

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

BARBARA COOPER, *Applicant*

vs.

**LAKE COUNTY TRIBAL HEALTH CONSORTIUM;
ALLIANT INSURANCE, *Defendants***

**Adjudication Number: ADJ18308975
Santa Rosa District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Order (F&O) of April 4, 2025, wherein the workers' compensation judge (WCJ) found in relevant part that defendant Lake County Tribal Health Consortium (LCTHC) maintained tribal sovereign immunity; as third party administrator of benefits, Tribal First stands in the shoes of LCTHC; and that the court lacked jurisdiction over LCTHC and Tribal First/ Alliant Insurance. (F&O, p. 1.) The WCJ dismissed the case with prejudice. (F&O, p. 2.) On April 24, 2025, Applicant filed the Petition for Reconsideration of the F&O. Applicant contends that non-tribal entities, such as Tribal First/ Alliant Insurance, are not entitled to sovereign immunity and therefore the Workers' Compensation Appeals Board has jurisdiction over that entity even if it does not have jurisdiction over the Native American tribe.

We have received an Answer from defendant and a "Reply Brief" from applicant.¹ The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

¹ We will treat the May 21, 2025 Reply Brief as a supplemental pleading and pursuant to our authority, we accept applicant's supplemental pleading. (Cal. Code Regs., tit. 8 § 10964.) We advise applicant that "[a] party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading." (Cal. Code Regs., tit. 8 § 10964.)

We have considered the Petition for Reconsideration, the Answer, the supplemental briefing, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petition for Reconsideration.

FACTS

Applicant, while employed on February 15, 2022, as a nurse practitioner, sustained injury arising out of and during the course of employment to her right knee. The case initially went to trial on February 27, 2024. There was no testimony but the WCJ admitted various exhibits into evidence. (2/27/24 Minutes of Hearing (MOH), pp. 1-6.) The parties stipulated that the employer's worker's compensation carrier was Alliant Insurance. (2/27/24 MOH, p. 2.) At the conclusion of the trial, the WCJ deferred submission of the case to allow defendant to submit a post-trial brief and supplement one of its exhibits. (2/27/24 MOH, p. 5.)

On March 11, 2024, the WCJ issued an Order Vacating Submission, Forwarding an Ex Parte Communication from Applicant, and Notice of Intent to Admit Additional Evidence and stated that "it is the intention of the court to admit the attached letter as Applicant's Exhibit 4, unless objection be made by defendant within 10 days (plus 5 days for mailing), after which time the case will be resubmitted." On March 25, 2024, defendant objected to the admission of the additional evidence. On April 2, 2024, applicant filed her Petition for Reconsideration, requesting that her letter that was the subject of the Notice of Intent be admitted as evidence. On May 31, 2024, the Appeals Board issued the Opinion and Order Dismissing Petition for Reconsideration as there was no final or interlocutory order.

On October 3, 2024, the WCJ issued a Findings and Order, finding in relevant part that the court lacked jurisdiction over the employer or the benefits provided to applicant. On October 23, 2024, applicant filed a Petition for Reconsideration of the October 3, 2024 Findings and Order. On November 4, 2024, the WCJ issued an Order Rescinding Findings and Order. The parties then filed additional briefing as requested by the WCJ.

The case returned for trial on January 7, 2025. The parties provided legal argument to the WCJ and the WCJ submitted the case for decision. (1/7/25 Minutes of Hearing and Verbatim Transcript, pp. 2-6.)

The WCJ then issued the F&O on April 4, 2025, finding in relevant part that defendant LCTHC maintained tribal sovereign immunity; as third party administrator of benefits, Tribal First

stands in the shoes of LCTHC; and that the court lacked jurisdiction over LCTHC and Tribal First/ Alliant Insurance. (F&O, p. 1.) The WCJ dismissed the case with prejudice. (F&O, p. 2.) On April 24, 2025, Applicant filed the Petition for Reconsideration of the F&O.

DISCUSSION

I.

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 May 9, 2025, and 60 days from the date of transmission is July 8, 2025. This decision is issued by or on July 8, 2025, 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 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 May 9, 2025, and the case was transmitted to the Appeals Board on May 9, 2025. 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 May 9, 2025.

II.

Applicant only challenges the finding that the WCAB does not have jurisdiction over Tribal First/ Alliant Insurance. Applicant claims that Tribal First/ Alliant Insurance does not have sovereign immunity and therefore must provide applicant her worker' compensation benefits despite the sovereign immunity of the employer tribe. However, applicant misconstrues the issue as the sovereign immunity of the insurance company. Tribal First/ Alliant Insurance cannot be liable for applicant's workers' compensation benefits if the defendant employer is not liable.

The employer here has sovereign immunity and is therefore immune to applicant's workers' compensation claim. (*United Indian Health Services, Inc./Tribal First v. Workers' Comp. Appeals Bd.* (2025) 111 Cal.App.5th 1064 [90 Cal.Comp.Cases 499].) An insurance company's liability is derivative of the liability of the employer. In other words, the insurance company is not responsible for providing workers' compensation benefits to an injured party if the employer itself is not responsible. The employer and its insurance company are treated as one in workers' compensation claims. (Lab. Code, § 3850(b) [“Employer” includes insurer as defined in this division].) Neither insurers nor independent claims administrators and adjusters have an independent responsibility to provide workers' compensation benefits separate from the employer's responsibility except under narrow exceptions not applicable here. (*King v. CompPartners, Inc.* (2018) 5 Cal.5th 1039, 1055-1056 [83 Cal.Comp.Cases 1523]; *Marsh & McLennan, Inc. v. Superior Court* (1989) 49 Cal.3d 1, 4 [54 Cal.Comp.Cases 265].) As the employer has sovereign immunity from workers' compensation claims, the Appeals Board does not have jurisdiction here. As there is no jurisdiction over the employer, there is also no jurisdiction over Tribal First/ Alliant Insurance. Therefore, the Petition for Reconsideration is denied.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 8, 2025

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

**BARBARA COOPER, IN PRO PER
PEEBLES KIDDER BERGIN & ROBINSON LLP**

JMR/abs

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