September 24, 2025, p. 3.)

The parties proceeded to trial on March 11, 2026, at which time the issues identified were as follows: 1. Injury arising out of and during the course of employment; 2. The need for further medical treatment; 3. Liability for self-procured medical treatment; 4. Lien of EDD will be deferred; 5. Attorney fees; 6. Other issues: (a) Defendant asserts Applicant abandoned his job by leaving the bus to pursue a passenger; (b) defendant asserts applicant's claim is barred by initial aggressor rule. (Minutes of Hearing and Summary of Evidence (MOH), March 11, 2026, p. 2, lines

12-20.) Applicant was the only witness to testify at trial. Evidence admitted included the coach video of the incident on March 25, 2026. (Joint Exh. 101.)

On May 14, 2026, the WCJ issued the FA&O dated May 13, 2026. The FA&O states in pertinent part that applicant sustained injury arising out of and during the course of employment to his right elbow, right wrist, right hand; injury to the psyche needs to be developed and is deferred.

Thereafter, defendant sought reconsideration of the FA&O.

In defendant's Petition for Reconsideration, it alleges that:

This trial took place on March 11th, 2026 and was submitted the same day. . . . On the 58th day following Trial, a Friday, at 2:30 p.m., the WCJ emailed the parties stating she could not view the video evidence submitted at Trial. After several e-mails back and forth, the WCJ stated, "I do need it by Monday at 8:30 AM so it is better to just have one of you bring in your laptop that you know you can open the video and let me watch it on your laptop. Please just talk to each her and decide who will do that Monday Morning." . . . The undersigned appeared at the District Office on Monday morning, the 61st day post-trial and the next business day from receipt of the email, with a laptop for the Judge to view the video.

. . .

Ordering counsel to appear essentially on command the next day to present video, without proper notice and without a showing that immediate presentation is necessary to decide a properly noticed issue exceeds legitimate needs and becomes coercive/punitive. The WCJ must manage the record, not compel counsel to litigate evidentiary issues on an emergency basis without statutory/regulatory support. While WCJs have broadly delegated authority to manage proceedings and issue interim orders, that authority is bound by reasonableness and by the WCAB's notice and due process requirements. By ordering counsel to appear on the next business day to show video without compliance with the 10 day notice rule, without waiver or express agreement, and without a procedure that affords meaningful notice and opportunity to be heard, the WCJ acted in excess of her powers. Reconsideration should be granted, and any further evidentiary presentation should be set on properly noticed proceedings consistent with CCR § 10750 and due process.

(Petition for Reconsideration, p. 6, 7-8.)

DISCUSSION

I.

Former Labor Code 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, Labor Code 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.

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

II.

We highlight several legal principles that may be relevant to our review of this matter.

California has a no-fault workers' compensation system. With few exceptions, all California employers are liable for the compensation provided by the system to employees injured or disabled in the course of and arising out of their employment, "irrespective of the fault of either party." (Cal. Const., art. XIV, § 4.) The protective goal of California's no-fault workers' compensation legislation is manifested "by defining 'employment' broadly in terms of 'service to an employer' and by including a general presumption that any person 'in service to another' is a covered 'employee.'" (Lab. Code, §§ 3351, 5705(a); *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80].)

Notwithstanding the above, Labor Code section 3600 only imposes liability on an employer for workers' compensation benefits if an employee sustains an injury arising out of and occurring in the course of employment (AOE/COE). An employer is liable for workers' compensation benefits, where, at the time of the injury, an employee is "performing service growing out of and incidental to his or her employment and is acting within the course of employment." (Lab. Code, § 3600(a)(2).) The determination of whether an injury arises out of and in the course of employment requires a two-prong analysis. (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644 [63 Cal.Comp.Cases 253].)

First, the injury must occur "in the course of employment," which ordinarily "refers to the time, place, and circumstances under which the injury occurs." (*LaTourette, supra*, at p. 256.) An employee is acting within "the course of employment" when "he does those reasonable things which his contract with his employment expressly or impliedly permits him to do." (*Id.*) In other words, if the employment places an applicant in a location and they were engaged in an activity reasonably attributable to employment or incidental thereto, an applicant will be in the course of employment and the injury may be industrially related. (*Western Greyhound Lines v. I.A.C. (Brooks)* (1964) 225 Cal.App.2d 517 [29 Cal.Comp.Cases 43].)

