

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

VIVIANA GREENE, *Applicant*

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendant*

**Adjudication Number: ADJ8387927
San Francisco District Office**

**OPINION AND ORDER DENYING
PETITION FOR RECONSIDERATION**

Applicant, in pro per, seeks reconsideration of the Opinion and Decision After Reconsideration (ODAR) issued on March 3, 2026, by the Workers' Compensation Appeals Board (WCAB), wherein we affirmed the May 24, 2022 Findings of Fact & Award finding that there was no evidence of preexisting labor disabling impairment for the allergic rhinitis, irritable bowel syndrome (IBS), gastroesophageal reflux disease (GERD) and dermatitis (in the form of a rash).

Applicant contends that the 73% disability rating for her November 4, 2010 injury and the 98% combined SIBTF rating unfairly excluded some of her preexisting conditions, including a congenital eye condition, and that she is entitled to a finding of 100% permanent disability.¹

We have not received an Answer from defendant. We have considered the Petition for Reconsideration and the record in this matter. As discussed in our ODAR, which we adopt herein, and for the reasons set forth below, we deny reconsideration.

¹ Applicant attached two medical reports to her Petition that are not part of the evidentiary record. To the extent that applicant alleges that the 2026 report regarding her eye condition is newly discovered evidence under Labor Code section 5903, the body part of eyes was not raised at the time of the proceedings in February 9, 2022, and there is no evidence in the record that the condition was labor-disabling before her 2010 injury. With respect to the 2004 report, it is not newly discovered as it existed before the proceedings in 2022, and we do not consider it.

DISCUSSION

I.

Former Labor Code section 5909² 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, the Legislature amended section 5909 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.

The Electronic Adjudication Management System (EAMS) Events log reflects transmission. Specifically, the Case Events log displays the phrase “Sent to Recon” under Event Description and “The case is sent to the Recon board” under Additional Information. Here, the Events log indicates the district office transmitted the case to the Appeals Board on April 23, 2026. 60 days from the date of transmission falls on June 22, 2026. We issue this decision on or before June 22, 2026, establishing that we have timely acted on the petition as section 5909(a) requires.

Section 5909(b)(1) requires the trial judge to provide notice of transmission to the parties and the Appeals Board. Transmitting the case in EAMS notifies the Appeals Board. Thus, the statute ensures the parties receive notice of the accurate date for the commencement of the 60-day period. Here, the Petition challenges an Appeals Board decision and the district office provided no other notice of transmission to the parties. While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result, the parties lacked notice of the commencement of the 60-day period on April 23, 2026.

II.

Section 5902 and Appeals Board Rules 10945, and 10972 authorize the Appeals Board to dismiss or deny a skeletal petition for reconsideration. (Lab. Code, § 5902; Cal. Code Regs., tit. 8, §§ 10945, 10972; e.g., *Cal. Indemnity Ins. Co. v. Workers’ Comp. Appeals Bd. (Tardiff)* (2004))

² Unless otherwise stated, all further statutory references are to the Labor Code.

69 Cal.Comp.Cases 104, 106-107 (writ denied); *Hall v. Workers' Comp. Appeals Bd.* (1984) 49 Cal.Comp.Cases 253, 254 (writ denied); *Green v. Workers' Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 564, 565 (writ denied).) In addition, a proper petition must fairly state all material evidence, including evidence unfavorable to the aggrieved party, and specifically discuss the record portions supporting their contentions. (e.g., *Addecco Employment Services v. Workers' Comp. Appeals Bd. (Rios)* (2005) 70 Cal.Comp.Cases 1331, 1305 (writ denied); *City of Torrance v. Workers' Comp. Appeals Bd. (Moore)* (2002) 67 Cal.Comp.Cases 948, 950 (writ denied).)

