WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

FRANCISCO MENDOZA OLIVARES, *Applicant*

vs.

BARRETT BUSINESS SERVICES, INC.;
ACE AMERICAN INSURANCE COMPANY administered by CORVEL, *Defendants*

Adjudication Number: ADJ15406376
Long Beach District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on July 25, 2025. The WCJ found that applicant, while employed by defendant during the period March 1, 1995 through March 31, 2020 as a cook, did not sustain injury arising out of and occurring in the course of employment (AOE/COE) to his heart, cardiac, insect bite, Chagas disease, internal, respiratory, pulmonary, stress, psyche, depression, sleep, swelling of joints, neck, back, shoulders, wrists, hands, bilateral carpal tunnel, legs, feet, varicose veins, headaches, bilateral eyes, vision loss, ophthalmology, bilateral hearing loss, ENT, gastritis, stomach, constipation, neurology, dizziness, forgetfulness, brain fog, high blood pressure, bilateral upper and lower extremity, neuropathy, chronic pain, anxiety, and chemical exposure. The WCJ ordered applicant take nothing for his claim.

Applicant contends in pertinent part: that the WCJ applied the wrong legal standard for causation; the absence of contemporaneous medical records is not determinative as to whether an industrial injury occurred; a cumulative injury claim and specific injury claim can coexist; the applicant's testimony is credible and consistent; no alternative cause was proven; and that further development of the record is appropriate, including additional panels of qualified medical evaluators (QME) in the fields of parasitology, psychology, cardiology, internal medicine, neurology and neuropsychology.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the WCJ's Report with respect thereto. Based on our preliminary review of the record, we will grant applicant's Petition. 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[1] section 5950 et seq.

FACTS

We will briefly review the relevant facts.

On November 10, 2021, applicant filed an Application for Adjudication (Application) claiming a cumulative injury from March 10, 2019 to March 10, 2020 to the ear(s), eye(s), wrist(s), back, and hand(s) while employed by defendant as a line cook.

On January 27, 2022, applicant filed an amended Application claiming a cumulative injury from March 1, 1995 to March 10, 2021 to the circulatory system, heart, cardiac, insect bite, Chagas disease, internal, respiratory system, pulmonary, stress, psych, depression, sleep swelling of joints, neck, back, shoulders, wrists, hands, bilateral carpal tunnel, headaches, eyes, ophthalmology, bilateral hearing loss, chemical exposure, ENT, upper extremities, lower extremities, neuropathy, chronic pain, gastritis, stomach, constipation, neurology, dizziness, forgetfulness and brain fog.

On February 21, 2022, applicant filed another amended Application to include the legs, varicose veins, vision loss, high blood pressure, and anxiety in addition to the previously alleged body parts.

On February 3, 2022, applicant was initially evaluated by primary treating physician (PTP), Dr. Rodney Ebrahimian. The PTP took a history of applicant's complaints as follows:

> The patient states that throughout the course of his employment at Barrett Business Services as a line cook he developed physical and psychological symptoms.

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

The patient states in 2007, he was changing into his uniform and as he stuck his right hand in the sleeve he felt a sharp sting and saw something like a beetle. He states his right hand and foreman swelled up became very itchy and red. He immediately reported the bite to the manager, Ramon Gonzalez, and thought it was a spider, and was told to go to the emergency room but no report was made. He immediately went to the emergency room at White Memorial Medical Center was given antibiotic and an ointment for the swelling.

The patient states the swelling and symptoms subsided but in 2019, while at home he suffered a heart attack and was taken to the emergency room at Kaiser and was hospitalized for a week and had a pacemaker installed. He was told he had a scars on his heart but did not know why. He was put on temporary total disability for four months.

The patient states in 2020, he suffered another heart attack and was taken to St. John's Hospital and was hospitalized two days, then he was transferred to UCLA where he was hospitalized for one week and was diagnosed with Changa parasite from the insect bite of 2007, and it was the cause of his heart issues. He was told that he had that parasite in his blood and it would slowly destroy his heart completely and is now only functioning 50% of the time and the only way to survive is by a heart transplant. He was put onto total temporary total disability for one year. He is under medication and treating at Olive View Hospital.

The patient states that he also developed headaches with dizziness, hallucinations, anxiety, depression, nervousness, constipation, swelling of the joints, numbness and tingling of his extremities.

The patient states that due to the medicine he takes for Changa he has inflammation of his stomach and constipation. He was given very strong medication in 2021, which did not help but caused stomach problems.