Second, the injury must "arise out of" the employment, "that is, occur by reason of a condition or incident of employment." (*Employers Mutual Liability Ins. Co. of Wisconsin v. I.A.C.*

(*Gideon*) (1953) 41 Cal.2d 676 [18 Cal.Comp.Cases 286].) “[T]he employment and the injury must be linked in some causal fashion,” but such connection need not be the sole cause, it is sufficient if it is a “contributory cause.” (*Maier v. Workers’ Comp. Appeals Bd.* (1983) 33 Cal.3d 729 [48 Cal.Comp.Cases 326].) A Court of Appeal reasoned that “where an employee is injured on his employer’s premises as contemplated by his contract of employment, he is entitled to compensation for injuries received during reasonable and anticipatable use of the premises.” (*Argonaut Ins. Co. v. Workmen’s Comp. Appeals Bd. (Helm)* (1967) 247 Cal.App.2d 669, 677 [32 Cal.Comp.Cases 14].)

In this case, defendant claims applicant is precluded from recovery because applicant was the initial physical aggressor. It is recognized that Labor Code Section 3600(a)(7) bars an employee’s claim for compensation where the injury arises out of an altercation in which the injured employee is the initial physical aggressor. (Lab. Code, § 3600(a)(7), see also, *Mathews v. Workmen’s Comp. Appeals Bd.* (1972) 6 Cal.3d 719, 726 [37 Cal.Comp.Cases 124, 127].) However, Labor Code Section 3600(a)(7) is an affirmative defense and defendant, as the party asserting the defense, has the burden of establishing that applicant was in fact the initial physical aggressor. (Lab. Code, § 5705 [“burden of proof rests upon the party or lien claimant holding the affirmative of the issue”].)

Moreover, decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (Lab. Code, § 5313.) “It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton, supra*, at p. 475.) The WCJ’s decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Id.* at p. 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

Here, based on our preliminary review, defendant claims in part that applicant's injury arose out of an altercation in which he was the initial physical aggressor, and applicant abandoned his job to pursue the passenger who posed no threat to applicant. (Petition, p. 10, lines 4-7.) However, without the ability to review the video, we cannot conduct a meaningful review on reconsideration. According to defendant and applicant, the WCJ asked the parties to appear on May 11, 2026 with a laptop so the WCJ could view the coach video evidence, and defendant did in fact appear with a laptop so the WCJ could review the video. (Petition, p. 6, lines 7-17; Answer, p. 4, lines 7-19.) Notably, although the coach video of the March 25, 2026 incident was jointly admitted into evidence, the video does not appear viewable directly from EAMS. A review of the evidence labeled as Joint Exhibit 101 consists of a web address to a third-party platform that when clicked is inaccessible. We believe it is necessary to view the coach video of the incident 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.

Accordingly, we will order that defendant provide a copy of Joint Exhibit 101, Coach Video of Incident, dated March 25, 2025, to the Appeals Board by way of filing in the Electronic Adjudication Management System (EAMS) in a format that is accessible directly through EAMS pursuant to WCAB Rule 10677. (Cal. Code Regs., tit. 8, § 10677.)

III.

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. 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. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. I.A.C.* (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; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593.) 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”].)

Labor Code 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.

Accordingly, we grant defendant's Petition for Reconsideration and we issue a notice of intention to dismiss defendant's Petition unless defendant provides a copy of Joint Exhibit 101, Coach Video of Incident, dated March 25, 2025, to the Appeals Board by *way of filing in the Electronic Adjudication Management System (EAMS) in a format that is accessible directly through EAMS pursuant to WCAB Rule 10677.* (Cal. Code Regs., tit. 8, § 10677.) Such evidence shall be filed within twenty (20) days after service of this Order, plus an additional five (5) days for mailing per WCAB Rule 10605. (Cal. Code Regs., tit. 8, § 10605.) If Joint Exhibit 101 is not timely filed and is not accessible, defendant's Petition is subject to dismissal. We 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 defendant's Petition for Reconsideration of the Findings and Award and Opinion on Decision issued on May 14, 2026 is **GRANTED** and 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.

IT IS FURTHER ORDERED AND NOTICE IS GIVEN that within twenty (20) days after service of this decision plus additional time for mailing per WCAB Rule 10605(a) (Cal. Code Regs., tit. 8, § 10605(a)), defendant must file Joint Exhibit 101, Coach Video of Incident, dated March 25, 2025, in the Electronic Adjudication Management System (EAMS) in a format that is accessible directly through EAMS pursuant to WCAB Rule 10677 (Cal. Code Regs., tit. 8, § 10677). *Failure by defendant to timely file Joint Exhibit 101 in the proper format will subject defendant's Petition for Reconsideration to dismissal.*

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL E. KELLY, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 17, 2026

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

**PARIS ANDERSON
BOXER & GERSON, LLP
EMPLOYMENT DEVELOPMENT DEPARTMENT
SAN FRANCISCO CITY ATTORNEY**

DC/pm

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