Well-settled law dictates that a party failing to prevail on a petition for reconsideration cannot file a successive petition unless newly aggrieved. (*Goodrich v. I.A.C.* (1943) 22 Cal.2d 604, 611 [8 Cal.Comp.Cases 177]; *Ramsey v. Workmen's Comp. Appeals Bd.* (1971) 18 Cal. App. 3d 155, 159 [36 Cal.Comp.Cases 382]; *Crowe Glass Co. v. I.A.C. (Graham)* (1927) 84 Cal. App. 287, 293-295.). As we explained in *Navarro v. A & A Framing* (2002) 67 Cal.Comp.Cases 296 (Appeals Board en banc):

The general rule is that, where a party has filed a petition for reconsideration with the Board, but the party does not prevail on that petition for reconsideration, the petitioning party cannot attack the [Appeal's] Board's action by filing a second petition for reconsideration; rather, the petitioning party must either be bound by the [Appeals] Board's action or challenge it by filing a timely petition for writ of review.

(*Id.* at p. 299.)

Because applicant failed to prevail on her prior petition, she may not attack our decision through a second petition. Instead, she should have petitioned the Court of Appeal for a writ of review within 45 days from our March 3, 2026 decision. (See Lab. Code, § 5950 ["The application for writ of review must be made within 45 days after a petition for reconsideration is denied, or, if a petition is granted or reconsideration is had on the appeal board's own motion, within 45 days after the filing of the order, decision, or award following reconsideration."].)

III.

Notwithstanding the procedural defects, we address applicant's claim on substantive grounds. After our review of the evidentiary record, she again fails to present legal grounds justifying an alteration of our prior decision. Section 4751 governs eligibility for SIBTF benefits. The statute requires an injured worker to demonstrate a permanent partial disability existing prior to the subsequent industrial injury. (Lab. Code, § 4751.) The preexisting impairment must have been labor disabling, meaning it caused a permanent impairment of earning capacity or created a competitive

handicap in the open labor market before the subsequent injury occurred. Applicant bears the burden of proving these elements through substantial medical evidence. A mere medical diagnosis, devoid of functional work restrictions, fails to satisfy this evidentiary burden.

Applicant asserts we retroactively applied novel legal standards to her claim and improperly ignored many of her documented preexisting conditions. She further contends the unavailability of historical medical records from former treating physicians excuses her evidentiary deficit. These arguments lack merit. The requirement to prove a preexisting labor disabling impairment represents foundational, long-standing jurisprudence rather than a retroactive change in the law. Furthermore, the loss or destruction of prior medical records does not alleviate applicant's burden of proof. As the March 3, 2026 ODAR established, the contemporaneous medical records regarding IBS, GERD, allergic rhinitis, and chronic dermatitis reflect only standard medical management and symptom monitoring. They do not document any prophylactic work restrictions or functional limitations existing before November 4, 2010.

Applicant introduces new medical reports but provides no legal justification for failing to submit them during the trial proceedings. (See Lab. Code, § 5903.) She admits her former attorney returned Dr. Campagna's records to her two years ago, establishing her possession of these documents long before we issued the March 3, 2026 ODAR. Even if we admitted Dr. Campagna's and Dr. Ou's reports into evidence, they do not cure the evidentiary defect in applicant's SIBTF claim. Dr. Campagna's report fails to outline any functional work restrictions or demonstrate how applicant's rheumatological conditions impaired her earning capacity or created a competitive handicap prior to November 4, 2010. Similarly, Dr. Ou's March 17, 2026 report evaluates applicant's current visual impairments without providing a retroactive impairment rating or evidence of a labor disabling vision impairment preceding the November 4, 2010 injury. Consequently, the newly proffered medical evidence fails to constitute substantial medical evidence of preexisting labor disabling permanent disability.

We acknowledge applicant's challenging personal circumstances, including her visual impairment, financial difficulties, and responsibilities caring for her mother and daughter. However, the Appeals Board must adjudicate claims based strictly on the statutory requirements of the Labor Code and the evidentiary record. Appeals to sympathy, while understandable, cannot substitute for substantial medical evidence nor alter the legal framework requiring that the conditions in question manifest as a labor disabling impairment prior to the subsequent injury. Because applicant has still not met her evidentiary burden, we deny her requested relief.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Opinion and Decision After Reconsideration issued on March 3, 2026 by the Workers' Compensation Appeals Board is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 19, 2026

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

**VIVIANA GREENE
FARNSWORTH LAW GROUP, APC
OFFICE OF THE DIRECTOR – LEGAL UNIT**

DLP/md

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