**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**THOMAS JOSEPH HOFFMAN, *Applicant***

**vs.**

**CITY OF LOS ANGELES, permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICE, INC., *Defendants***

**Adjudication Numbers: ADJ18998863; ADJ20148054; ADJ19129371; ADJ18808115; ADJ18807342; ADJ18805265**
**Los Angeles District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant, in pro per, seeks reconsideration of the Joint Findings of Fact and Order (F&O) issued on August 14, 2026, by the workers' compensation administrative law judge (WCJ).[1] By the F&O, as relevant here, the WCJ found that applicant, while employed as a communications electrician by defendant during various dates of injury, was subject to a valid and binding labor-management agreement consistent with Labor Code section[2] 3201.7 that established a valid alternative dispute resolution (ADR) Program, such that the WCAB does not have jurisdiction to decide the underlying workers compensation issues for applicant's pending claims. She ordered that applicant's cases were dismissed without prejudice and are subject to the ADR program with the City of Los Angeles and that applicant's exhibits were admitted.

Applicant contends that the WCJ erred by finding the WCAB did not have jurisdiction to adjudicate applicant's claims.

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[1] Applicant filed a timely verified Petition for Reconsideration dated August 31, 2026 and a timely Amended Petition for Reconsideration with updated signature page on September 1, 2026, which we accept. (See *Lucena v. Diablo Auto Body* (2000) 65 Cal.Comp.Cases 1425 (Significant Panel Decision).)

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

We have not received an answer from defendant. 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 for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant the Petition and, as our Decision After Reconsideration, we will affirm the F&O, except that we will amend the F&O to find that the WCAB retains jurisdiction over those claims that are not excluded by the ADR program. We will also amend the F&O to remove the order that applicant's cases are dismissed and to defer any issues arising out of the excluded claims, including Labor Code section 132a, death benefits, and serious and willful misconduct.

## FACTS

We will briefly review the relevant facts.

Applicant claimed various dates of injury while employed by defendant as a communications electrician. Applicant's relevant workers' compensation claims are as follows:

> **ADJ18998863,** applicant claims to have sustained injury arising out of and in the course of employment during the period March 4, 2023, through March 5, 2024, to his circulatory system, cardiovascular system, neurological system, psyche and respiratory system;
>
> **ADJ20148054,** applicant claims to have sustained injury arising out of and in the course of employment on November 7, 2024, to his circulatory system, cardiovascular system, neurological system, psyche and respiratory system;
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> **ADJ19129371,** applicant claims to have sustained injury arising out of and in the course of employment on March 5, 2024, to his circulatory system, cardiovascular system, neurological system, psyche and respiratory system;
>
> **ADJ18808115,** applicant claims to have sustained injury arising out of and in the course of employment on December 9, 2021, to his circulatory system, cardiovascular system, neurological system, psyche and respiratory system;
>
> **ADJ18807342,** applicant claims to have sustained injury arising out of and in the course of employment on October 10, 2019, to his circulatory system, cardiovascular system, neurological system, psyche and respiratory system; and

> **ADJ18805265,** applicant claims to have sustained injury arising out of and in the course of employment on August 21, 2018, to his circulatory system, cardiovascular system, neurological system, psyche and respiratory system.

(Report, p. 1, ¶ 2-p. 2, ¶ 4.)

The Memoranda of Understanding for the periods 2018 (Def. Exh. C), 2023 (Def. Exh. B), and 2023-2028 (Def. Exh. A) includes articles setting forth an "ADR Program Agreement." As relevant here, the Agreement states that:

> VIII. ADR PROGRAM JURISDICTION
>
> As to all claims with dates of injury on or after the effective date of this ADR Program, as agreed to by the City and Trades Council Party, it is the intent of the parties to replace all dispute resolution procedures set forth in the California Labor Code with those dispute resolution procedures outlined herein to the greatest extent allowed by law. In any conflict, the provisions of this Agreement shall take precedence over the provisions of the California Labor Code, but only so far as permitted by Labor Code Section 3201.7. This ADR Program shall be used in place of the filing of an application with the Workers' Compensation Appeals Board (WCAB) for any injuries or claims that would otherwise be subject to the initial jurisdiction of the WCAB. This ADR Program is the sole means of dispute resolution and no dispute shall proceed to the WCAB until it has completed the processes defined and established by this Agreement.

