

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

**HUMBERTO RIVAS, *Applicant***

**vs.**

**UNIVERSAL ALLOY CORPORATION; ACE USA,  
administered by ESIS; CALIFORNIA INSURANCE  
GUARANTEE ASSOCIATION by its servicing facility  
SEDGWICK CLAIMS MANAGEMENT SERVICES,  
for FREMONT COMPENSATION INSURANCE,  
in liquidation, *Defendants***

**Adjudication Numbers: ADJ786706(ANA0334510);  
ADJ672705 (ANA0348598)  
Anaheim District Office**

**OPINION AND ORDER GRANTING  
PETITION FOR RECONSIDERATION**

Applicant seeks reconsideration of the July 19, 2024 Findings and Order issued by the workers' compensation administrative law judge (WCJ). In that decision, the WCJ found that defendant is entitled to a credit in the amount of \$46,351.25 against applicant's Award of indemnity for reimbursement made to the California Insurance Guarantee Association (CIGA) for amounts paid on ADJ786706; that defendant's remaining credit of \$10,798.15 is disallowed against applicant's Award of future medical care; that applicant's Petition for Penalties and Interest is dismissed as attorney fees were subject to defendant's claim of credit; and that defendant is not allowed a credit for voluntary payment of applicant's attorney fees as this would create a further credit. Based on these findings, the WCJ ordered that defendant may claim credit in the amount of \$46,351.25 against applicant's Award of indemnity for reimbursement made to CIGA for amounts paid on ADJ786706 and that defendant's remaining credit of \$10,798.15 is disallowed against applicant's Award of future medical care and no credit is ordered for defendant's voluntary payment of attorney fees.

Applicant contends that defendant has not paid temporary disability pursuant to the November 29, 2012 Findings and Award to either applicant or CIGA and that defendant cannot profit from its failure to act.

Defendant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration

Based upon our preliminary review of the record, we will grant applicant'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<sup>1</sup> section 5950 et seq.

## I.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

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

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

---

<sup>1</sup> All statutory references are to the Labor Code unless otherwise stated.

Here, according to Events, the case was transmitted to the Appeals Board on September 6, 2024, and 60 days from the date of transmission is Tuesday, November 5, 2024. This decision is issued by or on Tuesday, November 5, 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. 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 September 6, 2024, and the case was transmitted to the Appeals Board on September 6, 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 6, 2024.

## II.

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

The WCJ's Report states:

Applicant was employed by Universal Alloy Press where he sustained an admitted industrial injury to his bilateral upper extremities on November 13, 1996. (ADJ786706). Defendant was insured for this date of injury by Fremont Compensation with CIGA assuming administration of the claim after commencement of their liquidation. A second injury to his neck was alleged to have occurred on October 23, 1997, Republic Indemnity was the insurer. (ADJ1659776).

A cumulative trauma injury was also alleged for the period June 15, 1998, through September 20, 2000, to Applicant's bilateral arms, hands, wrist, shoulders, and neck. (ADJ 672705). ACE USA provided coverage for defendant from June 15, 1998, through May 1, 2000, with Fremont Insurance Company, in liquidation and administered by CIGA insured defendant from May 1, 2000, to September 20, 2000.

Dr. Richard Woods was selected to act as an Agreed Medical Examiner and found Applicant's November 13, 1996, injury compensable as well as Applicant's claim of cumulative trauma. The alleged injury of October 23, 1997, was found non-industrial as to Applicant's neck and shoulders and apportionment of applicant's arm pain was assigned to the cumulative trauma injury.

