WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ALICIA RODRIGUEZ, *Applicant*

vs.

DYNAMIC EDGE CONSULTING; TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendant*

Adjudication Number: ADJ10884813
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award issued and served by the workers' compensation administrative law judge (WCJ) in this matter on November 12, 2024.

In that decision, the WCJ found that the applicant, while employed on April 27, 2017 by defendant, sustained injury arising out of and in the course of employment (AOE/COE) to her brain. The WCJ further found that the defendant did not conduct a timely utilization review (UR) for the prescription of 24-hour home health care issued by Roger Bertoldi, M.D., on May 29, 2024, and that such 24-hour home health case is found to be medically necessary based on the current evidentiary record. In addition, the WCJ made findings that the evidence currently before the Court does not support a finding that defendant must buy applicant a house, nor does the evidence currently before the court support issuance of a protective order to prevent the deposition of Sue Coleman, R.N.

Applicant was awarded 24-hour home health care on an ongoing basis absent a change in circumstances. The parties were to meet and confer regarding home health care expenses that may have been incurred 14 days prior to May 29, 2024 through the date of the award.

Petitioner contends that the WCJ error in finding applicant was entitled to 24-hour home health care based upon the evidence and due to their failure to conduct a timely UR of the May 29, 2024 report of Dr. Bertoldi. Defendant asserts such reporting was not a prescription for such services, as such reporting was non-compliant with Labor Code[1] Section 4600(h), and that their

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

only duty was to investigate, based upon the rationale in the *Neri Hernandez v. Geneva Staffing*[2] case, and not submit the prescription through UR.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant defendant'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.

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

[2] *Neri Hernandez v. Geneva Staffing, Inc. dba Workforce Outsourcing, Inc*. (2014) 79 Cal.Comp.Cases 682 (Appeals Board en banc).

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 December 17, 2024 and 60 days from the date of transmission is Saturday February 15, 2025. The next business day that is 60 days from the date of transmission is Monday, February 18, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision is issued by or on Monday, February 18, 2025, so that we have timely acted on the petition as required by Labor Code 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 presiding workers' compensation administrative law judge, the Report was served on December 17, 2024, and the case was transmitted to the Appeals Board on December 17, 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 December 17, 2024.

II.

Our preliminary review of this matter indicates the following:

The Minutes of Hearing and Summary of Evidence (MOH/SOE) dated October 9, 2024, indicate that there were no stipulations read into the record, and the issues to be decided by the WCJ were as follows:

1. Whether applicant is entitled to a house and 24/7 home health care.
2. Applicant's motion to quash the deposition of Sue Coleman.

[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.

Exhibits offered by the parties were admitted into the record. Defendant called one witness to testify, and the matter thereafter stood submitted.

(Minutes of Hearing and Summary of Evidence (Minutes), 10/9/24.).

On November 12, 2024, the WCJ issued her Findings and Award in which it was found that:

> 1. ALICIA RODRIGUEZ born on [REDACTED] while employed on 04-27-2017 as an account executive at Oxnard, California, by DYNAMIC EDGE CONSULTING, whose workers' compensation insurance carrier was TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, sustained injury arising out of and occurring in the course of employment to her BRAIN.
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> 2. Defendant did not conduct a timely utilization review for the prescription of 24 hour home health care issued by Dr. Bertoldi on May 29, 2024. 24 hour home health care is found to be medically necessary based on the current evidentiary record.
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> 3. The evidence currently before the Court does not support a finding that Defendant must buy Applicant a house.
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> 4. The evidence currently before the Court does not support issuance of a Protective Order to prevent the deposition of Sue Coleman, R.N.

(F&A, November 12, 2024, p.1-2.)

Applicant was awarded 24-hour home health care absent a change of circumstances and the parties were to meet and confer regarding home health care expenses that may have been incurred 14 days prior to May 29, 2024 through the award.

It is from this Findings and Award that defendant seeks reconsideration.

III.

Procedurally, we note that on June 3, 2024, applicant filed for an expedited hearing in this matter listing the dispute(s) as follows:

> APPLICANT SUSTAINED AND (*sic*) ADMITTED INJURY BASED ON THE FINDINGS OF THE IME SUE COLEMAN APPLICANT IS ENTITLED TO A HOUSE AND 247 HOME HEALTH CARE DISCUSSED THE MATTER WITH DEFENSE ATTORNEY SARAH HISCOTT WITHOUT RESOLUTION A COURT HEARING IS NECESSARY TO RESOLVE THIS MATTER

(DOR, 6/3/24.)

