

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

DEXTER HAYNES, *Applicant*

vs.

**TRANSFORCE, INC.; RETURN-TO-WORK SUPPLEMENT PROGRAM (real party in
interest), *Defendants***

**Adjudication Number: ADJ16283940
Marina del Rey District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Applicant Dexter Haynes seeks reconsideration of the November 27, 2024 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant is not entitled to a second Return-to-Work Supplement (RTWS) payment pursuant to Rule 17302(b) (Cal. Code Regs., tit. 8, § 17302(b).)

Applicant contends that (1) Rule 17302(b) should be struck down because it is inconsistent with Labor Code¹, section 139.48, the enabling statute; (2) the Appeals Board should issue an en banc decision on the issue of the validity of Rule 17302(b); and (3) section 139.48 and Rule 17302(b) are unconstitutional because the Legislature improperly delegated authority to the Director of the Department of Industrial Relations to determine the eligibility of the RTWS program.

We received an answer from the Director of the Department of Industrial Relations. It contends that (1) Rule 17302(b) was promulgated pursuant to statutory authority and is presumptively valid; and (2) the Appeals Boards lacks the jurisdiction to invalidate Rule 17302(b).

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted to address whether Rule 17302(b) is authorized by and consistent with section 139.48.

¹ All statutory references are to the Labor Code unless otherwise indicated.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we grant applicant's Petition for Reconsideration. Our order granting applicant's 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 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."

Here, according to Events, the case was transmitted to the Appeals Board on December 20, 2024, and 60 days from the date of transmission is February 18, 2025. This decision is issued by or on February 18, 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 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 December 20, 2024, and the case was transmitted to the Appeals Board on December 20, 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 20, 2024.

II.

The facts are undisputed in this matter. As the WCJ states:

Applicant, Dexter Haynes, sustained injury arising out of and in the course of employment to the right leg, ankle and foot while working for Transforce, Inc. on 05/26/2022 (MOH/SOE, p.2, lines 4-6). This matter settled by way of Compromise & Release (C&R) by Order Approving (OACR) issued on 06/19/2023 (Petition for Reconsideration, p.3, lines 19-20). As part of the C&R Applicant received a Supplemental Job Displacement Voucher (SJDV) on approximately 07/06/2023 (Id., p.4 lines 1-4). Based thereon, Applicant applied for a Return To-Work Supplement (RTWS) of \$5,000.00 from the Return-To-Work Supplement Program (RTWSP) and this application was denied on 07/18/2023 (Petition for Reconsideration, p.4, lines 5-7). Thereafter, Applicant filed a Petition Appealing Denial of Return-to-Work Supplement on 08/01/2023 (Joint Exhibit 104).

Based on the Trial Briefs submitted by the parties, the basis of this denial of eligibility for a second RTWS was CCR section 17302(b) which states: "An individual who has received a Return-to-Work Supplement may not receive a second or subsequent Return-to-Work-Supplement, except where the individual receives a Voucher for an injury which occurs subsequent to receipt of every previous Return to Work Supplement." Applicant's 05/26/2022 injury claim herein against Transforce, Inc. occurred prior to Applicant's 08/15/2022 receipt of a RTWS issued in a previous case, D. Haynes v. J.B. Hunt, case number ADJ14202486. (Petition for Reconsideration p.3, lines 10-11).

This matter proceeded to Trial on 10/16/2024 and was submitted for decision that same day after brief testimony from the Applicant that he expected to receive a second \$5,000.00 RTWS (MOH/SOE, 10/16/2024). The Decision and Findings & Order issued 11/27/2024. Per EAMS filenet, although dated 12/13/2024 Applicant's Petition for Reconsideration is listed as received on 12/12/2024 with a "Doc Entry Date" of 12/13/2024. In order to avoid any time deadline issues this court will presume that the filing date of the Petition for Reconsideration with the court is the earlier date. Finally, as of this date, no Answer has yet been filed by Defendant. (Report, pp. 2-3.)

III.

Section 139.48 provides:

(a) There is in the department a return-to-work program administered by the director, funded by one hundred twenty million dollars (\$120,000,000) annually derived from non-General Funds of the Workers' Compensation Administration Revolving Fund, for the purpose of making supplemental payments to workers whose permanent disability benefits are disproportionately low in comparison to their earnings loss. Moneys shall remain available for use by the return-to-work program without respect to the fiscal year.

(b) Eligibility for payments and the amount of payments shall be determined by regulations adopted by the director, based on findings from studies conducted by the director in consultation with the Commission on Health and Safety and Workers' Compensation. Determinations of the director shall be subject to review at the trial level of the appeals board upon the same grounds as prescribed for petitions for reconsideration.

(c) This section shall apply only to injuries sustained on or after January 1, 2013. (§ 139.48.)

Rule 17302(b) provides:

Rule 17302

(a) To be eligible for the Return-to-Work Supplement, the individual must have received the Supplemental Job Displacement Benefit (SJDB) Voucher for an injury occurring on or after January 1, 2013.

(b) An individual who has received a Return-to-Work Supplement may not receive a second or subsequent Return-to-Work-Supplement, except where the individual receives a Voucher for an injury which occurs subsequent to receipt of every previous Return to Work Supplement. (Cal. Code Regs., tit. 8, § 17302.)

Applicant admits that under Rule 17302(b), he is not qualified for an additional RTWS payment. (Petition, pp. 6:23-7:3.) However, he contends that Rule 17302(b) is not valid because it is not consistent with section 139.48, the enabling statute. Alternatively, he argues, that if Rule 17302(b) is consistent with section 139.48, then both section 139.48 and Rule 17302(b) are unconstitutional because section 139.48 gives unfettered discretion to the Director of the Department of Industrial Relations to determine eligibility for RTWS payments. Given the complexity and seriousness of this issue, we grant reconsideration in order to further consider whether Rule 17302(b) is authorized and consistent with section 139.48.

IV.

Finally, we observe that 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 § 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 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 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 Dexter Haynes's Petition for Reconsideration of the November 27, 2024 Findings and Order 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/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



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.

**DEXTER HAYNES
LAW OFFICES OF FRED L. FONG, APC
OD LEGAL – OAKLAND**

LSM/oo

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