In the Opinion and Decision of retired WCJ Silberman dated November 29, 2012, he found ACE USA to have all liability for Applicant's cumulative trauma claim as they constituted "other insurance" under Insurance Code section 1063.1 relieving CIGA of any liability for the claim. While the specific injury claims of November 13, 1996, was also found to be industrial, no industrial causation was found for the date of injury of October 23, 1997. Attorney fees of \$6,664.00 were awarded to Applicant's counsel. ACE USA was ordered to administer Applicant's claims. Prior to their liquidation, CIGA made payments to Applicant of in the total amount of \$5,785.22 with \$3,920.00 paid for permanent disability and \$1,865.22 for temporary disability benefits. (Exhibit A) After liquidation CIGA paid a total of \$60,626.20. (Exhibit B)

ACE USA filed a Petition for Reconsideration which was granted. On February 15, 2013, an Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration issued, deferring the issues of credit to ACE USA for indemnity paid by CIGA, reimbursement to CIGA by ACE USA, and credit claimed by ACE/USA and their reimbursement of CIGA.

The case came before the Court again on August 15, 2024, after a DOR was filed by Applicant's counsel from which the case proceeded to trial on the issues of ACE USA's credit for CIGA's reimbursed indemnity payments in ADJ786706 against ADJ672705, Defendant's remaining credit for overpayment of indemnity, and Applicant counsel's Petition and for Penalties and Interest.

The Finding and Award from prior WCJ Silberman of November 29, 2012, awarded Applicant \$9,320.00 in permanent disability benefits related to the specific injury of November 13, 1996. No temporary disability was awarded. (ADJ786706) An award of \$33,320.00 for permanent disability and \$17,781.05 for temporary disability benefits from September 20, 2000, through April 5, 2002, was issued for the cumulative trauma claim ending September 20, 2000. (ADJ672705) Applicant's total award of indemnity across the two claims totals. Attorney fees of 20% were also ordered in the amount of \$6,664.00. ACE USA/ESIS and CIGA reach an agreement for CIGA's claim of reimbursement/contribution via a stipulation of April 4, 2017, in amount of \$249,068.70.

The Award of permanent disability indemnity in Applicant's specific injury totaled \$9,320.00 of which CIGA had already advanced \$3,920.00 to Applicant leaving a remaining balance of \$5,400. For the cumulative trauma claim,

Applicant's Award of permanent disability of \$33,320.00 less \$6,664.00 for attorney fees produce a difference of \$26,656.00. When added to the award of \$17,781.05 for temporary disability Applicant's indemnity due on this claim totals \$44,437.05. The total indemnity owned less attorney fees on both cases totals \$49,837.95. Subtracting CIGA's overpayment of indemnity of \$60,626.20 leaves a remaining indemnity overpayment of \$10,789.15.

Due to the remaining overpayment of indemnity, Applicant's Attorney fees were paid on February 1, 2024. At trial defendant explained that the \$6,664.00 attorney [sic] was paid to Applicant's counsel as a good-faith effort to pay Applicant's counsel his fees despite the remaining credit from which the fee would be drawn.

In the undersigned's opinion on decision, I determined that no further indemnity was owed as Applicant had received the owed indemnity on the claims and that a credit remained in the amount of \$10,789.15. I also declined to further increase that credit in regard to defendant's payment of attorney fees as this would only further frustrate resolution of the issue. I also found that as no further indemnity was owed, the remaining \$10,789.15 was not to be applied against Applicant's Award of future medical care, effectively eliminating any remaining claim for credit. This holding was reached in an attempt to balance the equities of the parties; Applicant had received his indemnity award in full and finding any further owed by defendant would serve no other purpose than a situation where Applicant would receive essentially a double recovery. In addressing the payment of Applicant counsel's attorney fee, I found that as a credit remained that no attorney fee was payable pending the exhaustion of defendant's credit based upon the Court's holding in *Price v. W.C.A.B.* (1992) 57 Cal.Comp.Cases 743 and *Parker v. W.C.A.B.* (1994) 59 Cal.Comp.Cases 151 (writ denied).

