WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CRYSTAL GOMEZ, *Applicant*

vs.

CALIFORNIA INSTITUTION FOR WOMEN, LEGALLY UNINSURED, administered by STATE COMPENSATION INSURANCE FUND, STATE EMPLOYEES. *Defendants*

Adjudication Number: ADJ16229232
Riverside District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Lien claimant seeks reconsideration of the Findings & Orders (F&O) issued on May 13, 2025, wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that applicant alleged injury from May 4, 2020, to May 6, 2022, and defendant denied the claim on August 15, 2022; and when lien claimant provided services on November 21, 2022, there was no request for medical-legal examination from a proper party as defined under AD Rule 9793(h)(2) (Cal. Code Regs., tit. 8, § 9793(h)(2)). The WCJ ordered that lien claimant take nothing on their lien.

Lien claimant contends that a contested claim existed at the time that it provided medical-legal services and that it properly provided services pursuant to Labor Code section 4060.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation (Report), recommending that we deny reconsideration.

We have considered the Petition for Reconsideration and 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 lien claimant'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 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.

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 June 25, 2025, and 60 days from the date of transmission is Monday, August 25, 2025. This decision is issued by or on Monday, August 25, 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] All further statutory references are to the Labor Code, unless otherwise noted.

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 WCJ, the Report was served on June 13, 2025, and the case was transmitted to the Appeals Board on June 25, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on June 25, 2025.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on June 25, 2025.

II.

As set forth in the WCJ's Report:

> [Applicant], while employed by California Institution for Women between the period of May 4, 2020 to May 6, 2022, claimed to have sustained injury arising out of and in the course of employment to her Stress and Psych.
>
> This matter proceeded to lien trial before the undersigned on April 16, 2025.
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> In attempting to support entitlement to lien recovery, Lien Claimant primarily relied upon the Cal. Labor Code §4600 letter from Applicant's Attorney dated November 21, 2022, (Joint X-1) and the medical report of Lien Claimant dated November 21, 2022 (LC's 3). In review of the presented evidence, the undersigned found that the Lien Claimant did not meet their burden to prove their sole date of service of November 21, 2022, was a medical-legal expense.
>
> The evidence supported that at the time the date of service was conducted, the Lien Claimant did not have a Cal. Labor Code §4600 letter from the Applicant's Attorney as the letter was mailed the same day as the Lien Claimant's date of service. The letter specifically requested a medical-legal when the Applicant had reached maximum medical improvement. (Joint X-1, p.2). In the medical report dated November 21, 2022, Lien Claimant did not find the Applicant to have reached maximum medical improvement (LC's 3, p.16 – 17), and thus the condition precedent of Applicant's Attorney's request for a medical-legal had not been met. Given the foregoing, Lien Claimant did not meet its burden to

prove a request for medical- legal was made under CCR §9793(h)(2). Therefore, a Finding was issued that at the time of Lien Claimant's date of service, there was no request for a medical-legal examination and an Order issued Lien Claimant should take nothing.

Lien Claimant filed their Petition for Reconsideration (herein "Petition") on June 4, 2025.

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On November 21, 2022, Applicant's Attorney issued their Cal. Labor Code §4600 letter designating Lien Claimant as the Primary Treating Physician. (Joint X-1). This letter was served by Applicant's Attorney by "United States mail" and served on Lien Claimant at their physical address. (Id.). Pursuant to the mailbox rule under CCR §10605(a)(1) it is presumed received by Lien Claimant on November 26, 2022.

In discussing this, the undersigned outlines that at the time the Lien Claimant provided their date of service on November 21, 2022, they did not have this letter in their possession. In their Petition, Lien Claimant does not address this critical point. As CCR §9793(h)(2) requires the report to be "obtained at the request" of a party, it is counter-intuitive to retroactively apply a request to an already conducted date of service. The fact that Lien Claimant fails to address this point, whether it be with countermanding evidence at the trial level to rebut the date of receipt under CCR §10605(a)(1) or in their Petition for Reconsideration, leads the undersigned to believe that the Lien Claimant conceded this point. This alone undermines any argument that at the time the date of service was conducted, no specific request for medical-legal report was received by Lien Claimant from Applicant's Attorney.

As the undersigned finds the Cal. Labor Code §4600 letter was not in the possession of the Lien Claimant on the date of service, any argument and/or reliance on the contents of the letter is a moot point. Nevertheless, the undersigned will address the argument raised in the Petition.

