

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

SAMIA MORCOS, *Applicant*

vs.

**ARCHDIOCESE OF LOS ANGELES, permissibly self-insured,
administered by SEDGWICK VAN NUYS, *Defendants***

**Adjudication Numbers: ADJ11246488; ADJ19643909
Marina Del Rey District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION
AND DENYING PETITION
FOR REMOVAL**

On January 23, 2025, applicant filed a Petition for Reconsideration of the August 24, 2024 Order Approving Compromise and Release (OACR). On February 3, 2025, the workers' compensation administrative law judge (WCJ) issued an Order Rescinding the OACR and setting the matter for a status conference (Order).

Defendant filed a Petition for Removal or in the alternative Reconsideration, contending in pertinent part that its due process rights were violated when the WCJ issued the Order without conducting a hearing and that the Order should be vacated.

We have considered the allegations of the Petition for Reconsideration and Removal and the contents of the Report. Based on our review of the record and based on the analysis by the WCJ in her Report, and as discussed below, we will dismiss the Petition to the extent it seeks reconsideration and deny the Petition to the extent it seeks removal.

FACTS

Applicant filed an Application for Adjudication of Claim (Application) on March 22, 2018, alleging injury to her right foot as the result of a specific injury on April 12, 2017. (ADJ11246488)

The Application was later amended to include injury to knees, hips, back, and deep vein thrombosis.

Applicant became unrepresented, and she entered into a Compromise and Release (C&R) on August 6, 2024. The C&R included the addition of a second alleged cumulative injury for the period from January 1, 2014 through May 23, 2024 to multiple body parts. (ADJ19643909) The C&R was approved on August 6, 2024. Applicant's attorney's fees were held in trust.

Applicant then filed a Petition for Reconsideration on January 21, 2025 alleging, in part, that she did not have an interpreter on August 6, 2024 when she agreed to the C&R, that handwritten changes were made to the C&R after she signed it, that the alleged cumulative injury was not explained to her, and that she was no longer working for defendant at the time of end of the claimed cumulative injury period.

In response, the WCJ issued the Order.

DISCUSSION

I.

Only the Appeals Board is statutorily authorized to issue a decision on a petition for reconsideration. (Lab. Code, §§ 112, 115, 5301, 5901, 5908.5, 5950; see Cal. Code Regs., tit. 8, §§ 10320, 10330.) The Appeals Board must conduct de novo review as to the merits of the petition and review the entire proceedings in the case. (Lab. Code, §§ 5906, 5908; see Lab. Code, §§ 5301, 5315, 5701, 5911.) Once a final decision by the Appeals Board on the merits of the petition issues, the parties may seek review under Labor Code section 5950,¹ but appellate review is limited to review of the record certified by the Appeals Board. (Lab. Code, §§ 5901, 5951.)

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.

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

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 March 13, 2025, and 60 days from the date of transmission is May 12, 2025. This decision was not issued by or on May 12, 2025, so that we did not timely act on the Petition as required by section 5909(a).

When the Appeals Board does not review the petition within 60 days due to irregularities outside the petitioner’s control, and the 60-day period lapses through no fault of the petitioner, the Appeals Board must then consider whether circumstances exist to allow an equitable remedy, such as equitable tolling. It is well-settled that the Appeals Board has broad equitable powers. (*Kaiser Foundation Hospitals v. Workers’ Compensation Appeals Board* (1978) 83 Cal.App.3d 413, 418 [43 Cal.Comp.Cases 785] citing *Bankers Indem. Ins. Co. v. I.A.C.* (1935) 4 Cal.2d 89, 94-98 [47 P.2d 719]; see *Truck Ins. Exchange v. Workers’ Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers’ Comp. Appeals Bd. (Lutz)* (2013) 218 Cal.App.4th 258, 268 [78 Cal.Comp.Cases 758]; *Dyer v. Workers’ Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [59 Cal.Comp.Cases 96].) It is an issue of fact whether an equitable doctrine such as laches applies. (*Kwok, supra*, 2 Cal.App.5th at p. 402.) The doctrine of equitable tolling applies to workers’ compensation cases, and the analysis turns on the factual determination of whether an opposing party received notice and will suffer prejudice if equitable tolling is permitted. (*Elkins v. Derby* (1974) 12 Cal.3d 410, 412 [39 Cal.Comp.Cases 624].) As explained above, only the Appeals Board is empowered to make this factual determination.²

In *Shipley v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493], the Appeals Board denied applicant’s petition for reconsideration because it had not acted on the petition within the statutory time limits of section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of

² Section 5952 sets forth the scope of appellate review, and states that: “Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence.” (Lab. Code, § 5952; see Lab. Code, § 5953.)

