

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

ERIC TAYLOR, *Applicant*

vs.

**CITY OF WATSONVILLE, permissibly self-insured;
TRINDEL INSURANCE FUND for COUNTY OF SAN BENITO, *Defendants***

**Adjudication Numbers: ADJ9413996; ADJ9413375; ADJ9413995;
ADJ9413379; ADJ10118222; ADJ14275087
Salinas District Office**

**OPINION AND ORDER
GRANTING PETITIONS
FOR RECONSIDERATION**

Defendant City of Watsonville and defendant County of San Benito both seek reconsideration of the May 2, 2025 Amended Joint Findings, Award & Order (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant sustained 100 percent permanent and total disability, and that liability and administration for the claim rests with the County of San Benito.

City of Watsonville contends that applicant's various disability ratings should be combined rather than added, and that pursuant to Labor Code¹ section 5500.5, co-defendant County of San Benito should be unable to seek contribution from the City of Watsonville.

County of San Benito contends that applicant's various disability ratings should be combined rather than added, and that applicant's continued active employment is incompatible with a finding of permanent and total disability. County further contends that if there is an award of permanent and total disability, permanent disability indemnity payments should commence as of the December 21, 2021 reporting of Qualified Medical Evaluator (QME) Dr. Levy in which applicant was determined to have reached maximum medical improvement (MMI). Finally, County contends that any award should issue jointly and severally as against the City of Watsonville and the County of San Benito.

¹ All further references are to the Labor Code unless otherwise noted.

We have received an Answer from applicant with respect to the petition filed by the City of Watsonville, and a second Answer with respect to the petition filed by the County of San Benito. We have received an Answer from County of San Benito in response to City of Watsonville's petition. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that both the Petitions be denied.

We have considered the allegations of both Petitions for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based upon our preliminary review of the record, we will grant both the City of Watsonville's Petition for Reconsideration as well as the County of San Benito's Petition for Reconsideration. Our orders granting the Petitions for Reconsideration are not final orders, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petitions 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, 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 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 5, 2025, and 60 days from the date of transmission is August 4, 2025. This decision is issued by or on August 4, 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 June 5, 2025, and the case was transmitted to the Appeals Board on June 5, 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 June 5, 2025.

II.

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

Applicant’s six pending cases were previously the subject of our May 21, 2024 Opinion and Orders Denying Petition for Reconsideration, Granting Petition for Reconsideration, and Decision After Reconsideration (O&O), which recounted the factual and procedural history of this matter as follows:

Applicant has six pending cases. In ADJ10118222, applicant claimed injury to his right knee, heart/circulatory system, arrhythmias, atrial fibrillation and hypertension while employed as a Police Officer by the City of Watsonville on July 1, 2009. Defendant City of Watsonville admits injury to the right knee but disputes the nature and extent of the injury.

In ADJ9413379, applicant claimed injury to his right knee, heart/circulatory system, arrhythmias, atrial fibrillation and hypertension while employed by as a Police Officer by the City of Watsonville on December 16, 2010. Defendant City of Watsonville admits injury to the right knee but disputes the nature and extent of the injury.

In ADJ9413375, applicant claimed injury to the cervical spine, lumbar spine, bilateral ulnar neuropathy at the elbows and in the form of arrhythmias, atrial fibrillation, and hypertension, while employed by the City of Watsonville as a Police Officer on September 24, 2013. Defendant City of Watsonville admits injury to the cervical spine, lumbar spine and in the form of bilateral ulnar neuropathy but disputes the nature and extent of the injury.

In ADJ94133995, applicant claimed injury to the right knee, heart/circulatory system, arrhythmias, atrial fibrillation, and hypertension, while employed as a Police Officer by the City of Watsonville on January 18, 2014. Defendant City of Watsonville admits injury arising out of and in the course of employment (AOE/COE) to the right knee but disputes the nature and extent of the injury.

In ADJ9413996, applicant claimed injury in the form of arrhythmias, tachycardia, atrial fibrillation and hypertension while employed as a Police Officer by the City of Watsonville from 1999 to May 23, 2014. Defendant City of Watsonville disputes injury AOE/COE.

In ADJ14275087, applicant claimed injury to his heart/circulatory system, arrhythmias, atrial fibrillation with rapid ventricular rate, and hypertension, while employed as a Deputy Sheriff by the County of San Benito from June, 2014 to October 26, 2020. Defendant County of San Benito disputes injury AOE/COE.

The parties to applicant's claims as against the City of Watsonville have selected AME Samuel Sobol, M.D., in the field of internal medicine/cardiology, and Ronald Fujimoto, M.D., as the QME in orthopedic medicine. The parties to applicant's claim as against the County of San Benito have selected Richard Levy, M.D. as the QME in internal medicine/cardiology.

