

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

ESTEFANY MICHELLE OSORIO, *Applicant*

vs.

**SPACE EXPLORATION TECHNOLOGIES CORP (SPACE X);
permissibly Self-insured; administered by CorVel, *Defendants***

**Adjudication Number: ADJ17849976
Van Nuys District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the January 13, 2025 Findings and Award issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to the psyche and in the form of stress while employed as a customer support associate during the period of February 21, 2022 through May 30, 2023. Based on this finding, the WCJ awarded further medical treatment to cure or relieve the effects of the injury.

Defendant contends that the WCJ erred in finding applicant's injury compensable arguing that personnel actions were the substantial cause of applicant's psychiatric injury and arguing that the WCJ acted in excess of his powers by refusing defendant's objection to proceed to trial without the testimony of material witnesses.

We did not receive an answer. The WCJ issued a Recommendation on Petition for Reconsideration 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 defendant'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 Labor Code¹ 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 February 19, 2025 and 60 days from the date of transmission is Sunday, April 20, 2025. The next business day that is 60 days from the date of transmission is Monday, April 21, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, April 21, 2025, so that we have timely acted on the petition as required by Labor Code 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

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

² 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.

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 February 19, 2025, and the case was transmitted to the Appeals Board on February 19, 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 February 19, 2025.

II.

The WCJ provided the following discussion in the Report:

FACTS

Applicant was evaluated by QME Psychiatrist Dr. John Stalberg pursuant to his 11/9/2023 report (Exhibit X1) and 7/15/2024 deposition (Exhibit X3). Dr. Stalberg indicates at page 7 of his 11/9/2023 report (Exhibit X1) that:

“Her injury is caused by work and nothing else and that a portion of that is personnel related.

He indicates the following at page 3 of that report:

“...60% to interpersonal stress on the job caused by problems with co-workers, 30% to negative reviews and 10% to termination. That would appear to equal the required 35% to 40% needed for a Rolda analysis...”

Applicant's credible, consistent and un rebutted trial testimony is set forth in relevant part below:

Salvador bullied her and sexually harassed her. Salvador would call her constantly and sent her pictures of his penis on five separate occasions. She reported Salvador's actions and behavior to Human Resources. Human Resources did not conduct an investigation, to her knowledge... She felt really hurt and felt that women weren't treated well in her department. (MOH pg 3; lines 14 – 25).

She was constantly mistreated by a group of males. David indicated that he would follow her after work to see where she lives. Aaron and Jose called her names, and Applicant characterized the names as similar to saying that she was an "easy girl." These men would refer to her inappropriately as "bitch" or "ho," and she felt really depressed. She was sexually harassed while working in the Production Department. The sexual harassment and bullying were the exclusive sources of stress in that department.

Her supervisor, Daniel Hernandez, picked on her and said things to her such as that she was no good for the team. Men in the Production Department picked on her including the way she dressed, criticizing her appearance, and calling her names. She felt that she needed to protect or insulate herself from others in that department and felt unable to ask anyone for help. She would eat lunch by herself.

Applicant reported to Daniel several times how she was treated by people in the department. She had biweekly meetings with Daniel and discussed her performance, and she was given an opportunity to express her concerns to Daniel as well. She was treated unfairly at every one of those meetings as Daniel made her feel that she wasn't wanted in the department.

Applicant estimated that there were 15 to 20 employees in the Customer Service Department. She felt that she was bullied by the entire team. The bullying consisted of similar comments regarding her appearance, and she felt like an outsider and that no one was there to support her.

Applicant is no longer employed by SpaceX and last worked on or about May 9, 2023. A Human Resources Coordinator left her a voice mail indicating that she had been terminated. No reason was given for the termination. She believes that she was bullied because she is a woman and that her gender was a factor in the way that Daniel treated her; as though she wasn't intelligent. (MOH pg 4; lines 1 – 25)

(Report at pp. 2-3.)

III.

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

In order to establish the compensability of a psychiatric injury under section 3208.3, an injured worker has the burden of establishing “by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.” (Lab. Code, § 3208.3(b)(1).) “Predominant as to all causes” means that “the work-related cause has

greater than a 50 percent share of the entire set of causal factors.” (*Dept. of Corrections v. Workers’ Comp. Appeals Bd. (Garcia)* (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356, 1360]; *Watts v. Workers’ Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 684, 688 (writ den.); *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 246 (Appeals Board en banc).)

In *Rolda*, we set forth the multilevel analysis for determining if a claimed psychiatric injury is compensable when the affirmative defense of lawful, nondiscriminatory, good faith personnel action has been raised: “The WCJ, after considering all the medical evidence, and the other documentary and testimonial evidence of record, must determine: (1) whether the alleged psychiatric injury involves actual events of employment, a factual/legal determination; (2) if so, whether such actual events were the predominant cause of the psychiatric injury, a determination which requires medical evidence; (3) if so, whether any of the actual employment events were personnel actions that were lawful, nondiscriminatory and in good faith, a factual/legal determination; and (4) if so, whether the lawful, nondiscriminatory, good faith personnel actions were a “substantial cause” of the psychiatric injury, a determination which requires medical evidence.” (*Rolda, supra*, 66 Cal.Comp.Cases at pp. 245-247.)

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.)

Medical evidence is required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c)(d), 4061(i), 4062.3(l).) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers’ Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621

(Appeals Bd. en banc).) “Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board’s findings if it is based on surmise, speculation, conjecture or guess.” (*Heggin v. Workmen’s Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Based on our review, we are not persuaded that the record is properly developed. Where the medical evidence or opinion on an issue is incomplete, stale, and no longer germane, or is based on an inaccurate history, or speculation, it does not constitute substantial evidence. (*Place v. Workers’ Comp. Appeals Bd.* (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Here, it is unclear from our preliminary review that there is substantial medical evidence to support the WCJ’s decision without additional development of the record.

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 defendant'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 defendant'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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ PAUL KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 18, 2025

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

**ESTEFANY MICHELLE OSORIO
ABRAMSON LAW GROUP
SION ASSOCIATES**

PAG/bp

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