As defendant points out in their Answer to Petition for Reconsideration in their citation to the Appleby decision, Labor Code section 4909 and the Court's duty to balance the equities between the parties intersects with the policy that insurers are encouraged to issue voluntary indemnity payments. The Court stated that "Labor Code section 4909, as interpreted by the California courts, was intended to encourage employers to make voluntary payments to injured employees and obtain a subsequent reduction in the amount determined to be due the employee. In *Herrera v. Workmen's Comp. App. Bd.* (1969) 71 Cal. 2d 254, 258 [78 Cal. Rptr. 497, 455 P.2d 425], the California Supreme [27 Cal. App. 4th 192] Court held that this statute empowered the Board to exercise discretion in allowing or disallowing credit to an employer who had continued to pay wages to Herrera, an injured employee. In *Herrera*, the credit was allowed against an award of temporary disability indemnity, to preclude double recovery to the employee." *Appleby v. Workers' Compensation Appeals Bd.* (1994) 27 Cal.App.4th 184, 191, 52 Cal.Comp.Cases 520

In reaching my decision, I found that Applicant had received the entirety of indemnity that he was Awarded yet an overpayment of indemnity remained; I did not believe that Applicant counsel's argument would produce a fair balance of equity between the parties were defendant required to issue any further indemnity payments. An opposite finding would only encourage insurers to delay the provision of benefits to injured workers where liability between defendants may be in dispute, against the policy of Labor Code section 4909.

### III.

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

CIGA's liability is specifically defined in Insurance Code section 1063.1. While Insurance Code section 1063.1, subdivision (c)(1)(vi) defines "covered claims" as "the obligations of an insolvent insurer ... in the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the workers' compensation law of this state," subdivision (c)(9) provides, "'Covered claims' does not include (i) any claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured ... ."

The overpayment of benefits to an injured worker may be taken into account by the Appeals Board in determining the amount of the compensation to subsequently be paid. (Lab. Code, § 4909.) In *Maples v. Workers' Comp. Appeals Bd.* (1980) 111 Cal.App.3d 827 [45 Cal.Comp.Cases 1106], the Court of Appeal stated that equitable principles are frequently applied to workers' compensation matters and that overpayments of temporary disability indemnity are typically small so the allowance of credit would not result in any significant interruption of benefits. Equity favors the allowance of such credit against permanent disability indemnity. "The prerequisites to the applicability of the doctrine of equitable estoppel are that the party asserting the estoppel must have been ignorant of the true facts and must have relied upon the words or conduct of the adverse party to his detriment." (*Id.* at p. 839.) The Court also stated that temporary disability indemnity and permanent disability indemnity were intended by the Legislature to serve entirely different functions.

Temporary disability indemnity serves as wage replacement during the injured worker's healing period for the industrial injury. (Citation.) In contrast, permanent disability indemnity compensates for the residual handicap and/or impairment of function after maximum recovery from the effects of the industrial injury have been attained. (Citation.) Permanent disability serves to assist the injured worker in his adjustment in returning to the labor market.

(Citation.) Thus, in many instances the allowance of credit for a temporary disability overpayment against permanent disability indemnity can be disruptive and in some instances totally destructive of the purpose of permanent disability indemnity.

(*Id.* at 836-837, (citations omitted).)

Here it is unclear from our preliminary review of the evidence and the existing record as to whether there is any basis in equity or law that allows defendant to unilaterally apply a credit across injuries and species of benefits. Taking into account the statutory time constraints for acting on the petitions, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

#### IV.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal.2d 360, 364.) “[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied.”; see generally Lab. Code, § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”.]

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57

Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a “threshold” issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].)

Section 5901 states in relevant part that:

No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers’ compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. ...

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

## V.

Accordingly, we grant applicant’s Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. ***While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board’s voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to [WCABmediation@dir.ca.gov](mailto:WCABmediation@dir.ca.gov).***



For the foregoing reasons,

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

**IT IS FURTHER ORDERED** that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



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

**November 5, 2024**

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

**HUMBERTO RIVAS  
LAW OFFICES OF JESSE MARINO  
DIETZ GILMOR & CHASEN  
CIPOLLA, BHATTI, HOYAL & ROACH**

**PAG/abs**

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