On July 23, 2024, applicant filed a petition to quash the deposition subpoena of Nurse Case Manager (NCM) Sue Coleman. On July 24, 2024, defendant filed a petition to compel applicant's deposition, as well as a petition for costs and sanctions against applicant's counsel for unreasonable delay of discovery relating to the deposition of both applicant and NCM Coleman.

On July 30, 2024, WCJ Malagon issued two order from the bench; both an Order denying applicant's petition to quash the deposition subpoena of Sue Coleman, R.N. without prejudice, and an Order granting applicant's petition to quash applicant's deposition, thereby denying defendant's petition to compel applicant's deposition, without prejudice. (Orders, 7/30/24.)

On August 5, 2024, defendant filed a petition for an order to direct the medical unit to issue an additional panel of qualified medical evaluators (QMEs) in the specialty of neurology (MPN).

On August 23, 2024, a fully executed joint pre-trial conference statement (PTCS) dated July 25, 2024 was filed. The only issue listed was whether the applicant is entitled to a house and 24/7 home healthcare. (PTCS, 7/25/24.)

On August 26, 2024, applicant filed both a petition for supplemental proceedings as well as a petition for removal of the Order of the WCJ denying the petition to quash the deposition of Sue Coleman, R.N.

On August 28, 2024, the WCJ issued an Order vacating the Order denying applicant's petition to quash the deposition of Sue Coleman, R.N. stating:

> SOLOV TEITELL having filed a Petition for Removal and a Petition for Supplemental Proceedings, and GOOD CAUSE appearing therein, the Order Denying the Petition to Quash Deposition of Sue Coleman R.N. is hereby **ORDERED VACATED** and the matter is deferred to the upcoming trial on September 3, 2024 at 8:30 AM pursuant to Rule 10955.
>
> Should parties need additional time to file exhibits and amend the pretrial conference statement to include the additional issue, they may raise their request on the date of the above trial.

(Order Vacating, 8/28/24.)

On September 3, 2024, the parties appeared for trial. At that time, the WCJ noted under Comments on the Minutes of Hearing (MOH) as follows:

> DA HAS REQUESTED A CONTINUANCE TO REVIEW AA'S PET FOR SUPPLEMENTAL PROCEEDINGS AND REMOVAL, AND TO AMEND THE PTCS IN ACCORDANCE WITH THE 8-27-2024 ORDER VACATING. AA OBJECTS TO A CONTINUANCE.

PARTIES TO FILE AMENDED JOINT PTCS BY 9/6/2024.

(MOH, 9/3/24.)

Despite same, there appears to be no joint amended PTCS filed.

As to this issue, the Petition avers as follows:

> At the Trial on 09/03/2024, Defense counsel learned for the first time that not only had a Petition for Removal been filed but that the WCJ had rescinded the Order Denying the Petition to Quash the Deposition of Ms. Coleman as neither document had been received by the day of the 09/03/2024 Trial as both had been served via US mail. The matter was then continued to a new Trial date to allow the parties to amend the Pre-Trial Conference Statement to include the issue of Defendant's right to take the deposition of Sue Coleman. Defendant emailed the amended Pre-Trial Conference Statement to Applicant's counsel on 10/02/2024, and e-filed its additional trial exhibits on 10/04/2024. Defense counsel received no response to its email providing the amended Pre-Trial Conference Statement.
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> ***
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> On the day of the 10/09/2024 Trial WCJ did not allow additional time for the parties to complete the amended Pre-Trial Conference Statement and file an updated one with the additional exhibits.

(Petition, p. 5.)