(Def. Exh. C, p. 8, Section VIII.)

However, the language of the ADR Program Agreement expressly excludes certain claims as follows:

> XIX. CLAIMS NOT COVERED BY THIS ADR PROGRAM
>
> Labor Code Section 132a, Serious and Willful Misconduct, death claims, Americans with Disabilities Act of 1990, and the California Fair Employment and Housing Act are excluded from this ADR Program.

(Def. Exh. C, p. 10, Section XIX.)

On February 25, 2026, applicant filed a Declaration of Readiness (DOR) alleging entitlement to medical treatment and temporary disability or disagreement on the amount of temporary disability.

On March 12, 2026, defendant filed an objection, arguing that applicant's claims are subject to ADR pursuant to section 3201.7, so that the WCAB did not have jurisdiction.

On March 23, 2026, the WCJ issued a minute order taking the matter off calendar.

On May 1, 2026, applicant filed a Petition for Removal alleging that he was being "starved out" by defendant's ADR program due to defendant's delays.

On May 12, 2026, applicant filed a petition for section 132a benefits.

On May 13, 2026, the WCJ issued a "Joint Order Rescinding and Vacating Minute Order Taking Cases Off Calendar and Setting for Further Proceedings (Rule 10955)."

On June 1, 2026, the parties met for a status conference. Applicant contested ADR jurisdiction and sought a finding on the merits.

On June 23, 2026, the parties proceeded to trial on the sole issue of whether the WCAB has jurisdiction to decide the underlying issues in applicant's cases. The stipulated facts include the employment relationship, the various dates of injury, and the alleged body parts claimed to be industrial. Applicant submitted various exhibits (App. Exhs. 1-13), which, at that time, were marked for identification only. Applicant testified.

Thereafter, on August 14, 2026, the WCJ issued the F&O, finding in relevant part that because there was a valid ADR program in the matter, the WCAB did not have jurisdiction to decide the underlying workers' compensation issues in applicant's ADJ case numbers ADJ18998863, ADJ20148054, ADJ19129371, ADJ18808115, ADJ18807342, and ADJ18805265. She ordered that applicant's cases were dismissed without prejudice and are subject to the ADR program with the City of Los Angeles and that applicant's Exhibits 1 through 13 were admitted into evidence. Thereafter, applicant filed the Petition.

## DISCUSSION

### I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to section 5909, which states that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under 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 September 15, 2026 and 60 days from the date of transmission is Saturday, November 14, 2026. The next business day that is 60 days from the date of transmission is Monday, November 16, 2026.(See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision is issued by or on Monday, November 16, 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 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on September 15, 2026, and the case was transmitted to the Appeals Board on September 15, 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 September 15, 2026.

[3] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

## II.

Section 3201.7 requires the recognition of "valid and binding" labor-management agreements that provide for alternative dispute resolution of workers' compensation claims between employees and employers or their insurers. (Lab. Code, § 3201.7(a), (d).) Specifically, section 3201.7(a) provides that, "Except as provided in subdivision (b), the Department of Industrial Relations and the courts of this state *shall* recognize as valid and binding any labor-management agreement that meets all of the following requirements." (Lab. Code, § 3201.7(a), emphasis added.) It is a principle of statutory construction that the word "shall," as used in the Labor Code ordinarily connotes a mandatory duty. (Lab. Code, § 15 ["'[s]hall' is mandatory and 'may' is permissive"]; see also *Jones v. Tracy School Dist.* (1980) 27 Cal.3d 99, 109; *Morris v. County of Marin* (1977) 18 Cal.3d 901, 907.) Thus, the WCAB is required to accept as valid an employer's duly approved ADR agreement that meets the requirements of section 3201.7.

