

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

SCOTT MCNALLY, *Applicant*

vs.

**TAFT ELECTRIC COMPANY; OLD REPUBLIC INSURANCE COMPANY,
administered by GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ16306548
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration or removal of the Findings and Order with Opinion on Decision (F&O) issued on January 13, 2026, wherein the workers' compensation administrative law judge (WCJ) found that (1) while employed as an electrician by Taft Electric Company, per the filed application dated June 16, 2022, applicant claims to have sustained cumulative injury during the period November 12, 2020 through November 12, 2021, to his neck, back, and bilateral feet; (2) the claim was denied by Gallagher Bassett Services, and no benefits have been paid; (3) the NECA/IBEW Alternative Dispute Resolution (ADR) program on its face is a valid ADR program that has been recognized and repeatedly authorized by the Administrative Director (AD) and holds prima facie jurisdiction over applicant's claim, and applicant has not proven that it fails to meet the requirements of Labor Code section 3201.5(b) or violates his right to a fair hearing.

The WCJ ordered that (1) the NECA/IBEW ADR program is a legally valid and AD approved ADR program and holds prima facie jurisdiction over applicant's claim, and does not violate the requirements of Labor Code section 3201.5(b); and (2) the WCAB does not have jurisdiction to hear applicant's claim other than in the form of an appeal from a ruling by the ADR's arbitrator, and applicant needs to seek any further remedy and/or relief through the ADR program.

Applicant contends that the WCJ erroneously failed to determine that (1) the ADR program is invalid on its face or as applied to him; and (2) the ADR program otherwise violates California law on the grounds that the ombudsman assigned to applicant's claim did not fulfill his duties and had financial conflicts of interest.

We did not receive an Answer from defendant.

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

We have considered the allegations of the Petition and the contents of the Report. Based upon our review of the record, and as discussed below, we will treat the Petition as one for reconsideration and deny reconsideration.

FACTUAL BACKGROUND

On October 16, 2025, the matter proceeded to trial, with the following issue in dispute:

1. Does the WCAB have jurisdiction over this claim given the existence and applicability of the NECA/IBEW ADR program, and whether that ADR program violates and/or denies his rights to a fair hearing and process, as not being consistent with the requirements of Labor Code section 3201.5(b), and if so, should the claim be heard and adjudicated at the WCAB, as opposed to the ADR program, as requested by Applicant.

(Minutes of Hearing and Summary of Evidence, October 16, 2025, p. 3:2-5.)

The parties stipulated that applicant's claim was denied by Gallagher Bassett Services, Inc., and that subsequent to denial of the claim, the NECA/IBEW ADR program administratively closed its process with respect to applicant's claim on or about December 12, 2022. (*Id.*, p. 2:22-25.)

The WCJ admitted into evidence an exhibit entitled ADR Agreement Between the International Brotherhood of Electrical Workers and the National Electrical Contractors Association, dated September 28, 1994 (ADR Agreement). (*Id.*, p. 5:3, 22.)

The ADR Agreement provides, in pertinent part:

4.8 Neither party will be permitted to be represented by legal counsel at mediation.

The fact that an employee or employer representative or its workers' compensation carrier's representative has had legal training or is a licensed attorney shall not bar such person from participating in mediation unless he or she seeks to participate on the basis of a lawyer-client relationship. All communications between the mediator and the parties shall be directly with the parties, and not through legal counsel

4.9 Within 30 calendar days after the completion of the mediation process, any party not satisfied with the outcome shall file with the mediation board a request that the matter be referred for arbitration.

...

4.15 Arbitration shall be subject to the provisions of Labor Code Section 3201.5. The decision of the arbitrator shall be subject to review by the State of

California Workers' Compensation Appeals Board in accordance with the provisions of Labor Code Section 3201.5.

(Ex. A, ADR Agreement between the International Brotherhood of Electrical Workers and the National Electrical Contractors Association, September 28, 1994, pp. 4-5.)

In the Report, the WCJ states:

Applicant worked as an electrician/foreman for Taft Electric and was subject to the ADR Program pursuant to the collectively bargained contract between the Electrical Contractors Association and the International Brotherhood of Electrical Workers union. A primary goal of ADR programs like this, where applicants are generally not represented, is to reduce litigation and attendant costs, and expedite the resolution of worker's compensation claims through an alternative process that is roughly equivalent to that at the WCAB.[fn]

At some point and while unrepresented, the Applicant filed a claim of industrial through that program. Some months later, and seemingly frustrated by the lack of any progress of his claim through that ADR Program, he retained counsel, David Hart. Mr. Hart thereafter on June 16, 2022, e-filed an application for adjudication of claim with the Oakland District Office of the WCAB, alleging cumulative injury from November 12, 2020 through November 12, 2021, to his neck, back, and foot, citing "wear and tear." (See EAMS/Filenet on that date.) The WCAB claim was denied by Gallagher Bassett the third party administrator for Old Republic Insurance, in a notice dated July 25, 2022. (Joint 101.) That denial notice cited as grounds, a lack of "factual and substantial medical evidence to support an industrial injury," and the lack of timely reporting within 30 days, and the fact that the claim was filed "post-termination." (Id. at p. 1.) It also referenced the ADR carve out program, and provides contact information for the ADR Program's ombudsman, Richard Robyn, including his mailing address, email, and phone number, and the internet address for the program's website, as well as the phone number for the Gallagher Bassett adjuster, Endeliza Mena. (Id. at p. 2.) On August 22, 2022, defense counsel e-filed a Petition for Dismissal pursuant to Labor Code section 3201.5, alleging that Applicant worked as a union electrician for this employer, whose employment was governed by a collectively bargained contract, and as part of that contract, its employees workers' compensation claims were subject to an ADR program operated by a NECA/IBEW ADR carve out program recognized and approved by the DWC pursuant to Labor Code section 3201.5. (See EAMS/Filenet on that date, and related documentation attached to that petition.)

In response to that Petition, I issued a conditional order dated September 19, 2022, which dismissed the case with prejudice based for lack of jurisdiction, and directed Applicant to pursue his claim through the ADR process. That order was emailed to respective counsel the same day, with defense counsel designated to serve pursuant to Rule 10629. (See EAMS/Filenet on that date, Correspondence-Other.) Defense counsel filed a proof of service related to that order dated October 4, 2022. (See EAMS/Filenet on that date.) No objection in response to that order was filed, and

no Petition for Reconsideration and/or Removal was ever filed with respect to that order, and it seemingly became final.

On March 21, 2023, Applicant's attorney e-filed a DOR requesting a status conference on the issues of Applicant's attempt to schedule a QME evaluation with David Smolins, M.D., and defendant's cancellation of same, and further alleging the ADR Program's ombudsman, Richard Robyn, and defense counsel were non-responsive to efforts to resolve the dispute. (See EAMS/Filenet on that date.) It further asserted that the Applicant has received no benefits and that a med/legal evaluation was necessary to move the case forward. (Id.) Defense counsel filed an objection to that DOR dated March 30, 2023, citing the previous dismissal of the case per the order dated September 19, 2022, which was not objected to and/or the subject of any Petition for Reconsideration and/or Removal and was therefore final, and additionally that the WCAB lacks jurisdiction. (See EAMS/Filenet on that date.)

A status conference was held on that DOR on April 19, 2023, as reflected in the related Minutes of Hearing (MOH), and the case was taken off calendar at defendant's request and over Applicant's objection, on the basis the case had been previously dismissed. (See EAMS/Filenet on that date.) In an effort to get the ADR case moving, those MOH reflect I directed defense counsel to have the Gallagher Bassett adjuster contact Applicant's attorney in an effort to discuss any hold ups and/or problems in the ADR process. (Id.)

On August 21, 2023, Applicant's attorney filed a Petition to Have Claim Removed from ADR and Proceed with claim at the WCAB, citing the QME dispute referenced above and unsuccessful attempts by Applicant's attorney to take the deposition of the ombudsman, Mr. Robyn. (See EAMS/Filenet on that date.) Since the case had been previously dismissed, no action was immediately taken with respect to that petition. Applicant's attorney e-filed another DOR on January 11, 2024, requesting an MSC on the issue of Applicant's Petition to Remove the claim from ADR. (See EAMS/Filenet on that date.) Defendant e-filed an objection to that DOR on January 22, 2024, noting the prior final order dismissing the WCAB case and citing the OTOC at the prior April 19, 2023 status conference. (See EAMS/Filenet on that date.) At the February 21, 2024 MSC related to that DOR, as reflected in the related MOH, I continued that hearing to April 3, 2024, over defendant's objection, to allow Applicant's attorney to file a brief laying out his legal arguments. (See EAMS/Filenet dated 2/21/24 entered in EAMS on 4/5/24.) Applicant's attorney e-filed his letter brief dated March 29, 2024. (See EAMS/Filenet on that date, Typed or Written Letter.)

The MOH from April 3, 2024, reflect that I again continued the MSC to April 17, 2024 at 1:30 PM, in order to review Applicant's brief and do my own research, and at my request, Applicant's attorney e-filed various documents on April 22, 2024, which he felt were relevant to his Petition. (See EAMS/Filenet on that date.) On April 17, 2024, as reflected in the related MOH, I advised the parties that in light of my review of the filed letter brief and related documents and caselaw, I would

not be granting Applicant's petition, but would prepare a formal order to that effect, and I ordered the case off calendar, over Applicant's objection. Unfortunately, the related order did not issue until November 7, 2024, and that delay is solely my fault. The resulting Order, dated entitled "Denying Applicant's Petition to Remove Claim from Alternative Dispute Resolution (ADR) and Affirming Previous Order Dismissing Case for Lack of Jurisdiction" denied Applicant's Petition to remove the matter from the ADR and assume jurisdiction and reaffirmed the September 19, 2022, dismissed the case at the WCAB for lack of jurisdiction, and was emailed to respective counsel, on the same date, with defense counsel ordered to serve.

On November 19, 2024, Applicant's attorney filed a Petition for Reconsideration from that Order. Defendant e-filed an Answer objecting on November 27, 2024, and I filed a Report and Recommendation recommending reconsideration be denied, which was served on December 11, 2025. Thereafter the WCAB issued its Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (O&O) dated February 10, 2025, which rescinded that Order on the basis a trial should have been held on the dispute and a sufficient record was not made, and returned the matter to District Office for further proceedings.

...

The Applicant was the only witness to testify at trial. His testimony is summarized in the MOH/SOE dated October 16, 2025, at pages 6-10. The relevant highlights are as follows. He worked as a professional journeyman electrician for 25 years and stopped working because of physical limitations and conditions related to his back, neck, and right shoulder, the latter of which ultimately required a shoulder replacement. (Id. at p. 6.) He last worked in approximately early November 2021, and does not know the legal definition of a cumulative injury. (Id.) He was diagnosed with double crush syndrome involving his neck and upper extremities, and his hands would cramp up and prevent him from using a screwdriver, and he experienced back pain that radiated into both lower extremities. (Id.) He had a right shoulder replacement approximately three years ago at Kaiser, in 2022. (Id. at pp. 6, and 9.) He filed for and received an SSDI award because he can no longer work. (Id. at p. 6.)

He does not know what a QME is and the ADR Program's ombudsman Mr. Robyn never called him, so he retained Mr. Hart, in part because he was concerned about Mr. Robyn's objectivity and because he was concerned about the way things were going. (Id. at pp. 7, 10.) He did not understand the letter Mr. Robyn sent him, and does not believe or feel he was treated fairly by the ADR process, but is willing to cooperate to do whatever he has to in order to obtain workers' compensation benefits, including attending medical/legal exams. (Id.) He acknowledges receiving Mr. Robyn's letter of August 17, 2022, with multiple attachments, which is in evidence as Joint Exhibit 104. (Id.) He states he eventually sent in a QME request to Mr. Robyn, in response to this letter. (Id.)

On cross-examination, he testified he was hired out of the union hall and worked for Taft Electric from 2020, through his last day worked in November 2021. (Id. at p. 8.) The reason he stopped work was due to symptoms in his hands. (Id.) He does

not recall if he received the Gallagher Bassett letter dated July 25, 2022, (Joint 101), denying the claim or not. (Id.) He sent a letter to Mr. Robyn dated May 3, 2023, which objects to the denial of his claim and requests a QME, and confirms that is his signature. (Id. at p. 9.) He acknowledges that this letter was almost a year after the July 1, 2022, letter from Mr. Robyn to Mr. Hart (Joint 106). (Id.) He recalls getting Mr. Robyn's letter of August 17, 2022, (Joint 104), which indicates he has 30 days to request a QME. (Id.) He admits he was represented at the time he received the July 1, 2022 letter from Mr. Robyn to Mr. Hart, (Joint 106), which he was copied with, and could have discussed this letter with Mr. Hart at the time, including what he needed to do to pursue his claim in the ADR program. (Id.)

APPLICANT'S CLAIMS OF ERROR AND DISCUSSION

Applicant's Petition initially concedes "while there are some questions about the timeliness" of Applicant's objection/response to the Ombudsman's letter of August 17, 2022 to the Applicant (Joint 104) forwarding a number of documents including a QME list to complete and return if he objected to the Gallagher Bassett denial of his claim filed at the WCAB if he wanted a QME evaluation. (Petition at p. 2-4.) That letter on its face advised and warned the Applicant as follows: "Failure to file a Request for QME Panel within said third (30) days will mean that you agree with the opinions and conclusions contained in the enclosed 7/25/2022 letter from Gallagher Bassett, and your right to dispute such will terminate as per Article XIII Section 48(g) of the ADR Program Rules." (Joint 104, p. 1.) Unfortunately, it is clear from this record that the Applicant, who was represented by Mr. Hart at that point, failed to timely respond to this letter and that seemingly stalled and possibly doomed his claim pursuant to the clear ADR Program rules. Mr. Robyn's letter to the Applicant dated August 17, 2022, was preceded by a letter/fax to Applicant's attorney dated July 1, 2022 explaining his role in the ADR Program process, referencing an earlier letter he had sent to the Applicant, and advising that if a dispute arises the Applicant can request mediation of any dispute, and if that mediation failed to resolve the dispute, then the matter would proceed to arbitration at which point counsel could appear. (Joint 106.) Any requests for information, dispute resolution and/or mediation must be directed to him as the ombudsman, and he then cited a series of WCAB and/or Court of Appeal cases which explain the jurisdiction of the ADR program . . .

...
Although the Applicant eventually sent a letter dated May 3, 2022 to Mr. Robyn, almost 9 months later (Joint 102), which objected to denial of his claim, and requested a QME, seemingly without completing or enclosing the related form, the objection and request was clearly untimely on its face. A few days later, Applicant's attorney Megan Cheng of the David Hart office sent letter to Mr. Robyn dated May 11, 2023, which copied the Gallagher Bassett adjuster and defense counsel in the WCAB claim, asserting he had been non-responsive to multiple efforts to contact him requesting status of Applicant's claim in the ADR Program, and requesting he call their office to discuss how to get the denied claim moving therein. (Joint 103.)

On May 12, 2023, the Gallagher Bassett adjuster, Liza Mena emailed Izaias Garcia Applicant's attorney's office in response to that letter, which had been emailed to her and others including Mr. Robyn and defense counsel, confirming the denial of the claim for lack of medical evidence to support it, a lack of timely reporting and an alleged post termination defense, and advising Mr. Robyn will only work with the Applicant directly and not through counsel, as attorneys per the ADR Program rules are only allowed direct involving at the ultimate arbitration of the dispute and forwarding a copy of the Ombudsman's prior letter. (Joint 105.) Following that email, Mr. Garcia of the Hart office completed that the Ombudsman never responded to their office and advising that is why she was copied. (Id.) In response, Ms. Mena emailed Mr. Garcia back on May 12, 2023 at 12:57 PM requesting he call her to discuss. (Id.) The Petition further alleges that Applicant's attorney attempted to set Mr. Robyn's deposition on May 19, 2023, but it did not proceed because Mr. Robyn refused to confirm it and/or cooperate. (Id. at p. 2.)

In terms of substantive arguments in Applicant's Petition, the first is essentially a conclusory claim and assertion that the ADR Program improperly denied benefits to the Applicant. Nothing is said about the Ombudsman's letter of August 17, 2022 to the Applicant (Joint 104) quoted above, which clear[ly] advised the Applicant that if he wished to object to Gallagher Bassett's denial of his claim, he needed to submit a request for QME using the enclosed form within 30 days, *and that failure to do so would terminate his right to dispute that denial*. The basic problem here was not an arbitrary and/or improper or illegal denial of rights or due process, *but the Applicant's failure to complete and timely return the form despite explicit instructions and a warning by Mr. Robyn in that letter that a failure to do so would waive his right to contest the denial*. It is also noteworthy that the Applicant was represented by counsel at the time and presumably could and/or should have sent that letter to his attorney Mr. Hart if he was confused by or did not understand it. While this apparent rule or term of the ADR Program appears harsh on its face, i.e., Article XIII section 48(g), Applicant's attorney does not cite of reference it, much less dispute that it exists and applies in this case.

...

There is no question that this employer and the Applicant are subject to this ADR Program as part of the contract between NECA and its members, one of which is Taft Electric, and the Applicant as a union electrician employee. (Defendant's A.) It also clear that the AD has repeatedly approved this particular ADR Program over the years pursuant to related DIR/DWC rules. (See Defendant's B.)

...

On page 6, the Petition cites and quotes from an article that Mr. Robyn, a retired WCJ, apparently wrote for the Journal of Policy Analysis and Management in 2002), which discusses the role of an ombudsman in an ADR program, in an effort to seemingly attempt to contrast what he lists as the goals of an ADR program, and what occurred in this case. There are a number of problems with this. First, is that article was not offered and is not in evidence in this case. It is improper to cite and rely on evidence that is not part of and/or admitted into the record in a Petition for Reconsideration. Second, this article has no relevant whatsoever to the issue in dispute, i.e., whether the WCAB had jurisdiction over this claim and/or whether

Applicant has proven that this particular ADR Program on its face or as applied failed to comply with the requirements of Labor Code section 3201.5(b).

...

Finally, the petition appears to attempt to personally disparage Mr. Robyn with the unsupported assertion that he has family members in his practice, which constitute a conflict of interest, and that he improperly failed to make required financial disclosures. (Id. at pp. 10-11.) There is no evidence in the record to support this essentially ad hominin attack on Mr. Robyn, and I do not believe it constitutes an good faith legal argument that needs to be addressed.

(Report, pp. 3-13.)

DISCUSSION

I.

Former Labor Code section 5909¹ 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. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part:

(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 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 27, 2026, and 60 days from the date of transmission is April 28, 2026. This decision is issued by or on April 28, 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

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

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 February 27, 2026, and the case was transmitted to the Appeals Board on February 27, 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 27, 2026.

II.

A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (§§ 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, 413]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal. App. 3d 39, 45 [43 Cal.Comp.Cases 661, 665]) 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, 650–651, 655–656].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian, supra*, 81 Cal.App.4th at p. 1075 [65 Cal.Comp.Cases at p. 655] ("interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final'"); *Rymer, supra*, 211 Cal.App.3d at p. 1180 ("[t]he term ['final'] does not include intermediate procedural orders or discovery orders"); *Kramer, supra*, 82 Cal.App.3d at p. 45 [43 Cal.Comp.Cases at p. 665] ("[t]he term ['final'] does not include intermediate procedural orders").) Such interlocutory decision include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

Here, the WCJ's order that the WCAB does not have jurisdiction to hear applicant's claim other than in the form of an appeal from a ruling by the ADR's arbitrator determines a threshold

issue and therefore constitutes a “final” order. Accordingly, we will treat the Petition as one for reconsideration.

III.

Section 3201.5 provides, in pertinent part:

(a) [T]he Department of Industrial Relations and the courts of this state shall recognize as valid and binding any provision in a collective bargaining agreement between a private employer or groups of employers engaged in construction, construction maintenance, or activities limited to rock, sand, gravel, cement and asphalt operations, heavy-duty mechanics, surveying, and construction inspection and a union that is the recognized or certified exclusive bargaining representative that establishes any of the following:

(1) An alternative dispute resolution system governing disputes between employees and employers or their insurers that supplements or replaces all or part of those dispute resolution processes contained in this division, including, but not limited to, mediation and arbitration. Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers’ compensation administrative law judge . . .

(b)

(1) Nothing in this section shall allow a collective bargaining agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division. The portion of any agreement that violates this paragraph shall be declared null and void.

In *Costa v. Workers Compensation Appeals Bd.* (1998) 63 Cal.Comp.Cases 814, the Court of Appeal affirmed the WCAB's dismissal of the applicant’s workers’ compensation claim on the grounds that the applicant’s claim was subject to a collective bargaining agreement between IBEW and NECA which required it to be adjudicated under an ADR program authorized by section 3201.5 and not by the WCAB. The Court concluded that the ADR program was facially valid and could not be challenged as applied because the applicant had not pursued the claim in ADR.

The *Costa* court described the ADR program at issue:

The [ADR] agreement creates a three-step procedure to deal with job-related injury disputes. Initially, an employee, employer or interested third party files a complaint with an ombudsman, a person selected and paid by the fund, to assist in attempting to resolve the dispute. The ombudsman must provide a response within 10 working days, unless the parties agree to extend the response time. If the ombudsman cannot

satisfactorily resolve the matter, the complainant may apply for mediation. If requested, the ombudsman must assist an employee in filing for mediation.

...

Any party dissatisfied with outcome of the mediation may file a request for arbitration "[w]ithin 30 calendar days after the completion of the mediation process." The matter is then immediately referred to an arbitrator who "shall have experience and be knowledgeable in the workers' compensation dispute process and shall have been at one time a certified specialist in workers' compensation law or a California Workers' Compensation judge." Unless the parties otherwise agree, the arbitration "shall be completed within 30 days after referral, and an arbitration decision rendered within 10 working days of the completion of the proceedings." "[T]he Arbitrator shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case. The decision of the Arbitrator is subject to review by the Workers' Compensation Appeals Board and shall have the same force and effect as an award, order, or decision of a workers' compensation judge."

The agreement allows the parties to retain at their own expense, but they are prohibited from appearing by an attorney during the ombudsman and mediation phases. The parties may be represented by counsel during the arbitration phase.

(Costa, supra, at p. 816.)

Applicant first contends that the ADR program is invalid on its face or as applied to him. Specifically, applicant argues that the ADR program is (1) facially invalid under section 3201.5 because it fails to make decisions issued under the program subject to review by the WCAB and bars attorneys from participating in "critical phases" of the proceedings; and (2) invalid as applied because it operated to deny his claim on the grounds that he failed to timely request a QME. (Petition, p. 6.)

As to the issue of whether the ADR program is facially invalid because it fails to authorize review by the WCAB, we observe that the ADR agreement provides the "decision of the arbitrator shall be subject to review by the State of California Workers' Compensation Appeals Board in accordance with the provisions of Labor Code Section 3201.5." (Ex. A, ADR Agreement between the International Brotherhood of Electrical Workers and the National Electrical Contractors Association, September 28, 1994, p. 5.) This language meets the section 3201.5(a)(1) requirement that the ADR program provide for review by the Appeals Board in the manner provided for reconsideration of a final order, decision, or award by a WCJ.

Accordingly, we discern no grounds to conclude the ADR program is facially invalid because it fails to make decisions subject to review by the Appeals Board.

As to the issue of whether the ADR program is facially invalid because it bars attorneys from participating in critical phases of the proceedings, the ADR agreement provides that the parties may not be represented by legal counsel at mediation, but any party not satisfied with the outcome of mediation may request arbitration, a proceeding for which both parties may retain counsel. (Ex. A, ADR Agreement between the International Brotherhood of Electrical Workers and the National Electrical Contractors Association, September 28, 1994, p. 4.)) These provisions are identical to those considered by the Court of Appeal in *Costa* and determined to be facially valid. (*Costa, supra*, at p. 816)

Accordingly, we discern no grounds to conclude the ADR program is facially invalid because it bars attorneys from participating in mediation.

As to the issue of whether the ADR program is invalid as applied because it operated to deny applicant's claim on the grounds that he did not timely request a QME, the record shows that applicant, after becoming frustrated with the ADR process, did not timely request a QME despite receiving notice that he was required to do so in order to maintain his claim. (Report, pp. 1, 7-9, 11.) Thereafter, his claim was administratively closed and the record does not show that he sought review of that action by the Appeals Board. (Minutes of Hearing and Summary of Evidence, October 16, 2025, p. 2:22-25; Report, pp 3-13.)

Since we may only exercise jurisdiction over a dispute arising out of the ADR program where review of a decision is sought, and since applicant did not seek review of the closure of his claim in ADR, we lack jurisdiction to determine the validity of the closure of applicant's claim. (See *Costa, supra*.)

Accordingly, we conclude that we hold no jurisdiction over applicant's contention that the ADR program is invalid as applied.

We turn next to applicant's contention that the ADR program otherwise violates California law on the grounds that the ombudsman assigned to applicant's claim did not fulfill his duties and had financial conflicts of interest.

Here, we have concluded that we lack jurisdiction over the contention that the ADR program is invalid as applied because applicant did not maintain his claim in that forum and we reject applicant's argument on that basis.

However, as the WCJ states in the Report, applicant asserts without evidence that the ombudsman failed to fulfill his duties or disclose conflicts of interest. (Report, pp. 12-13.) Hence we admonish applicant's attorney to support all evidentiary statements in pleadings filed with the

Appeals Board by specific references to the record and that any failure to do so may result in denial of a future petition before us. (Cal. Code Regs., tit. 8, § 10945.)

Accordingly, we will treat the Petition as one for reconsideration and deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings and Order with Opinion on Decision issued on January 13, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER



KATHERINE WILLIAMS DODD, COMMISSIONER
PARTICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 27, 2026

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

**SCOTT MCNALLY
LAW OFFICE OF DAVID L. HART
MULLEN & FILIPPI**

SRO/kl

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