

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

BENEDO ALFARO VASQUEZ (Deceased), *Applicant*

vs.

**YOUNG'S COMMERCIAL TRANSER;
NATIONAL INTERSTATE INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ17382484
Fresno District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the July 14, 2025 Findings and Order issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant's injury occurred during the course of his normal commute from his place of employment and was not within the course of employment under the "going and coming" rule. Based on these findings, the WCJ ordered that applicant take nothing by way of her claims.

Applicant contends that the WCJ erred in finding the claim barred by the "going and coming" rule. Defendant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration recommending that we deny reconsideration.

We have considered the Petition for Reconsideration, the Answer, the contents of the Report, and have reviewed the record in this matter. 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 section 5950 et seq.

I.

Preliminarily, we note that 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.”

Here, according to Events, the case was transmitted to the Appeals Board on August 13, 2025 and 60 days from the date of transmission is Sunday, October 12, 2025. The next business day that is 60 days from the date of transmission is Monday, October 13, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Monday, October 13, 2025, 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

¹ 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.

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 August 13, 2025, and the case was transmitted to the Appeals Board on August 13, 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 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 August 13, 2025.

II.

The WCJ stated following in the Report:

Benedo Alfaro Vasquez, deceased, [], while employed on October 3, 2022, as a commercial truck driver at Porterville, California by Young's claims to have sustained injury AOE/COE of blunt force trauma to his head as a result of a motor vehicle accident resulting in death.

At the time of injury the employee's earnings were \$1,600 per week warranting indemnity rates of \$1,072 for temporary disability and \$290 for permanent disability. At issue for the trier of fact were Injury AOE/COE and Attorney's fees.

The case proceeded to trial on May 27, 2025. At trial, the undersigned found that Applicant did not sustain injury arising out of and occurring in the course of employment on October 3, 2022 as alleged, Applicant's injury occurred during the course of his normal commute from his place of employment and was not within the course of his employment under the "going and coming" rule and because the Applicant did not sustain injury arising out of and occurring in the course of employment, no attorney's fees are awarded. The undersigned ordered that the Applicant take nothing. It is from this Finding and Order that Applicant seeks reconsideration.

(Report, at p. 2.)

III.

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

Labor Code section 3600 imposes liability on an employer for workers' compensation benefits only if its employee sustains an injury "arising out of and in the course of employment." The "going and coming" rule excludes from compensability injuries that occur while the employee is going to or returning from work in the routine commute. (*Ocean Acc. & Guarantee Co. v. Industrial Acc. Com. (Slattery)* (1916) 173 Cal. 313.) "The rule provides that an injury suffered 'during a local commute en route to a fixed place of business at fixed hours in the absence of special or extraordinary circumstances is not within the course of employment.'" (*Price v. Workers' Comp. Appeals Bd. (Price)* (1984) 37 Cal.3d 559, 564-565 [49 Cal.Comp.Cases 772] quoting *Hinojosa v. Workmen's Comp. Appeals Bd.* (1972) 8 Cal.3d 150, 157 [37 Cal.Comp.Cases 734].) The rationale for this judicially created doctrine is that during an ordinary commute, the employee is not rendering any service for the benefit of the employer. (*City of San Diego v. Workers' Comp. Appeals Bd. (Molnar)* (2001) 89 Cal.App.4th 1385 [66 Cal.Comp.Cases 692].)

However, numerous exceptions to the going and coming rule exist. (*Hinojosa, supra*, at p. 156.) "Since the going and coming rule rests upon the basis that the employer-employee relationship lapses during the employee's off-duty absence from the job, [] the rule does not apply in the event that the relationship in fact continues. . . . courts have recognized exceptions to the rule upon a showing that the employer furnished transportation to the worker, or compensated him for travel time or defrayed his travel expenses." (*Zenith National Ins. Co. v. Workmen's Comp. App. Bd.* (1967) 66 Cal.2d 944, 947 [32 Cal.Comp.Cases 236]; see also *Kobe v. Industrial Acci. Com.* (1950) 35 Cal. 2d 33, 35 (15 Cal.Comp.Cases 85, 87) [the employer may agree, either expressly or impliedly, that the relationship shall continue during the period of "going and coming," in which case the employee is entitled to the protection of the act during that period. . . . such an agreement may . . . be inferred from the fact that the employer compensates the employee for the time consumed in traveling to and from work"].)

Moreover, it is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be

reasonable in nature, credible, and of solid value.” (*Braewood Convalescent Hospital v. Workers’ Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Based on our preliminary review, we are not persuaded that there is substantial evidence to support the WCJ’s decision on the issue of injury AOE/COE. Taking into account the statutory time constraints for acting on the petition, 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. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. 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.

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/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 13, 2025

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

**DYLAN VASQUEZ
KEVIN VASQUEZ
MARIA VASQUEZ
MIRNA DE JESUS ALFARO VASQUEZ
VALDEZ & VALDEZ
MICHAEL SULLIVAN & ASSOCIATES**

PAG/pm

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