Further, we note that we previously issued an Opinion and Order Granting Petition for Reconsideration and Decision granting Reconsideration and Decision After Reconsideration (Opinion and Decision) on October 20, 2023, wherein we addressed, in part, the issue of applicant's entitlement to home health care services based upon the medical reporting of Sue Coleman, as follows:

> An industrially injured worker is entitled, at an employer's expense, to medical treatment that is reasonably required to cure or relieve the effects of the industrial injury. (Lab. Code, § 4600(a).) Home health care services, including housekeeping services, have long been held to be subject to reimbursement under section 4600 as medical treatment reasonably required to cure or relieve from the effects of the injury, if there is a medical recommendation or prescription that certain housekeeping services be performed, i.e., that there is a "demonstrated medical need" for such services. (*Smyers v. Workers' Comp. Appeals Bd.* (1984) 157 Cal.App.3d 36, 203 [49 Cal.Comp.Cases 454].) "The coverage of section 4600 extends to any medically related services that are reasonably required to cure or relieve the effects of the industrial injury, even if those services are not specifically enumerated in that section." (*Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910, 916-917; see also *Hodgman v. Workers' Comp. Appeals Bd.* (2007) 155 Cal.App.4th 44, 54 [72 Cal.Comp.Cases 1202]; and *Henson v. Workmen's Comp. Appeals Bd.* (1972) 27 Cal.App. 452 [37 Cal.Comp.Cases 564].)

A home healthcare assessment is medical treatment, and as discussed below, it is clear from the record here that the parties followed the statutory framework for obtaining authorization for medical treatment in the form of a home health care assessment.

Labor Code section 4061.5 states that:

> The treating physician primarily responsible for managing the care of the injured worker or the physician designated by that treating physician shall, in accordance with rules promulgated by the administrative director, render opinions on all medical issues necessary to determine eligibility for compensation.

Here, applicant's treating neurologist Dr. Bertoldi submitted a request for authorization for a home health care evaluation, which defendant then authorized.

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Labor Code section 4605 states:

> Nothing contained in this chapter shall limit the right of the employee to provide, at his or her own expense, a consulting physician or any attending physicians whom he or she desires. Any report prepared by consulting or attending physicians pursuant to this section shall not be the sole basis of an award of compensation. A qualified medical evaluator or authorized treating physician shall address any report procured pursuant to this section and shall indicate whether he or she agrees or disagrees with the findings or opinions stated in the report, and shall identify the bases for this opinion.

Under this section, an employee remains responsible for the expense of this report. However, it also directs a qualified medical evaluator or authorized treating physician to address such reporting and indicate whether they are in agreement with such findings or opinions. Accordingly, the assessment obtained by applicant should have been forwarded to treating neurologist Dr. Bertoldi.

We observe that if Dr. Bertoldi then opines that home health care treatment is reasonable and necessary, the parties can then follow the appropriate procedures in Labor Code sections 4610 et seq. and 4614 et seq., as to whether defendant should authorize and pay for the recommended treatment.

(Opinion and Decision, 10/20/23.)

That decision thereafter became final. On May 29, 2024, Dr. Bertoldi issued a one page medical report, in which he stated:

To Whom It May Concern:

I have reviewed the 5/23/2023 in home evaluation report provided by Sue Coleman. I am in agreement with her recommendations and will adopt and incorporate such recommendations as my own.

If I can be of further assistance, please do not hesitate to contact me.

(Ex. 3, p.1.)

On May 30, 2024, defendant issued a letter to Roger Bertoldi, M.D. stating they were unable to conduct utilization review of his May 29, 2024 correspondence because a medical report with an RFA was not attached. (Ex. D.)

It was not until Dr. Bertoldi issued an RFA dated August 2, 2024, that defendant conducted Utilization Review, dated August 8, 2024.

In his Report, the WCJ addresses the issue of the applicant's entitlement to the home health treatment, and his basis for finding the defendant failed to conduct a timely review of Dr. Bertoldi's prescription for 24-hour home health care as follows, in relevant part:

> Pursuant to Labor Code 4600(h) "Home health care services shall be provided as medical treatment only if reasonably required to cure or relieve the injured employee from the effects of the employee's injury and prescribed by a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, and subject to Section 5307.1 or 5307.8. The employer is not liable for home health care services that are provided more than 14 days prior to the date of the employer's receipt of the physician's prescription." In Neri *Hernandez v. Geneva Staffing, Inc.* dba Workforce Outsourcing, Inc., 79 Cal. Comp. Cases 682, the Board held En Banc the prescription required by section 4600(h) is either an oral referral, recommendation or order for home health care services for an injured worker communicated directly by a physician to an employer and/or its agent; or, a signed and dated written referral, recommendation or order by a physician for home health care services for an injured worker.
>
> In the case at hand the Court found that Dr. Bertoldi's May 29, 2024, incorporation of Sue Coleman's report constituted a prescription for home health care. Evidence was not submitted to establish that Defendant conducted a timely utilization review for the 24/7 home health care request. Defendant contends that they had no obligation to submit Dr. Bertoldi's May 29, 2024, report to utilization review as the report did not meet the requirements for requests for authorization. The Court did not issue a decision as to whether the May 29, 2024, report complied with the regulations for requests for authorization, but instead reviewed the request to determine whether it was a prescription pursuant to Labor Code 4600(h) as this is the relevant provision in the Labor Code concerning home health care. In accordance with the Neri Hernandez decision the Court found that Dr. Bertoldi's May 29, 2024, signed and dated report, when read in conjunction with Sue Coleman's May 23, 2023, report, constituted a prescription for 24-hour home health care. Defendant received this request as they sent a letter dated May 30, 2024, to

Dr. Bertoldi seeking clarification.

Defendant argues that even if Dr. Bertoldi's report is seen as a prescription, they should be allowed to conduct discovery on the medical necessity of Applicant's need for 24-hour home health care first before it is awarded. In Dr. Bertoldi's first report dated September 21, 2022, he notes under treatment rendered "24/7 Home Health Care" (APPLICANT'S EXHIBIT 10). In his February 7, 2024, PR-2 he also notes "24/7 home health care" under treatment plan (APPLICANT'S EXHIBIT 4). Defendant had an opportunity to begin their investigation when Dr. Bertoldi first noted a need for 24/7 home health care in September 2022. As the California Supreme Court noted in the case of *Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (34 Cal. 3d 159) "Section 4600 requires more than a passive willingness on the part of the employer to respond to a demand or request for medical aid. This section requires some degree of active effort to bring to the injured employee the necessary relief." The Labor Code does not permit a Defendant to avoid or delay conducting a good faith investigation for the purposes of circumventing their obligations. Sue Coleman provided a thorough analysis as to why Applicant needs 24-hour home health care which Dr. Bertoldi incorporated into his May 29, 2024, report. Per the reporting of Sue Coleman, given "the severity of the injury and Miss Rodriguez's ongoing deficits secondary to her brain injury, it is reasonable to provide health aide services 24/7 for assistance with activities of daily living which would include grocery shopping, laundry, housekeeping, meal preparation, transportation out into the community, bathing, and dressing. This patient's condition is one in which she faces an imminent and serious threat to her health absent the necessary home health assistance. The patient is significantly disabled and unable to navigate independently in the community and is limited in her ability to conduct activities of daily living. She is homebound and requires the assistance of another to safely leave the home unassisted" (JOINT EXHIBIT J, pg. 12). Dr. Bertoldi's May 29, 2024, report read in conjunction with Sue Coleman's May 23, 2023, report make it clear that Applicant is in need of 24-hour home health care. The case in chief has not resolved and discovery remains ongoing. Defendant is not precluded from conducting additional discovery regarding Applicant's need for ongoing treatment and should there be a change in Applicant's status that might impact her need for 24-7 home health care, Defendant is not precluded from raising that as an issue before the Court.

(Report, pp. 3-5.)

III.

Any decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [520 P.2d 978, 113 Cal. Rptr. 162] [39 Cal.Comp.Cases 310]*; Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [475 P.2d 451, 90 Cal. Rptr. 355] [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [463 P.2d 432, 83 Cal. Rptr. 208] [35 Cal.Comp.Cases 16].)

Further, 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]).)

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 appears that the existing record may not properly set forth all relevant issues and include all evidence sufficient to support the decision, findings, award, and legal conclusions of the WCJ. It is also unclear as to whether further development of the record may be necessary with respect to the issues noted above.

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"].)

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 sections 5950 et seq.

V.

Accordingly, we grant defendant'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 .

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued on November 12, 2024 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/ JOSEPH V. CAPURRO, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 18, 2025

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

ALICIA RODRIGUEZ
SOLOV & TEITELL APC
WOOLFORD & ASSOCIATES

LAS/abs

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