

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

**ANGELICA GUTIERREZ, *Applicant***

**vs.**

**LOS ANGELES UNIFIED SCHOOL DISTRICT; SEDGWICK, *Defendants***

**Adjudication Numbers: ADJ8095560, ADJ8100891, ADJ16004817  
Los Angeles District Office**

**OPINION AND ORDER GRANTING  
PETITION FOR RECONSIDERATION**

Nogales Psychological Counseling, Inc. (NPC) seeks reconsideration of the Joint Findings and Order issued by the workers' compensation administrative law judge (WCJ) in this matter on June 11, 2024. In that decision, the WCJ found that applicant, born on [], while employed on January 22, 2004 as a library aide at North Hollywood, California, by defendant Los Angeles Unified School District (LAUSD) claimed to have sustained injury arising out of and in the course of her employment to her head, neck upper extremities, shoulders, bilateral low extremities, psyche, cardiovascular system and dental.

The WCJ further found that there was no substantial evidence to sustain a finding of injury to the psyche, and disallowed the lien of Nogales Psychological

Petitioner contends the WCJ erred, as all reporting physicians ultimately found industrial causation for applicant's psychological injury, but differed on apportionment of any resulting disability.

Petitioner also asserts that since the defendant denied applicant's claimed injury to the psyche, she was rightfully entitled to self-procure her psychiatric treatment, and further, that the medical reporting was substantial medical evidence.

We have not received an Answer from defendant.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied or dismissed as untimely.

Based upon our preliminary review of the record, we will grant NPC's 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 section 5950 et seq.

## I.

We note at the outset that lien claimant's petition was timely filed. There are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600(b).) To be timely, however, a petition for reconsideration must be filed (i.e., received) within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(a).) Petitions for reconsideration are required to be filed at the district office, and not directly at the Appeals Board. (Cal. Code Regs., tit. 8, § 10995(b); see Cal. Code Regs., tit. 8, § 10205(l) [defining a "district office" as a "trial level workers' compensation court."].)

This time limit is jurisdictional and therefore, the Appeals Board has no authority to act upon or consider an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650, 656]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008, 1011]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73, 75-76].)

Here, the WCA issued the decision on June 11, 2021, and per the Events in EAMS, defendant filed the Petition for Reconsideration on the 25<sup>th</sup> day, which was Saturday, July 6, 2021 at 15:30 hours. The next business day was July 8, 2021. Thus, the Petition was timely filed within 20 days of the decision.

## II.

Former Labor Code 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, Labor Code 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 Labor Code 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 July 30, 2024 and 60 days from the date of transmission is September 28, 2024. The next business day that is 60 days from the date of transmission is September 30, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>1</sup> This decision is issued by or on September 30, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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

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<sup>1</sup> 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.

parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code 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 July 30, 2024, and the case was transmitted to the Appeals Board on July 30, 2024. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 30, 2024.

### III.

Preliminarily, we note the following, which may be relevant to our review:

The Minutes of Hearing and Summary of Evidence (MOH/SOE) dated May 14, 2024 consolidated three cases for trial. The first case (listed as the Master File) is a claimed specific injury of January 22, 2004 to applicant's head, neck, upper extremities, shoulders bilateral lower extremities, psyche, cardiovascular system, and dental (ADJ8095560). Applicant further claimed a continuous trauma injury during the period May 1, 1997 through September 6, 2011. Injury was admitted as to her face, head, circulatory system, digestive system, bilateral wrists, bilateral hands, left shoulder, neck, bilateral legs, multiple parts, and dental, and denied as to the psyche (ADJ8100891). The third claim involves a claimed specific injury of September 6, 2011 to her psyche, digestive system, and circulatory system (ADJ6004817).

The issues listed for trial were injury arising out of the course of employment (AOE/COE) on both denied specific dates of injury, and the lien of petitioner NPC. On the admitted continuous trauma claim, the issue was parts of body, with applicant alleging psyche, as well as the lien of petitioner. (MOH/SOE, p. 2-4.)

On June 11, 2024, the WCJ issued a Joint Findings and Order as follows:

**FINDINGS OF FACT**

1. ANGELICA GUTIERREZ born on [ ] while employed on 01/22/2004 as a library aide at North Hollywood, California, by Los Angeles Unified School District, claimed to have sustained injury arising out of and occurring in the course of employment to her head, neck upper extremities, shoulders, bilateral lower extremities, psyche, cardiovascular system and dental.
2. Accordingly Defendant's Exhibits A through K are admitted in evidence herein.
3. There is no substantial medical evidence to sustain a finding of injury to the psyche.
4. The lien of Nogales Psychological is disallowed.
5. In light of the foregoing there is no basis to award statutory increase and interest or reimbursement of the filing fee.

**ORDER**

**IT IS ORDERED** that the lien of Nogales Psychological is disallowed.

(Jt. Findings and Order, 6/11/24.)

There do not appear to be any additional findings of fact and/or orders as to the issues raised in applicant's two other cases; the continuous trauma claim during the period May 1, 1997 through September 6, 2011, and the specific injury claim of September 6, 2011.

The Opinion of the WCJ states in pertinent part:

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Injury to the face, head, circulatory system, digestive system, bilateral wrists, bilateral hands, left shoulder, neck, bilateral legs, multiple parts and dental are admitted in ADJ8100891 (cumulative trauma from 05/01/1997 through 09/06/2011). However in this case defendants deny injury to the psyche.

No injury is admitted in the other two consolidated cases.

Panel qualified medical examiner reporting of David Taylor, M.D. is considered (Lien Claimant's Exhibit 9, reports of 12/18/2013 and 03/31/2017 as well as Defendant's Exhibit A (report of 02/24/2020).

On 12/18/2013 Dr. Taylor opined that 51% of applicant's "problems" were related to injuries at work. Of this he found that 70% were from physical pain and

problems and 30% of feeling harassed and told to do work outside her job description. In his 03/21/2017 he opined that the predominant cause of psychiatric injury was the events of 09/06/2011, which he concluded was a personnel action. He deferred to the trier of fact the question of whether the personnel action was in good faith.

As to causation, Dr. Taylor on 02/24/2020 concluded that neither applicant's cumulative trauma nor her specific 2004 injury was the predominant cause; but that the personnel action 09/06/2011 was (still deferring on the good faith issue). As to disability, he found 50% apportionment to the 09/06/2011 incident and 50% to non-industrial factors.

Turning then to the report of Ana L. Nogales Ph.D. of 07/21/2012 (Lien Claimant's Exhibit 5) histories of the specific 2004 injury, the reported harassment by the employer and the 09/06/2011 events are taken. Dr. Nogales then concludes that applicant "developed anxiety and depression" as a "direct result of her workplace injuries and harassment." This constituted a percentage of total causation of more than "the legal threshold of industrial causation" of 50%.

The totality of evidence of an industrial psychological or psychiatric injury is a mish-mash of causation opinions. The PQME vacillates between causation by industrially caused physical conditions and solely the events of 09/06/2011. The treating doctor appears to find causation from all the claimed injuries.

Both then defer to the trier of fact on industrial causation.

The factual and legal issue relating to causation is whether the 09/06/2011 events were good faith personnel actions.

Neither party presented any evidence on those events beyond the histories in the medical reports.

It was defendant's burden to establish that those events were 1) personnel actions, and 2) lawful and non-discriminatory and done in good faith. In the absence of any documentary evidence or testimony that burden was not met.

It was, however, lien claimant's burden to provide substantial medical evidence of psychiatric injury, which included industrial apportionment of causation of greater than 50% at a minimum.

Neither the treating doctor nor the PQME provided substantial medical evidence of causation.

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In the absence of a finding of psychiatric or psychological injury it is found that defendant has no liability for the treatment charges of Nogales Psychological.

Lien Claimant's Exhibits 2 and 3 do not support a finding of necessity for a medical legal evaluation. Exhibit 2 is a letter from applicant's counsel requesting reporting under 8 Cal. Code of Reg. Sec. 9785, which are treating physician reports, not medical legal. Exhibit 3 is a letter issued by lien claimant to applicant.

