WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

DEBORAH JANKOWSKI, ***Applicant***

vs.

TVI, INC.; ZURICH AMERICAN INSURANCE COMPANY, administered by BROADSPIRE, ***Defendants***

Adjudication Number: ADJ9961038
Riverside District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant has petitioned for reconsideration of the Findings of Fact, Award and Order issued and served by the workers' compensation administrative law judge (WCJ) in this matter on August 19, 2024. In that decision, the WCJ found that applicant, while employed on February 5, 2025 by defendant, claims to have sustained injury arising out of and in the course of her employment (AOE/COE) to the left shoulder, left knee, left ankle, feet, psyche, back, hands, arms, "CRPS", right wrist, head, neck left eye, jaw, face, chest, legs, "weight gain and loss", gastro-intestinal, intestinal, and thyroid. In Findings of Fact two (2) and three (3), the WCJ stated that the parties declined to have the court address issues of compensability, parts of the body, and apportionment, and limited the court's issues to whether applicant is 100% permanently totally disabled, and attorney's fees. The WCJ thereafter made a finding that "assuming the case is compensable because of said injury, applicant is permanently totally disabled," and appears to have conditionally awarded applicant permanent disability of 100%, as well as attorney's fees.

Petitioner contends that the WCJ erred in awarding applicant permanent total disability as there has been no established schedule rating, and thus the vocational rehabilitation reporting does not constitute substantial evidence. Petitioner also argues that the WCJ should have relied upon the findings of the Agreed Medical Evaluators (AME) as well as their apportionment determinations, as opposed to applicant's treating physicians. Finally, petitioner asserts that

findings of causation must first be determined as to the various parts of body in dispute prior to finding the existence of permanent disability.

Petitioner requests the findings and award of the WCJ be rescinded, and the matter sent back to the trial level for further proceedings.

Applicant filed a response.

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

We have reviewed the allegations in the Petition for Reconsideration, the Answer, and the contents of the Report. Based upon our preliminary review of the record, we will grant defendant's Petition for Reconsideration, and we will order that this matter be referred to a WCJ or designated hearing officer of the Appeals Board for a status conference. Our order granting defendant's 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.

Former Labor Code[1] 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.

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

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 30, 2024 and 60 days from the date of transmission is Friday, November 29, 2024, a state holiday. The next business day that is 60 days from the date of transmission is Monday, December 2, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday December 2, 2024, 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 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 September 30, 2024, and the case was transmitted to the Appeals Board on September 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 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 30, 2024.

Turning to the merits, we preliminarily note the following in our review:

The Minutes of Hearing and Summary of Evidence (MOH/SOE) dated June 18, 2024 list the stipulations and issues at trial as follows:

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[2] 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.

THE FOLLOWING FACTS ARE ADMITTED:

1. Deborah Jankowski, born [], while employed on February 5th, 2015, as a retail sales manager, Occupational Group Number 212, at La Mirada, California, by TVI, Inc., claims to have sustained injury arising out of and in the course of employment to various parts and conditions, including the following: Left shoulder, left knee, left ankle, left foot, psych, back, left hand, left arm, CRPS, right arm, right wrist, right hand, head, neck, left eye, jaw, face, chest, legs, right foot, weight gain, gastrointestinal, weight loss, intestines, and thyroid.

2. At the time of injury, the employer's workers' compensation carrier was Zurich, administered by Broadspire.

3. At the time of injury, the employee's earnings were $1,024.40 per week, warranting indemnity rates of $682.94 for temporary disability and $290.00 for permanent disability.

4. The carrier/employer has paid compensation as follows:

Temporary disability at the weekly rate of $682.94 for the period of February 15, 2015 through February 10, 2017. Permanent disability at the weekly rate of $290.00 which began on February 11, 2017.

5. The employer has furnished some medical treatment.

6. No attorney fees have been paid and no attorney fee arrangements have been made.

THE FOLLOWING ARE THE ISSUES:

1. Permanent disability. Within that, we have applicant's assertion that the applicant is 100% permanently totally disabled based on her preclusion from the open labor market and not amenable to vocational rehab.

2. Attorney fees.

(MOH/SOE, 6/18/24, pp. 2-4.)

Thus, it appears that the issues framed for trial by the parties and the WCJ were solely limited to permanent disability and attorney fees.

II.

It is well established that decisions and awards 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]).)

Further, all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd*. (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, *supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acci.*

Com. (*Baskin*) (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

When applicant claims a physical injury, applicant has the initial burden of proving industrial causation by showing the employment was a contributing cause. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302; § 5705.) Applicant must prove by a preponderance of the evidence that an injury occurred AOE/COE. (Lab. Code[5], §§ 3202.5; 3600(a).)

