WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ERNESTO ACEVEDO aka MARIO RECINOS, ***Applicant***

vs.

HAITBRINK ASPHALT PAVING;
REDWOOD FIRE AND CASUALTY INSURANCE COMPANIES;
Administered by BERKSHIRE HATHAWAY
HOMESTATE COMPANIES, ***Defendants***

Adjudication Number: ADJ3869833 (RIV0081149)
Riverside District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration, applicant's Answer, and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed in the WCJ's Report, which we adopt and incorporate, we will deny reconsideration.

Former Labor Code section 5909[1] 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.

[1] All section references are to the Labor Code, unless otherwise indicated.

> (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 October 24, 2025, and 60 days from the date of transmission is December 23, 2025. This decision is issued by or on December 23, 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 October 24, 2025, and the case was transmitted to the Appeals Board on October 24, 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 October 24, 2025.

Accordingly, defendant's petition is denied.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 22, 2025

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

ERNESTO ACEVEDO aka MARIO RECINOS
LAW OFFICE OF RENE H. PIMENTEL, INC.
BRADFORD & BARTHEL, LLP

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

Applicant's Occupation:	Laborer
Applicant's Age (at time of injury):	31
Injury:	Applicant sustained injury arising out of and in the course of employment to the back resulting in quadriplegia on September 6, 2007.
Identity of Petitioner:	Defendant, Redwood Fire & Casualty Insurance
Timeliness:	The petition was filed timely.
Verification:	The petition was properly verified.
Date of Issuance of Order/Award:	September 18, 2025
Date Transmitted to the Appeals Board:	October 24, 2025

II
PETITIONER'S CONTENTIONS

1. By Decision and Award, the Board acted in excess of its powers.
2. The evidence does not justify the finding of fact.
3. The findings of fact do not support the Order, Decision, or Award.

III
FACTS

This case previously proceeded to trial on 10/07/2010. Following the trial, Judge Jimenez made a finding that Applicant, Ernesto Acevedo aka Mario Recinos Gonzalez, born [ ], while employed as a raker/laborer at Corona, California by Haitbrink Asphalt, sustained injury arising out of and in the course of employment on 9/6/2007 to his lower back and on 9/10/2007 sustained paralyzing injuries arising out of and in the course of said employment. It was further noted that the injury sustained by applicant in the 9/10/2007 automobile accident is a compensable consequence of his 9/6/2007 industrial injury.

Multiple additional hearings were conducted over the years before Judges Jimenez, Hill, Thompson and Yee. The undersigned notes that at a trial before Judge Yee on 6/01/2023, the parties enter into a Stipulation and Award wherein the Defendant agreed to provide the Applicant with transportation to and from his brother's house for twice a month for one month and then once a month for 2 months. The agreed upon visits were noted to be with a caregiver and limited to four hours plus travel time.

Judge Yee presided over several additional hearings including an expedited hearing on 10/01/2024. At that time, the parties agreed to take the matter off calendar and the minutes noted

"Remaining issue from DOR is the van repair bill of about $5,100.00. Court recommends parties resolve this issue informally."

On 10/21/2024, Applicant's Counsel filed a DOR requesting an MSC on the issue of "repairs to van". A MSC took place before Judge Yee on 12/11/2024, at which time the parties jointly requested that the matter be set for trial over the issue of reimbursement of van repair costs.

The parties appeared for trial before the undersigned on 2/13/2025. At that time, the parties jointly requested the matter be continued because the undersigned had a priority trial moving forward and the applicant was not feeling well. The trial was continued to 4/07/2025. Prior to that trial date, the parties requested a continuance due to the unavailability of witnesses. The request was granted and the trial date was rescheduled.

The matter again came before the undersigned for trial on 5/22/2025. Unfortunately, on that date the parties again had an issue with the availability of witness(es) and jointly requested continuance. The trial was again rescheduled, this time for 7/21/2025.

The trial proceeded on 7/21/2025. Exhibits were offered and admitted into evidence and testimony was taken of the Nurse Cases Manager, Esther Salazar, and Ruth Recinos. The matter was submitted on 7/21/2025.