The Appeals Board therefore generally has limited jurisdiction over disputes arising from a claim subject to an ADR agreement. The parties must exhaust their remedies in the ADR program before seeking intervention from the Appeals Board. (See *Costa v. Workers' Comp. Appeals Bd*. (1997) 62 Cal.Comp.Cases 1149 (writ den.); see also *Costa v. Workers' Comp. Appeals Bd*. (1998) 65 Cal.App.4th 1177 [the Court of Appeal affirmed the Appeals Board's order denying reconsideration of the order dismissing applicant's claim for lack of jurisdiction since it was subject to an ADR agreement].) Section 3201.7(a)(3)(A) requires that an ADR program provide for review by the Appeals Board of a final order, decision, or award issued by an arbitrator. The Appeals Board consequently has jurisdiction to address a *final* order, decision or award from an arbitrator in an ADR program, but no jurisdiction to address a non-final order by an arbitrator in these programs. (See *Bradford v. McMillian Bros. Electric Inc*., (November 10, 2008, ADJ2501619) [2008 Cal. Wrk. Comp. P.D. LEXIS 756, *15].) [4]

In *Jimenez, Perez v. Samuel Hale, LLC* (2020) 85 Cal.Comp.Cases 717, cited by the WCJ, we were presented with a challenge to jurisdiction of a dispute arising from a claim subject to an ADR agreement. In that case, we emphasized that:

[4] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].)

> [T]he legislature conferred jurisdiction in the AD [Administrative Director] to recognize labor-management agreements pursuant to section 3201.7—not the WCAB—and the AD has the "power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred" by the Legislature under the Labor Code (Lab. Code, § 133). Although the WCAB has a broad grant of authority to exercise all judicial powers vested in it by the Labor Code and may do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it by the Labor Code (§§ 111, 133; *see* §§ 115, 130, 134, 5307, 5309, 5813, 5900 et seq.) [describing various powers of the Appeals Board]), the WCAB has no authority in those matters where jurisdiction is vested in the AD by the Labor Code. (See *Stevens v. Workers' Comp. Appeals Bd.* (2015) 241 Cal.App.4th 1074, 1091 [80 Cal.Comp.Cases 1262 [statutory exceptions to the WCAB's exclusive adjudicatory jurisdiction in sections 4610 (utilization review) and 4610.6 (independent medical review)]; see also Lab. Code, §§ 3715(c) (workers' compensation insurance), 4603.6(f) (medical bills), and 139.21 (suspension of medical providers) [statutory exceptions to the WCAB's exclusive adjudicatory jurisdiction].)

(*Id.* at p. 731.)

Here, the issue before us is limited to whether the WCAB has jurisdiction over applicant's underlying issues in his enumerated workers' compensation claims. Defendant produced an ADR Program Agreement demonstrating the existence of a valid labor-management agreement that was initially approved by the State of California on or about October 2, 2018, and remained in effect from January 1, 2023 through December 30, 2023, and December 31, 2023 through December 23, 2028 (Def. Exh. C; see also, Def. Exh. A, p. 66, Article 7.15; Def. Exh. B, p. 57, Article 7.15), dates that encompass the dates of injury alleged in applicant's underlying workers' compensation claims. Applicant presented no evidence challenging the execution of the ADR Program Agreement itself, the Administrative Director (AD)'s authorization of the ADR Program Agreement, his membership in a union bound by the ADR Program Agreement, or any other evidence demonstrating that the ADR Program Agreement was invalid or nonbinding or that he was not subject to its terms.

Accordingly, based on the evidence, we must recognize defendant's ADR Program Agreement and, as a result, the WCAB does not have jurisdiction to decide the underlying workers' compensation issues covered by the ADR Program Agreement.

As further explained by the WCJ:

> Here, the Memorandum of Understanding ("MOU") dating back to June 2018 (Defendant's Exhibit C) and thereafter the MOU documents from 2023, and

2023-2028 (Defendant's Exhibits A & B), show that the City of Los Angeles has an established ADR program which covers the injuries alleged by the applicant in this matter. Furthermore, in the case of *Jimenez, Perez v. Samuel Hale, LLC* (2020) 85 CCC 717, 731, states:

> [T]the legislature conferred jurisdiction in the AD to recognize labor management agreements pursuant to section 3201.7-not the WCAB-and the AD has the "power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred" by the Legislature under the Labor Code (Labor Code, Section 133) .... The WCAB has no authority in those matters where jurisdiction is vested in the AD by the Labor Code.[…]

Based on Labor Code Section 3201.7, during the time of the applicant's alleged dates of injury, a valid Labor Agreement existed as stated in the Memorandums of Understanding between the City of Los Angeles and Los Angeles/Orange Counties Building & Construction Trades Council in 2018, and in 2023-2028 between the City of Los Angeles and Los Angeles/Orange Counties Building & Construction Trades Council, AFL-CIO, which established a valid ADR program in connection with injuries sustained on an industrial basis. Therefore, it was found that jurisdiction lies in the matter with the Administrative Director and not the WCAB such that these matters should be heard pursuant to the ADR program for the City of Los Angeles. It was thus found that the Workers Compensation Appeals Board does not have jurisdiction to decide the underlying issues in these cases.

Second, as for petitioner's contention that there was error by not finding that arbitrator incorrectly self-dismissed his claim, since there was a finding of no jurisdiction, this is moot. A review of all of the petitioner's many workers' compensation claims, he did at one time have an attorney who was then substituted out for another attorney who was then substituted out by the applicant and the applicant began to represent himself in pro per. While this court appreciates the applicant's frustration with the defense and the events that have occurred the fact remains that there does not appear to be jurisdiction at this time. It is noted that had applicant filed a petition for reconsideration of the arbitrator's alleged self-dismissal, then jurisdiction on that issue would have been with the Appeals Board. This however did not occur.

(Report, p. 4, ¶ 2-p. 5, ¶ 2.)

Applicant asserts the WCAB retains jurisdiction over his claims despite the existence of an ADR Program Agreement, arguing defendant's ADR Program was legally invalid because it was not a "functioning, fair, and neutral forum." (Petition, p. 5, ¶ Section III.) In essence, applicant takes issue with defendant's implementation of its ADR Program. Although the WCAB retains jurisdiction to determine whether it has jurisdiction over particular claims, that authority does not

extend to reviewing the fairness, neutrality, validity, or otherwise of an ADR program properly approved pursuant to section 3201.7. Those determinations fall within the AD's authority, which the WCJ may not override. (See *Stevens, supra*, at p. 1091.)

To the extent applicant claims that because the WCAB has jurisdiction over applicant's section 132a claim, the WCAB must exercise jurisdiction over his underlying workers' compensation claims, we disagree. Applicant provides no authority for the proposition that because the WCAB has jurisdiction to adjudicate a claim that is excluded by the ADR agreement, jurisdiction is conferred on the WCAB to adjudicate the underlying workers' compensation claims.

For the aforementioned reasons, and based on our review, we conclude that because there is an ADR program that meets the requirements of section 3201.7, the WCAB does not have jurisdiction over applicant's underlying workers' compensation issues.

**III.**

The Appeals Board retains jurisdiction to address disputes that cannot be adjudicated through an ADR program but are still subject to the Appeals Board's jurisdiction. (See e.g., *Kiewit Pacific Co. v. Workers' Comp. Appeals Bd*. (*Beaver*) (2003) 68 Cal.Comp.Cases 1873 (writ den.).)

Here, the language of the ADR Program Agreement expressly excludes certain claims as follows:

> XIX. CLAIMS NOT COVERED BY THIS ADR PROGRAM
>
> Labor Code Section 132a, Serious and Willful Misconduct, death claims, Americans with Disabilities Act of 1990, and the California Fair Employment and Housing Act are excluded from this ADR Program.

(Def. Exh. C, p. 10, Section XIX.)

Moreover, section 132a is not in Division 4, and vests only the WCAB "with full power, authority and jurisdiction to try and determine finally all [employee discrimination claims]" (Lab. Code, § 132a.), and there is nothing in section 132a that expressly permits any exceptions to the WCAB's exclusive jurisdiction over employee discrimination claims. (*Kiewit Pacific Company v. Workers' Comp. Appeals Bd. (Beaver)* (2003) 68 Cal.Comp.Cases 1873, 1875 (writ den.).)

Because the ADR Program Agreement explicitly excludes certain claims, including claims under section 132a, for death benefits, and for serious and willful misconduct, the WCAB retains

jurisdiction over those claims, and they are not subject to the ADR Program Agreement between applicant and defendant.[5]

Applicant contends the WCJ's F&O failed to dispose of or identify the proper forum for applicant's non-delegable claims. (Petition, p. 6, Section IV.) Although the F&O does not individually address each of applicant's claims, the WCJ explained:

> [R]egarding the petitioner's contention that this judge erred by not deciding the Petitioner's Labor Code Section 132a claim, that issue was not yet before the Court, only the issue regarding the jurisdiction of the underlying cases.

(Report, p. 5, ¶ 3.)

We agree. The issue at trial was whether the WCAB had jurisdiction to decide the underlying issues in the cases, and determination of the substantive issues applicant claimed were not before the WCJ at that time. However, because there is a pending section 132a claim where the WCAB does have jurisdiction, we amend the F&O to accurately reflect that the WCAB retains jurisdiction over applicant's claims that are not excluded by the ADR Program Agreement and to remove the order dismissing applicant's cases.

Regarding applicant's remaining objections, applicant attempts to offer arguments not directly on point to the issue identified at the time of the June 23, 2026 trial (Minutes of Hearing, June 23, 2026, p. 5, lines 6-9.), and, if adjudicated by the Appeals Board, would result in denying defendant their right to due process. Thus, we do not consider them further.

Accordingly, we grant the Petition for Reconsideration, and affirm the F&O, except that we amend the F&O to find that the WCAB retains jurisdiction over those claims that are not excluded by the ADR program and to remove the order that applicant's cases are dismissed and to defer any issues for the excluded claims, including under Labor Code section 132a, for death benefits, and for serious and willful misconduct.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Joint Findings of Fact and Order issued on August 14, 2026 is **GRANTED**.

[5] We note that our jurisdiction does not extend to claims under the Americans with Disabilities Act of 1990 and the California Fair Employment and Housing Act, and we do not address any claims under those Acts.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings of Fact and Order issued on August 14, 2026 by the WCJ is **AFFIRMED**, except that the Joint Finding of Fact and Order are **AMENDED** as follows:

**JOINT FINDINGS OF FACT**

* * *

8. Since there is a valid ADR program in this matter, the WCAB does not have jurisdiction to decide the underlying workers' compensation issues in these enumerated cases herein. However, the WCAB does have jurisdiction to decide the issue of applicant's claims that are excluded by the ADR Program Agreement.

## ORDER

**IT IS ORDERED** that case numbers **ADJ18998863 (MF); ADJ20148054; ADJ19129371; ADJ18808115; ADJ18807342; and ADJ18805265** are subject to the ADR program with the City of Los Angeles. The WCAB retains jurisdiction to adjudicate the claims excluded by the ADR Program Agreement, including any claims under Labor Code section 132a, for death benefits, and for serious and willful misconduct, and any issues arising out of the excluded claims are deferred.

* * *

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ PAUL F. KELLY, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**NOVEMBER 16, 2026**

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

**THOMAS JOSEPH HOFFMAN**
**OFFICE OF THE 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.
KL