Appeal reversed the Appeals Board’s decision holding that the time to act on applicant’s petition was tolled during the period that the file was misplaced. (*Id.* at p. 1108.) Pursuant to the holding in *Shipley* allowing equitable tolling of the 60-day time period in section 5909, the Appeals Board acts to grant, dismiss, or deny such petitions for reconsideration within 60 days of receipt of the petition, and thereafter issues a decision on the merits.

“[I]t is a fundamental principle of due process that a party may not be deprived of a substantial right without notice....” (*Shipley, supra*, 7 Cal.App.4th at p. 1108.) All parties to a workers’ compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) “Due process requires notice and a meaningful opportunity to present evidence in regards to the issues.” (*Rea v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 635, fn. 22 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers’ Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].)

On December 11, 2024, the California Supreme Court granted review in *Mayor v. Workers’ Compensation Appeals Bd.* (2024) 104 Cal.App.5th 713 [2024 Cal.App. LEXIS 531]. One issue granted for review is the same issue present in this case, i.e., whether section 5909 is subject to equitable tolling. The Supreme Court noted the conflict present in the published decisions of the Courts of Appeal, and in its order granting review of *Mayor*, stated as follows:

Pending review, the opinion of the Court of Appeal, which is currently published at 104 Cal.App.5th 1297, may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority that would in turn allow trial courts to exercise discretion under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456, to choose between sides of any such conflict. (See *Standing Order Exercising Authority Under California Rules of Court, Rule 8.1115 (e)(3), Upon Grant of Review or Transfer of a Matter with an Underlying Published Court of Appeal Opinion*, Administrative Order 2021-04-21; Cal. Rules of Court, rule 8.1115(e)(3) and corresponding Comment, par. 2.)

(Order Granting Petition for Review, S287261, December 11, 2024.)

Like the Court in *Shipley*, “we are not convinced that the burden of the system’s inadequacies should fall on [a party].” (*Shipley, supra*, 7 Cal.App.4th at p. 1108.) The touchstone of the workers’ compensation system is our constitutional mandate to “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.” (Cal.

Const., art. XIV, § 4.) “Substantial justice” is not a euphemism for inadequate justice. Instead, it is an exhortation that the workers’ compensation system must focus on the *substance* of justice, rather than on the arcana or minutiae of its administration. (See Lab. Code, § 4709 [“No informality in any proceeding . . . shall invalidate any order, decision, award, or rule made and filed as specified in this division.”].) When a litigant is deprived of their due process rights based upon the administrative errors of a third party, for which they bear no blame and over whom they have no control, substantial justice cannot be compatible with such a draconian result. We also observe that a decision on the merits of the petition protects every litigant’s right to seek meaningful appellate review after receiving a final decision from the Appeals Board.

Consequently, we will apply the doctrine of equitable tolling pursuant to *Shipley* to this case. Here, the WCA issued the Order on February 3, 2025. Defendant timely filed its Petition at the district office at the WCAB on February 21, 2025. However, the Petition was titled as one for Removal, so that the Appeals Board was not aware that the Petition was filed in the alternative. Accordingly, the Appeals Board failed to act on the petition within 60 days, through no fault of the parties. Since we failed to act on the Petition within the 60-day period, and if it was rendered deemed denied, defendant’s right to appellate review would be compromised as the 45-day period to seek appellate review has elapsed.

Under the circumstances, the requirements for equitable tolling have been satisfied in this case. However, as explained below, defendant seeks review of a non-final order, so that we will dismiss the Petition. By so doing, it makes clear that defendant did not waive its right to seek appellate review when a decision by the WCJ ultimately issues.

II.

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 solely resolves an intermediate procedural or evidentiary issue or issues. The decision does not determine any substantive right or liability and does not determine a threshold issue. Based on the language in the Order, the WCJ rescinded the OACR so that applicant's petition to set aside could be heard. Once the WCJ has issued a new decision on the issue of whether the OAC&R is set aside and/or , either party may seek reconsideration. Accordingly, it is not a "final" decision, and the Petition will be dismissed to the extent it seeks reconsideration.

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 substantial 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, based upon the WCJ's analysis of the merits of petitioner's arguments, we are not persuaded that substantial prejudice or irreparable harm will result if removal is denied or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

III.