It is undisputed that the Applicant's Attorney does make mention of a comprehensive medical-legal evaluation in the Cal. Labor Code §4600 letter. However, in supporting their position, Lien Claimant contends that the undersigned "…has incorrectly combined the final two requests, thereby rearranging the entire context." (Petition, p.6, line 8,9).

In attempting to show the undersigned incorrectly combined the final two requests of Applicant's Attorney in that letter, Lien Claimant has materially misquoted the letter's grammar and wording structure. On page 6 of the Petition, Lien Claimant contends that the first request was, "Disability Status for Vocational rehabilitation reports when request, and when the applicant becomes permanent and stationary" with the final request being "a comprehensive medical-legal evaluation in accordance with the Rules and Practices and

procedures §9785.5(d), (e) and (f).” (Petition, p. 6, lines 10-13). The quote as written by Lien Claimant on page 6 of is incorrect.
When reviewing the actual wording of the Cal. Labor Code §4600 letter, the complete quote encompassing the two requests as written by Applicant’s Attorney was,

> “… disability status for vocational rehabilitation reports when requested, and, (emphasis added) when the applicant becomes permanent and stationary, a comprehensive medical-legal evaluation in accordance with Rules of Practice and Procedure §9785.5(d), (e), and (f).” (Joint X-1, p.2).

It is worth noting that on page 5 of the Petition, Lien Claimant did in fact quote this correctly. (Petition, p.5, lines 3-5). However, in attempting to support their contention that the undersigned “incorrectly combined the final two requests”, Lien Claimant’s removal of the commas that bracket the word “and” gives clear new meaning to the complete request. The comma preceding the word “and” in that request evidence a clear break in the list of requests from Applicant’s Attorney. The condition precedent of the Applicant being permanent and stationary applies to the comprehensive medical-legal evaluation and not to the disability status for vocational rehabilitation when requested. As written, the undersigned believes the only logical conclusion that can be reached is that the Applicant’s Attorney specifically asked for a medical-legal at the time the Applicant was permanent and stationary.

In their report, Lien Claimant found the Applicant to not be permanent and stationary and requiring further treatment, and notes that issues of apportionment will be addressed “… in a permanent and stationary report.” (LC’s 3, p.17-18). As the doctor did not find the Applicant permanent and stationary, the condition precedent in place by the Applicant’s Attorney had not been met. The evidence supports the conclusion that (1) Applicant’s Attorney’s 4600 letter was not in the possession of the Lien Claimant at the time the service was conducted, and (2) that the condition precedent of which the Applicant’s Attorney would have requested a medical-legal examination had not been met. Therefore, there was no request for a medical-legal from the Applicant’s Attorney according to the evidence provided at the time the date of service was conducted. Equally, the Lien Claimant failed to produce any evidence supporting the Applicant requested a medical-legal, which was Lien Claimant’s burden to provide.

As such, the only conclusion this Court could reach based on the evidence presented was there was no request for medical-legal examination on November 21, 2022, from Applicant or Applicant’s Attorney.

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(Report, June 13, 2025, pp. 1-2; 4-6.)

III.

We highlight several legal principles that may be relevant to our review of this matter. Section 4060, subsection (c) provides that:

> (c) If a medical evaluation is required to determine compensability at any time after the filing of the claim form, and the employee is represented by an attorney, a medical evaluation to determine compensability shall be obtained only by the procedure provided in Section 4062.2.

Here, lien claimant contends that they demonstrated that a medical evaluation was required after the filing of the claim form and the WCJ's conclusion that the request for a medical evaluation and the medical evaluation could not be simultaneous is not based on the clear language of the statute.

In the Petition, lien claimant alleges that:

> In summary, the defendant denied the claim in its entirety. The applicant designated Mark H Michaels PhD as the primary treating physician. After the denial, the applicant requested, and Dr. Michaels properly performed the medical-legal service. Therefore, the medical-legal expense must be reimbursed accordingly.

(Petition for Reconsideration, p. 8.)

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 14 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 sections 5950 et seq.

V.

Accordingly, we grant lien claimant'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 lien claimant's Petition for Reconsideration of the May 13, 2025 Findings and Orders 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/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 25, 2025

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

PREMIER PSYCHOLOGICAL SERVICES
JARON T. WEST/PAPERWORK & MORE,
STATE COMPENSATION INSURANCE FUND, LEGAL

AS/mc

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