On September 28, 2021, a WCJ ordered all six cases consolidated.

...

On February 27, 2024, the PWCJ issued the F&O. Therein, the PWCJ determined that applicant had sustained a single overarching cumulative injury from 1999 to October 26, 2020, in the form of arrhythmias, atrial fibrillation and hypertension. (Finding of Fact No. 1.) The PWCJ further determined that although the presumptions of section 3212.5 were applicable to applicant's "heart trouble," and that the anti-attribution provisions of section 4663(e) applied only to prevent attribution between applicant's work as a sheriff and

work as a police officer. (Opinion on Decision, at p. 7.) The PWCJ awarded 16% percent permanent disability after applying nonindustrial apportionment of 50 percent, and 25 percent apportionment to the pain and anxiety of the industrial injuries to the right knee, lumbar spine and cervical spine. (*Ibid.*)

With respect to the claimed specific injuries in Case Nos. ADJ9413995, ADJ9413375, ADJ9413379, and ADJ10118222, the PWCJ determined that applicant had sustained specific orthopedic industrial injuries in each claim. The PWCJ further determined that as a compensable consequence of the orthopedic injuries, applicant had also sustained injury in the form of cardiac arrhythmias, atrial fibrillation and hypertension. (Opinion on Decision, at p. 9.) The PWCJ also noted that, “as the compensable consequence injury to the heart resulted from all the specific injuries and was determined to [be] inextricably intertwined, described as related to the sympathetic response, anxiety, pain management, weight gain, lack of activity, loss of sleep related to pain and anxiety and impact of use of pain medication, which contributed to the Applicant’s arrhythmias and high blood pressure, the Applicant is entitled to a single joint award, related to these four injury claims.” (*Ibid.*) However, the PWCJ also determined that notwithstanding the finding of injury to applicant’s heart in the form of arrhythmias, the presumptions of section 3212.5 were “sufficiently rebutted by the medical evidence that establishes causation specifically resulting from [a]pplicant’s specific orthopedic injuries.” (Opinion on Decision, at p. 9.) Accordingly, the PWCJ awarded 72 percent permanent disability arising out of the four claimed specific injuries.

(O&O, dated May 21, 2024, at pp. 2-3.)

Both applicant and defendant City of Watsonville filed petitions seeking reconsideration of the WCJ’s F&O.

In our May 21, 2024 O&O, we determined that all of applicant’s pending claims of injury invoked the presumptions of section 3212.5 and that defendants had not rebutted the presumption. We therefore concluded that pursuant to section 4663(e), applicant is entitled to an unapportioned award. We also specifically rejected applicant’s argument that the addition of his disability percentages was required under *Todd v. Subsequent Injuries Benefits Trust Fund* (2020) 85 Cal.Comp.Cases 576 [2020 Cal. Wrk. Comp. LEXIS 35] (*Todd*) and observed that pursuant to the undisputed opinions of both the AME and the QME, the application of the Combined Values Chart (CVC) was the more appropriate method for combination. We thus rescinded the WCJ’s F&O and substituted new findings of fact reflecting that the presumption of section 3212.5 attached to all six of applicant’s pending claims of injury and returned this matter to the PWCJ for the issuance of a combined and unapportioned award.

On May 2, 2025, the WCJ issued the F&A, determining in relevant part that applicant's permanent disability was permanent and total. (Finding of Fact no.1.) The WCJ issued a corresponding award, and determined that pursuant to section 5500.5, liability for the injury rested with the County of San Benito. (Finding of Fact No. 2.) The WCJ further determined that based on partially overlapping body parts, the County of San Benito may be entitled to reimbursement or contribution from City of Watsonville. (*Ibid.*) The WCJ's Opinion on Decision explains that apportionment of 50 percent of applicant's hypertension condition to nonindustrial factors was appropriate based on the deposition testimony of Richard Levy, M.D. (Opinion on Decision, at p. 5.) The WCJ further explained that the internal medicine ratings were combined using the CVC, then pursuant to *Todd, supra*, 85 Cal.Comp.Cases 576, added to the combined spine ratings, which were then added to the right knee ratings. The total aggregate disability using this additive method yielded 112 percent permanent disability, and thus, a finding of permanent and total disability. (*Id.* at p. 4.)

The County of San Benito's Petition for Reconsideration (San Benito Petition) contends that the ratings from applicant's successive cases were added in error, and that applicant's disabilities should be combined by application of the CVC. (San Benito Petition, at p. 3:7.) The petition further asserts it is incongruous to find an employee has sustained 100 percent permanent disability while applicant continues to work as the Sheriff for the County of San Benito. (*Id.* at p. 6:17.) Finally, the County contends that if 100 percent permanent disability is awarded, it should commence as of the December 21, 2021 MMI date per QME Dr. Levy. (*Id.* at p. 7:11.)

The City of Watsonville Petition for Reconsideration (Watsonville Petition) similarly contends that the ratings from applicant's successive cases were added in error, and that applicant's disabilities should be combined by application of the CVC. (Watsonville Petition, at p. 2:18.) The petition also asserts that the issuance of a joint award based on presumptive body parts precludes any right to contribution by the County of San Benito. (*Id.* at p. 3:14.)

Applicant's Answer to the Watsonville Petition responds that because there are multiple injury dates but a single Award, the CVC is used to combine permanent disabilities with respect to the rating of single injuries, but not to combine successive permanent disabilities related to prior and subsequent injuries. (Applicant's Answer, at p. 2:9.) Applicant thus submits that the CVC is only applicable to a single injury and would not apply in the instant matter involving multiple injuries. Applicant's Answer to the San Benito Petition advances a similar analysis.

The County of San Benito’s Answer to the Watsonville Petition observes that the joint award involves separate injuries and separate defendants. (County of San Benito’s Answer to Co-Defendant City of Watsonville’s Petition, at p. 1:25.) The County’s Answer also observes that section 5500.5 does not act as a bar to reimbursement for benefits arising solely or partially from injuries applicant sustained while employed by City of Watsonville. (*Id.* at p. 3:1.) The County of San Benito thus concludes that, “[w]hile the WCAB may order one defendant to administer a joint award for the purpose of streamlining provision of benefits to applicant, defendants are entitled to pursue and litigate any claims for reimbursement and/or contribution in supplemental proceedings. Neither Labor Code § 5500.5 nor Labor Code § 4663(e) bar a defendant’s right to seek reimbursement and/or contribution from a co-defendant, for the share that the co-defendant’s separate injuries contributed to the need for benefits.” (*Id.* at p. 5:1.)

Pursuant to our en banc decision in *Vigil v. County of Kern* (2025) 89 Cal.Comp.Cases 686, the CVC as a component of the Permanent Disability Ratings Schedule may be rebutted and impairments may be added where an applicant establishes the impact of each impairment on the activities of daily living (ADLs) and that either there is no overlap between the effects on ADLs as between the body parts rated; or (b) there is overlap, but the overlap increases or amplifies the impact on the overlapping ADLs. (*Id.* at pp. 688-689.)

However, decisions of the Workers’ Compensation Appeals Board must be based on a review of the entire record and must rest on competent medical evidence. (*Bracken v. Workers’ Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246 [54 Cal.Comp.Cases 349]; *LeVesque v. Workers’ Comp. Appeals Bd.* (1970) 1 Cal. 3d 627 [35 Cal.Comp.Cases 16]; *Lamb v. Workers’ Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310].)

We also observe that pursuant to section 5500.5, “liability for occupational disease or cumulative injury claims filed or asserted on or after January 1, 1978, shall be limited to those employers who employed the employee during a period of [one year] immediately preceding either the date of injury, as determined pursuant to Section 5412, or the last date on which the employee was employed in an occupation exposing him or her to the hazards of the occupational disease or cumulative injury, whichever occurs first.” (Cal. Lab. Code, § 5500.5(a).) Generally, the reimbursement and contribution rights of insurers and employers must be decided in independent supplemental proceedings between themselves. (*General Accident Ins. Co. v. Workers’ Comp. Appeals Bd.* (1996) 47 Cal.App.4th 1141 [61 Cal.Comp.Cases 648].) However, we must determine

in the first instance the extent to which the question of liability under section 5500.5 interacts with the anti-attribution features of section 4663(e).

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.) “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]).)

Additionally, the WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board 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, based on our preliminary review, it appears that further development of the record may be appropriate.

III.

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 Labor Code sections 5950 et seq.

IV.

Accordingly, we grant both the City of Watsonville's Petition for Reconsideration as well as the County of San Benito's Petition for Reconsideration. We will further order that a final decision after reconsideration is deferred pending further review of the merits of the Petitions 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 the City of Watsonville's Petition for Reconsideration of the Findings and Award issued by a workers' compensation administrative law judge on May 2, 2025 is **GRANTED**.

IT IS FURTHER ORDERED that the County of San Benito's Petition for Reconsideration of the Findings and Award issued by a workers' compensation administrative law judge on May 2, 2025 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/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 4, 2025

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

**ERIC TAYLOR
DILLES LAW GROUP
RTGR
MACINTYRE AND WHITE**

SAR/abs

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