In *Camacho v. Target Corp.* (2018) 24 Cal.App.5th 291 [83 Cal.Comp.Cases 1014], the Court of Appeal observed that:

Given the more informal nature of workers' compensation proceedings, there are certain safeguards in place to protect workers from unknowingly releasing their rights. For example, "[t]o safeguard the injured worker from entering into

unfortunate or improvident releases as a result of, for instance, economic pressure or bad advice, the worker's knowledge of and intent to release particular benefits must be established separately from the standard release language of the form. [Citation.]" (*Ibid.*) Further, "[e]ven with respect to claims within the workers' compensation system, execution of the form does not release certain claims unless specific findings are made. [Citations.]" (*Ibid.*)

The board or referee must inquire into the fairness and adequacy of a settlement and may set the matter for hearing to take evidence when necessary to determine whether to approve the settlement. [Citations.] "These safeguards against improvident releases place a workmen's compensation release upon a higher plane than a private contractual release; it is a judgment, with 'the same force and effect as an award made after a full hearing.' [Citation.]" (*Johnson v. Workmen's Comp. App. Bd.* (1970) 2 Cal.3d 964, 973 [88 Cal.Rptr. 202, 471 P.2d 1002]; see also *Steller*, at p. 181.)

(*Id.* at pp. 301-302.)

The "Workers' Compensation Appeals Board shall inquire into the adequacy of all Compromise and Release agreements and Stipulations with Request for Award and may set the matter for hearing to take evidence when necessary to determine whether the agreement should be approved or disapproved, or issue findings and awards." (Cal. Code Regs., tit. 8, § 10700(b).) We observe that contract principles apply to settlements of workers' compensation disputes. Stipulations between the parties must be interpreted to give effect to the mutual intention of the parties it existed at the time of contracting, so far as the same is ascertainable and lawful. (*County of San Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda)* (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193], citing Civ. Code, § 1636.)

Additionally, there must be a complete record for our review of the case. "[A] proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc).) The Appeals Board's record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator's file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, § 10803.)

Finally, all parties in workers' compensation proceedings retain their fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker, supra*, 82 Cal.App.4th at pp. 157-158.) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, 82 Cal.App.4th at pp. 157-158, citing *Kaiser Co. v. I.A.C.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710-712 [57 Cal.Comp.Cases 230].)

In the June 24, 2026 en banc decision in *Gaines, et al. v. ABM Aviation Inc., et al.*, (2026) 91 Cal.Comp.Cases ___, the Appeals Board discussed the WCJ's role in determining adequacy of settlements. We held that:

1. A workers' compensation settlement is only enforceable after approval by the Workers' Compensation Appeals Board. In approving a settlement, a WCJ must consider whether the agreement is valid and must determine whether the settlement is adequate in order to protect the injured worker and the public interest.
2. Where the terms of the settlement are inconsistent, do not comply with the Labor Code, and / or are inadequate, the WCJ may investigate by issuing an order suspending action, and if the parties do not provide sufficient information, the WCJ may hold a hearing to create an evidentiary record that establishes the adequacy of a settlement.

(*Id.* at p. __.)

Here, it is not clear from the record whether the C&R was submitted as a walk through, and there are no minutes of hearing or statement of evidence upon which we can review the settlement. The only medical records entered into EAMS are three qualified medical evaluator (QME) reports. None of the reports discuss a cumulative injury and one of the reports defers the issue of organ prolapse and other body parts to other specialties. A Medicare Set Aside was procured, approved, and attached to the settlement. However, the approval letter from Center for Medicare Services is dated April 27, 2020, four years prior to the approval of the C&R and prior to the internal QME report dated August 21, 2023 finding additional compensable body parts. This raises questions as to whether Medicare interests have been properly considered. Additionally, the record does not appear to include a printout of benefits, wage statement, benefit notices, permanent disability ratings either by the parties or the Disability Evaluation Unit. The aforementioned items

are helpful and necessary to determining the adequacy of a settlement. Further, the C&R notes less than 104 weeks of temporary disability paid at a rate of \$520.00 per week, however the total paid is well short of the total applicant would have otherwise been entitled to for that period. While there may be a reason for the discrepancy, the record does not support the assertion made in the body of the C&R. These are all factors to consider in determining whether there is adequate consideration paid and therefore whether there is actually a valid agreement.

As a result, we do not disturb the OACR so that the parties can create a record on the issues of whether the settlement is adequate; should be enforced; or whether further discovery should take place. At that time, they will have an opportunity to raise any other issues and make any objections. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration filed by defendant on February 21, 2025 is **DISMISSED** and the Petition for Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 18, 2026

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

**SAMIA MORCOS
ACUMEN LAW**

TF/md

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