> The requirement of Labor Code section 3600 is twofold. On the one hand, the injury must occur in the course of the employment. This concept ordinarily refers to the time, place, and circumstances under which the injury occurs. On the other hand, the statute requires that an injury arise out of the employment. It has long been settled that for an injury to arise out of the employment it must occur by reason of a condition or incident of the employment. That is, the employment and the injury must be linked in some causal fashion. (Clark, 61 Cal.4th at 297 (internal citations and quotations omitted).)
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> * * *
>
> The statutory proximate cause language [of section 3600] has been held to be less restrictive than that used in tort law, because of the statutory policy set forth in the Labor Code favoring awards of employee benefits. In general, for the purposes of the causation requirement in workers' compensation, it is sufficient if the connection between work and the injury be a contributing cause of the injury.

(*Clark*, *supra* at 298 (internal citations and quotations omitted).)

In the WCJ's Opinion, he discusses the issues raised by the parties at trial, as well as the undecided issue of causation, in relevant part, as follows:

> The following issues were raised and addressed:
>
> 1. Permanent disability and whether applicant is 100% permanently totally disabled; and,
> 2. Attorney fees.
>
> At the second trial setting, the court inquired about the need to address two essential issues: 1. parts of the body, and 2. apportionment. The parties declined to have the court to address these issues, and only decide whether applicant is 100% permanently totally disabled.
>
> Causation is another threshold issue because the defendant had never formally accepted the injury or any of the claimed parts or conditions. However, it is well established that for the purpose of meeting the causation requirement in a

> workers' compensation injury claim, it is sufficient if the work is a contributing cause of the injury. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (2015) 61 Cal.4th 291 [80 Cal.Comp.Cases 489].) The court assumes the case is undisputedly compensable because the parties declined to have the court address these fundamental issues, the medical reporting confirm the applicant fractured her left foot when she stepped off a curb (Pain Medicine AME report of Jorge Minor, M.D., dated 3/13/2019, Exh. 7, p. 2), and defendant paid temporary disability and permanent disability indemnity benefits (MOH/SOE Trial day 1, 6/18/24, p. 2:13-16; and Benefit Printout, Exh. E).
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> (Opinion, p. 2.)

While the WCJ may presume the case is compensable, there appears to be no signed stipulation by the parties as to the issue of industrial causation. Applicant raised permanent disability as an issue at trial. In order for the WCJ to award applicant benefits, there would first need to be either a finding by the WCJ of injury AOE/COE or a stipulation of industrial injury by the parties, even if some parts of body claimed injured or nature and extent are in dispute. There appears to be no such stipulation, and absent same, no assumption by the WCJ as to the case being undisputedly compensable can be made.

A stipulation between the parties obviates the need to provide an opportunity to be heard or to create a record. (Cal. Code Regs., tit. 8, § 10835.)

As defined in *Weatherall*, "A stipulation is 'An agreement between opposing counsel . . . ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,' (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves 'to obviate need for proof or to narrow range of litigable issues' (Black's Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding." (*Weatherall*, *supra,* at p. 1119.)

Section 5702 states:

> The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

Labor Code section 5702 provides that the WCAB "may" make findings based upon the parties' stipulations. However, a WCJ is not required to accept the parties' stipulations, and may make further inquiry into the matter "to enable it to determine the matter in controversy." (Lab. Code, § 5702; see also *County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000)

77 Cal.App.4th 1114, 1119 [65 Cal.Comp.Cases 1]; *Turner Gas Co. v. Workers' Comp. Appeals Bd. (Kinney)* (1975) 47 Cal.App.3d 286 [40 Cal.Comp.Cases 253].)

Here, the WCJ awarded permanent total disability to the applicant; however, the parties stipulated at trial that applicant *claimed* to have sustained industrial injury to numerous parts of body. The parties did not stipulate that applicant *sustained* industrial injury, nor as to what part or parts of body for which injury AOE/COE is in dispute.

As to the issue of industrial causation, Petitioner asserts:

> Both parties agreed that Applicant was *claiming* injury to her left shoulder, left knee, left ankle, left foot, psyche, back, left hand, left arm, CRPS, right arm, right wrist, right hand, head, neck, left eye, jaw, face, chest, legs, right foot, weight gain, gastrointestinal, weight loss, intestines and thyroid. Pursuant to Black's Law Dictionary the word claim means "A statement that something yet to be proved is true." (Black's Law Dictionary 12th ed. 2024). By its very definition, the body parts listed were in dispute and causation had yet to be determined.
>
> Permanent disability is assigned to body parts/systems where causation is deemed industrial. Therefore, a determination regarding causation to the body parts/systems alleged must be determined.
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> The psychiatric injury is denied. Therefore, unless there is a finding of industrial causation for the alleged psychiatric injury, any permanent disability associated with the alleged psychiatric injury could not be considered as part of the scheduled rating. Even if the psychiatric injury is determined industrial, *Labor Code* Section 4660.1(c)(1) serves as a statutory bar for permanent disability for psychiatric injuries stemming from a physical injury. While there are exceptions to this rule, there have been no determinations made in this case as to whether the applicant qualifies for any of the exceptions. Without a finding addressing the psychiatric injury, the permanent disability schedule cannot be ascertained.

(Petition, pp. 8-9.)

Defendant also asserts the medical and vocational reporting does not constitute substantial evidence upon which to support an award of 100% permanent disability.

The WCJ addresses this in his Report as follows:

> Petitioner contends there is a lack of substantial evidence to support the award of a 100% permanent disability, and they highlight various points. However, [the] decision was based on the entire record. Defendant's premise assumes the court only relied on the opinions and reporting of Mr. Paul Broadus, Applicant's vocational expert. However, the court followed Mr. Broadus' reasonings and weighed the medical evidence coupled with applicant's credible testimony to conclude applicant is 100% disabled.
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> Petitioner asserts applicant's vocational rehabilitation opinions are not substantial evidence and therefore suggests the decision should be based on the medical

> reports. The court disagrees as it was found that the vocational rehabilitation opinions presented by applicant *and* the medical reports of the treating doctors that applicant cannot work or she has an extremely, significant reduction in her future earning capacity due to his injury, following *LeBoeuf v. Workers' Compensation Appeal Board* (1983) 34 Cal. 3d 234. And based on the totality of her injuries and condition, applicant has met the burden of proof that she is incapable of rehabilitation.

(Report, p. 4.)

Based upon the above, the WCJ appears to be finding applicant sustained industrial injury and permanent total disability as a result of the totality of her injuries, without making any separate findings as to what body part or system those injuries are, to what extent each injury is industrial, and to what extent any permanent disability arises as to those specific injuries. That would necessarily entail findings as to industrial causation as to each of such injuries.

Thus, an essential step prior to the issuance of an award for permanent disability appears to have be missed or intentionally sidestepped. In order for any award or order to issue on behalf of, or against a party, there must be a finding of injury AOE/COE, either stipulated to by the parties, or adjudicated by the WCJ, in addition to findings related to parts of body industrially injured. Here, there is neither.

Finally, petitioner takes issue with the WCJ's reliance upon the vocational reporting of Paul Broadus, as well as the failure to rely upon the reports of the AMEs in this case, Jorge Minor, M.D. and Stanley Majcher, M.D.

With respect to the vocational evidence, defendant asserts the conclusions of vocational evaluator Broadus do not constitute substantial medical evidence, as he failed to review all pertinent medical reports and deposition testimony of the AMEs, and further incorrectly applied impermissible vocational apportionment in place of otherwise valid apportionment. As stated by petitioner:

> Per the *Nunes* decision, "factors of apportionment must be carefully considered, even in cases where an injured worker is permanently and totally disabled as a result of an inability to participate in vocational retraining. Expert vocational testimony may be utilized to identify and distinguish industrial and nonindustrial vocational factors, but may not substitute impermissible 'vocational apportionment' in place of otherwise valid medical apportionment." (*Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal. Comp. Cases 751, 754.)

(Petition, pp. 12-13.)

Both AME Jorge Minor, M.D. as well as Stanley Majcher, M.D. found applicant to have sustained impairments that were both industrial and non-industrial.

In *Power v. WCAB*, the court stated that an agreed medical examiner is presumed to have been chosen by the parties because of his expertise and neutrality. Therefore his opinion should ordinarily be followed unless there is good reason to find that opinion unpersuasive. (*Power v. WCAB* (1986) 179 Cal. App. 3d 775, 1986 Cal. App. LEXIS 1434; 51 Cal. Comp. Cases 114.)

Here, there is no discussion by the WCJ as to why such opinions were not relied upon, and/or why the WCJ found the reporting of the treating physicians more persuasive than the AMEs.

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on a threshold issue.

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. (Lab. Code, §§ 5701, 5906; *Nunes (Grace) v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741, 752; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 392-394 [62 Cal.Comp.Cases 924]; *McDonald v. Workers' Comp. Appeals Bd., TLG Med. Prods.* (2005) 70 Cal.Comp.Cases 797, 802.)

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.)

Labor Code section 5310 states in relevant part that: "The appeals board may appoint one or more workers' compensation administrative law judges in any proceeding, as it may deem necessary or advisable, and may refer, remove to itself, or transfer to a workers' compensation administrative law judge the proceedings on any claim. . . ." (See also Lab. Code, §§ 123.7, 5309.)

Here, it appears upon preliminary review that the issues raised and determined, as well as the existing record, may not be sufficient to support the findings of fact, award, orders, and legal conclusions of the WCJ as to applicant's injuries and claims; and/or whether further development of the record may be necessary. Thus, we will order the matter to a status conference before a WCJ at the Appeals Board.

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.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 [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 defendant's Petition for Reconsideration, order that this matter be set for a status conference, 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.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings of Fact, Award and Order issued on August 19, 2024 by a workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED that this matter will be set for a Status Conference with a workers' compensation administrative law judge or assigned designee of the Appeals Board. Notice of date, time, and format of the conference will be served separately, in lieu of an in person appearance at the San Francisco office of the Appeals Board.

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/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 2, 2024

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

DEBORAH JANKOWSKI
LAW OFFICES OF GERALDINE LY
HIRSCHL MULLEN

LAS/*abs*

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