The undersigned issued a Findings and Award with Opinion on Decision on September 18, 2025. An Award was made that Applicant was entitled to reimbursement in the amount of $5,169.00 for the repairs made to his handicapped modified van.

Defendant, by and through their attorneys, filed a Petition for Reconsideration on October 13, 2025.

Applicant's counsel filed an Answer to the Petition for Reconsideration on October 21, 2025.

IV
DISCUSSION

Petitioner seeks Reconsideration of the Findings and Award, wherein they contend that the undersigned WCALJ erred in finding that repairs to a handicapped van are medical treatment and that the evidence supports the Applicant is entitled to reimbursement for the costs of the repairs made.

Petitioner contends that the WCALJ erred in finding that van repairs are medical treatment. The undersigned disagrees and finds plenty of support in the case law for the proposition that this is a form of medical treatment that can be awarded under the provisions of the Labor Code.

Medical treatment is covered under Labor Code §4600, which reads as follows:

> "(a) Medical, surgical, chiropractic, acupuncture, licensed clinical social worker, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. In the case of the employer's neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment." Cal Lab Code § 4600

Case law has held that handicapped modified vans are considered "apparatuses" under Labor Code section 4600, which means they fall within the scope of medical treatment that employers must provide to injured workers when reasonably required to cure or relieve the effects of an industrial injury. The courts have historically interpreted LC §4600 liberally in favor of the employee's right to reimbursement. The cases cited in Applicant's counsel's Answer are among the cases reviewed to support this contention and include *The Webb Schools v. WCAB (Roberts) (1997) 62 CCC 1329 (writ denied), Industrial Indemnity Co. v. WCAB (Roche) (1976) 42 CCC 565 (writ denied) as well as Gordon M. Caesar, Inc., dba Gordons Market v. WCAB (Hinds) (1976) 41 CCC 344 (writ denied).*

When an apparatus is deemed reasonably required to cure or relieve the effects of the injury, then associated costs such as repairs can be awarded.

The undersigned maintains that reimbursement for the costs of repairs to a handicapped modified van are within the scope of benefits that can be awarded under the Labor Code.

It is noted that Petitioner argues that the repairs should be categorized as normal operating costs, however there is nothing normal about the Applicant's need for a modified van that accommodates his large electronic wheelchair which he is confined to due to the accepted injury. Applicant did not have need for a van to transport himself and his wheelchair prior to the injury.

Petitioner further contends that the medical evidence around the time of the repairs does not support the causal relationship between the injury and the need for an operational van. Petitioner makes no mention of the 6/17/2025 (applicant's exhibit 25) medical reporting of Dr. Phillip's which the undersigned stated he relied upon in determining that the self-procured treatment was reasonable and necessary. There is nothing that prevents the court from considering all medical evidence addressing the issue even if that reporting comes after the date of the self-procurement.

Petitioner contends that the undersigned finding would create an unjust and unintended expansion of the employer's liability. As noted above, the finding is in line with prior case law, which has already set forth that when deemed reasonable and necessary apparatus as well as the repair and maintenance of said apparatus are compensable benefits under the workers' compensation system.

Finally, petitioner contends that the van repairs cannot be found to be medical treatment because the parties stipulated that defendant furnished all medical treatment and "if defendant has

provided all medical treatment, then the disputed repairs are not medical treatment." The parties were well aware of the dispute over reimbursement for the van repairs and that this issue was being set for trial, the applicant has an accepted case for which the Defendant has been providing medical treatment. There appears to currently be no third party that is paying for his treatment as there was prior in the case as noted by the prior lien of HMS Dept of Health Services, this is what the undersigned understands the stipulation to refer to, not that the Applicant cannot seek reimbursement for medical treatment he has self-procured.

V
RECOMMENDATION

For all the forgoing reasons, it is respectfully requested that the Petition for Reconsideration be denied.

This Report and Recommendation on Reconsideration was **transmitted** to the Appeals Board on October 24, 2025.

DATE: 10/23/2025

Joseph Yalon
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE