WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

SHARON HUGHES*, Applicant*

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendant*

Adjudication Number: ADJ12141593
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the October 24, 2025 Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant, while employed on March 20, 2019 as an organizer by defendant, sustained an injury arising out of and occurring in the course of employment (AOE/COE) to her neck, cervical spine, lumbar spine, bilateral shoulders, and thoracic spine. The WCJ found the injury claim was settled by Compromise and Release (C&R) based upon a split of the primary treating physician (PTP) and the panel qualified medical evaluator (QME). The WCJ further found that applicant filed a timely petition for benefits from the Subsequent Injuries Benefits Trust Fund (SIBTF) but failed to meet her evidentiary burden of proof to show that she was permanently partially disabled prior to her subsequent industrial injury of March 20, 2019. The WCJ thereafter ordered that the applicant take nothing from the SIBTF.

Applicant argues that the WCJ erroneously limited her analysis to whether work restrictions had been imposed in order to determine whether applicant had any preexisting labor-disabling disability, and that submitted medical reports pertaining to her pre-existing conditions constitute substantial medical evidence in support of a finding of entitlement to SIBTF benefits. In the alternative, applicant contends that the record requires further development.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny applicant's Petition.

We have considered the Petition for Reconsideration, the Answer, the contents of the Report, and have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant the Petition for Reconsideration. 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 Labor Code[1] section 5950 et seq.

I.

Preliminarily, we note that former 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.
>
> (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 November 24, 2025 and 60 days from the date of transmission is Friday, January 23, 2026. This decision is

[1] All further statutory references are to the Labor Code, unless otherwise noted.

issued by or on Friday, January 23, 2026, so that we have timely acted on the petition as required by Labor Code 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 workers' compensation administrative law judge, the Report was served on November 24, 2025, and the case was transmitted to the Appeals Board on November 24, 2025. 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 November 24, 2025.

II.
FACTS

Applicant began working as an organizer with Groundworks Campaigns beginning in 2006 and continuing, when on March 20, 2019, she suffered a slip and fall at work, injuring her neck, thoracic spine, lumbar spine, bilateral shoulders, and cervical spine. Applicant settled this subsequent industrial injury case with State Compensation Insurance Fund (SCIF) by C&R, and an Order Approving Compromise and Release (OACR) issued on March 24, 2023. (Exhs. D and E.)

On May 31, 2023, applicant filed an Application for Subsequent Injuries Fund Benefits (Application) through new legal counsel.

On August 5, 2025, the matter proceeded to trial on the SIBTF issues. The parties stipulated:

> 1. Sharon Hughes Taylor, born [ ], while employed on 3-20-2019 as an organizer at Long Beach, California by GroundWorks Campaign, claims to have sustained injury arising out of and in the course of employment to her neck, thoracic spine, lumbar spine, bilateral shoulders, and cervical spine.

(Minutes of Hearing (Minutes) dated August 5, 2025, at p. 2.)

The parties further stipulated to the employee's earnings, as well as deferral of the issue of credit or offsets under section 4753. (*Ibid.*)

The issues were limited to:

1. Whether apportionment applies to the 35% or 5% threshold.
2. Whether applicant meets the 70% threshold.
3. Whether applicant has a pre-existing permanent partial disability.

(*Ibid*.)

Although applicant did not testify at trial, the WCJ made findings that applicant suffered injury to all body parts, but that applicant did not meet her evidentiary burden of proof that she was permanently partially disabled prior to the subsequent industrial injury and issued an Order that the applicant take nothing from the SIBTF. (F&O, at pp. 1-2.)

It is from this F&O that applicant seeks reconsideration.

DISCUSSION

The documents admitted into evidence at trial by the WCJ include joint exhibits consisting of the C&R and Order approving same as to the subsequent injury of March 20, 2019, and the medical-legal reports by Qualified Medical Evaluator (QME) Dr. Zenia E. Cortes, M.D. Applicant offered the medical reports of treating physician Matthew Longacre, M.D., as well as the reports by three physicians who evaluated the applicant solely for her SIBTF claim, Joseph Minkstein, M.D., Douglas Drucker, M.D., and Babak Kamkar, M.D. These exhibits were marked for identification only, and admitted into evidence in the WCJ's F&O.

According to our review of the C&R, applicant and defendant SCIF agreed to "split ratings of 36 + 58 to 47%" for permanent disability. (Exh. D, at pp. 7.) Further, the parties outlined the basis for the settlement:

> 40% (15.01.01.00 - 25 - 35 - 251E - 32 - 40) 16
> 90% (15.03.01.00 - 8 - 11 - 251E - 10 - 13) 12 16 C12=36%
> BACK, BILATERAL HIPS, NECK, BILATERAL HANDS, BILATERAL SHOULDERS, BILATERAL UPPER EXTREMITIES

(*Ibid*.)

The ratings referred to in the C&R appear to be based on the medical report by QME Dr. Cortes dated July 27, 2020. (Ex. C.) In accord with the first rating noted above, the QME's rating for the cervical spine is 25% whole person impairment (WPI) with apportionment of 40 percent to the injury of March 20, 2019, and apportionment of 60 percent to a pre-existing congenital fusion. (Exh. C, at pp. 15-16.) The second string rating corresponds with the QME's rating of 8% WPI for

the lumbar spine, with apportionment of 90 percent to the March 20, 2019 injury and apportionment of 10 percent to progressive degenerative changes. (*Ibid*.) The ratings listed in the settlement document appear to be ratings under the 2005 Permanent Disability Ratings Schedule (PDRS) which take into consideration applicant's age and occupation.