Thus there is no request by applicant's attorney to produce a medical legal report to prove or disprove psychiatric or psychological injury.

(Opinion, pp. 2-4.)

Petitioner addresses these issues as follows:

Judge Carrero indicates that the lien claimant cannot meet it[s] burden of proof as to psyche injury due to the differing opinions as to the percentage of causation assigned by different providers. The interesting thing in this particular matter is that all physicians find industrial injury. The question is not if the employment contributed to the cause of the psychological injury, rather to what degree.

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On 12/18/2013 Dr. Taylor opined that 51% of applicant's "problems" were related to injuries at work. Of this he found that 70% were from physical pain and problems and 30% of feeling harassed and told to do work outside her job description. In his 03/21/2017 he opined that the predominant cause of psychiatric injury was the events of 09/06/2011, which he concluded was a personnel action. He deferred to the trier of fact the question of whether the personnel action was in good faith. In the Lien Claimant's opinion this clearly shows that the psychological injury was 100% due to industrial causation. This is the report the Defense requested due to their initial denial.

As to causation, Dr. Taylor on 02/24/2020 concluded that neither applicant's cumulative trauma nor her specific 2004 injury was the predominant cause; but that the personnel action 09/06/2011 was (still deferring on the good faith issue). As to disability, he found 50% apportionment to the 09/06/2011 incident and 50% to non-industrial factors but did not explain the change in his opinion nor where the disability to the non industrial factors came from.

Turning then to the report of Ana L. Nogales Ph.D. of 07/21/2012 (Lien Claimant's Exhibit 5(pages 13 through14) histories of the specific 2004 injury, the reported harassment by the employer and the 09/06/2011 events are taken. Dr. Nogales then concludes that applicant "developed anxiety and depression" as a "direct result of her workplace injuries and harassment." This constituted a percentage of total causation of more than "the legal threshold of industrial causation" of 50%, also indicating she required medical records, and employment records as she would revisit and address apportionment at a later date.

In her permanent and stationary evaluation of 01/02/2018 (Lien Claimant's Exhibit 8) the doctor reiterates that the causation of the mental disorder was "estimated" at a "higher level than the legal threshold of industrial causation of more than 50%." She then advises that "Ultimately the Trier of Fact would determine whether or not there was industrial causation." This is in regards as to the whether or not there was a Good faith personnel issue.

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The expenses at issue are medical-legal expenses within the meaning of Labor Code §4620 and §4621 because they were reasonably, actually, and necessarily incurred for the purpose of proving or disproving a contested claim. As indicated above, Defendant's denied the Applicant's psyche component to her injury. Medical-Legal expenses are "any costs or expenses incurred by or on behalf of any party, the administrative director, or the board...for the purpose of proving or disproving a contested claim". *LC§4620(a)*; see also *CCR§9793*. Defendants are liable for medical-legal expenses that are "reasonably, actually, and necessarily incurred"*LC§4621(a)*. "The reasonableness of and necessity for, incurring these expenses shall be determined with respect to the time when the expenses were actually incurred.

(Petition, pp. 3-5, 10.)

## II

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.)

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 and analyzed; whether the existing record is sufficient to support the decision, order, and legal conclusions of the WCJ; whether all issues raised in each case have been properly addressed, and/or whether further development of the record may be necessary with respect to the issues noted above.

### III.

Finally, we observe that 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. pp.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [62 Cal.Rptr. 757, 432 P.2d 365]; *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”].)

Labor Code 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.

#### IV.

Accordingly, we grant NPC'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](mailto:WCABmediation@dir.ca.gov).

For the foregoing reasons,

**IT IS ORDERED** that NPC's Petition for Reconsideration of the Joint Findings and Order issued on June 11, 2024 by a workers' compensation administrative law judge 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/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**September 30, 2024**

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

**NOGALES PSYCHOLOGICAL COUNSELING, INC.  
R&R SERVICES  
SEDGWICK LIEN RESOLUTION**

**LAS/abs**

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