Although the settlement agreement memorializes only ratings for the cervical spine and lumbar spine, Dr. Cortes also rates applicant's left shoulder 5% WPI and her right shoulder 6% WPI with no apportionment. (*Ibid*.)

Exhibit 1 is a permanent and stationary (P&S) medical report addressing the subsequent industrial injury by applicant's PTP Dr. Longacre, dated December 1, 2020. Therein, Dr. Longacre provides ratings for multiple body parts including a rating of 27% WPI for the cervical spine, 6% WPI for the thoracic spine, 7% for the lumbar spine, 2% WPI for the right shoulder, and 6% WPI for the left shoulder. (Exh. 1, at pp. 9-11.) Regarding apportionment, Dr. Longacre apportions 20% of the cervical spine impairment to preexisting degenerative changes and 80% of the current level of impairment to the injury of March 20, 2019. (*Id.,* at p.12.) Dr. Longacre apportions 10% of the lumbar spine impairment to preexisting degenerative changes and 90% of the current level of impairment to the injury of March 20, 2019. (*Ibid*.) Dr. Longacre finds no apportionment to the thoracic spine and bilateral shoulders.

We note that the WCJ's F&O did not consider Dr. Longacre's reporting.

Applicant also offered medical-legal reports by Joseph Minkstein, D.C., Jose Javier Hernandez, M.D. and Douglas Drucker, Ph.D., which were prepared for the SIBTF claim. These reports were marked for identification only at the trial and subsequently admitted into evidence in the F&O, however, the WCJ found that applicant's medical-legal reports produced for the purposes of the SIBTF claim did not constitute substantial medical evidence.

III.

We highlight the following legal principles that may be relevant to our review of this matter:

SIBTF is a state fund that provides benefits to employees with preexisting permanent disability who sustain subsequent industrial disability. The purpose of the statute is to encourage the employment of the disabled as part of a "complete system of [workers'] compensation contemplated by our Constitution." (*Subsequent Injuries Fund of the State of California v. Industrial Acci. Com. (Patterson)* (1952) 39 Cal.2d 83 [17 Cal.Comp.Cases 142]; *Ferguson v.*

Industrial Acci. Com. (1958) 50 Cal.2d 469, 475; *Escobedo v, Marshalls* (2005) 70 Cal.Comp.Cases 604, 619 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Board en banc).)

SIBTF is codified in section 4751, which provides:

> If an employee who is permanently partially disabled receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury alone, and the combined effect of the last injury and the previous disability or impairment is a permanent disability equal to 70 percent or more of total, he shall be paid in addition to the compensation due under this code for the permanent partial disability caused by the last injury compensation for the remainder of the combined permanent disability existing after the last injury as provided in this article; provided, that either (a) the previous disability or impairment affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the subsequent injury affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee, is equal to 5 percent or more of total, or (b) the permanent disability resulting from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of total. (§ 4751.)

The preexisting disability may be congenital, developmental, pathological, or due to either an industrial or nonindustrial accident. (*Escobedo, supra,* 70 Cal.Comp.Cases at p. 619.) It must be "independently capable of supporting an award" of permanent disability, "as distinguished from [a] condition rendered disabling only as the result of 'lighting up' by the second injury." (*Ferguson, supra*, 50 Cal.2d at p. 477.)

In *Todd v. Subsequent Injuries Benefits Trust Fund (*2020) 85 Cal.Comp.Cases 576, 581-582 [2020 Cal. Wrk. Comp. LEXIS 35] (Appeals Board en banc), we stated that an employee must prove the following elements to recover subsequent injuries fund benefits:

(1) a preexisting permanent partial disability;

(2) a subsequent compensable injury resulting in additional permanent partial disability:

(a) if the previous permanent partial disability affected a hand, an arm, a foot, a leg, or an eye, the subsequent permanent disability must affect the opposite and corresponding member, and this subsequent permanent disability must equal to 5% or more of the total disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee; or

(b) the subsequent permanent disability must equal 35% or more of the total disability, when considered alone and without regard to, or adjustment for, the occupation or the age of the employee;

(3) the combined preexisting and subsequent permanent partial disability is greater than the subsequent permanent partial disability alone; and

(4) the combined preexisting and subsequent permanent partial disability is equal to 70% or more. ([Lab. Code] § 4751.)

(*Todd, supra,* 85 Cal.Comp.Cases 576, 581-582).

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].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

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; see also Cal. Code Regs., tit. 8, § 10787.) "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,* 66 Cal.Comp.Cases 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]).)

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (§§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [65 Cal. Rptr. 2d 431, 62 Cal.Comp.Cases 924] ["The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims."]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [72 Cal. Rptr. 2d 898, 63 Cal.Comp.Cases 261]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805]; *Gangwish v. Workers' Comp. Appeals Bd. (*2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

The Appeals Board also has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (Id. at p. 404.)

Here, it is unclear from our preliminary review whether the legal issues have been properly identified; whether the existing record is sufficient to support the decision, order, and legal conclusions of the WCJ; and/or whether further development of the record may be necessary as it relates to the issues raised by the parties, including whether applicant is entitled to an award against the SIBTF.

IV.

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. Industrial Acc. Com*. (*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. Industrial Acc. Com*. (*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. Industrial Acci. Com*. (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 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) 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"].)

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.

V.

Accordingly, we grant applicant's Petition for Reconsideration, and 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. ***While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to*** WCABmediation@dir.ca.gov.

For the foregoing reasons,

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

IT IS FURTHER ORDERED 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.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 22, 2026

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

SHARON HUGHES
LAW OFFICE OF JAMIE A. BLUNT
OFFICE OF THE DIRECTOR – LEGAL UNIT
SUBSEQUENT INJURIES BENEFITS TRUST FUND

TD/bp

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