The patient states in 2015, a degreasers liquid fell in his eyes and he felt severe singing and were red. He states he reported the incident to Jorge Torres, who just told him to wash his eyes with water. He states he did but his eyes were very red and stung and he could hardly see but finished his shift. He states since then he has seen blurry.

The patient states that vents are very noisy and as a result he started suffering from hearing loss in 2016.

The patient states in 2016, he began to suffer from lower back pain and stiffness due to having to carry and stock very heavy merchandise. He had to lift and carry 70+ pound boxes full of merchandise which he stocked. He did not report his pain and continued working in pain and his pain began to radiate to his legs.

The patient stays around 2017, he began to suffer pain along his entire arms from shoulder to fingertips due to the repetitive movement of having to put plates with cheese on a cheese melting machine that he had to lift his arms 2 meters high. He states that he developed numbness and tingling along his entire arms.

> The patient states he also developed varicose veins and 2011, with severe pain along his legs due to prolonged standing with numbness and tingling of his feet. He went to his PCP and was sent to a specialist in 2020 because he could no longer stand his leg pain. He states COVID started and he could not follow-up with his doctor.

(Applicant's Exhibit #1, Report of Rodney Ebrahimian, M.D., February 3, 2022, at pp. 3-4.)

Dr. Ebrahimian stated that applicant's diagnoses were as follows:

1. Cervical pain, ligament sprain, and muscle sprain.
2. Lumbar pain, ligament sprain and muscle strain with myospasm.
3. Right shoulder ligament sprain and muscle strain.
4. Left shoulder ligament sprain and muscle strain.
5. Right hand possible carpal tunnel syndrome.
6. Left hand possible carpal tunnel syndrome.
7. Right foot ligament sprain.
8. Left foot ligament sprain.
9. Sleep disturbances, deferred to specialist.
10. Stress, deferred to specialist.

(*Id.* at p. 10.)

The panel QME in rheumatology/internal medicine, Stuart L. Silverman M.D., evaluated the applicant on March 7, 2024. Dr. Silverman subsequently issued two supplemental reports dated May 1, 2024 and June 30, 2024. The applicant informed Dr. Silverman that in 2007/2008, while he was changing into his uniform at work outside, a black insect with red and yellow stains bit his forearm. He alleged he felt itching, a burning sensation, inflammation, and flu-like symptoms for five days. (Joint Trial Exhibit #103, Report of Stuart Silverman M.D., March 7, 2024, at p.1.)

On March 20, 2025, Dr. Silverman was deposed and testified in pertinent part, as follows:

> THE WITNESS: I do want to mention I did mention in my report there were musculoskeletal manifestations that were not related to chagas. If you remember, I did notice a little low back pain, if I remember correctly. And I suggested -- I was concerned about lumbar radiculopathy, which I would not relate to chagas. And, in fact, I did recommend -- I did recommend consideration for some imaging studies to look at that as well.
>
> MR. ASHKAR: Well, I think you asked for an MRI. Was it a lumbar MRI, doctor?
>
> A: That's correct, Counsel.
>
> Q: That is correct you said?

A: Yes. I recommended on page 27 of my original report, I recommended to rule out lumbar radiculopathy, which I'm not saying is not related to chagas disease, no.

Q: Okay. And that runs -- now again, I would need you to look at McArthur's report to tell me -- would you -- strike that.

I'm sorry do you believe you should review McArthur's report to confirm whether your conclusion there comports or does not comport with his conclusion because from what I recall, his conclusions were that there was the orthopedic complaints stemming back to the chagas disease as a consequence?

THE WITNESS: Counsel, I did state that the joint pain, the arthralgia, that's mostly likely chagas. But I'm also saying there were some non-chagas musculoskeletal complaints, such as low back with lumbar radiculopathy possible that I'm not relating to chagas.
So I'm going to agree that there's rheumatologic manifestations of chagas and there's also rheumatologic manifestations that are not related to the chagas.

MR. ASHKAR: And the manifestations that are not related to chagas then should be deferred to Dr. McArthur, the orthopedic surgeon; is that correct?

A: Yes. Once we have imaging studies to confirm whether or not there is any pathology.

Q: And that would be the MRI of the Applicant's lumbar spine that you're referring to; is that correct, Doctor?

(Joint Trial Exhibit #106, Deposition Transcript of QME Dr. Silverman, dated March 20, 2025, at pp. 33:22-35:17.)

The QME in orthopedic surgery, Robert J. MacArthur M.D., evaluated the applicant on March 16, 2022 and issued a supplemental report dated June 13, 2022. The applicant informed Dr. MacArthur that he had a "continuous progressive injury over a 14 year period since 2008 when he states he was bitten by a bug also known as a kissing bug and sustained a parasite infection that results in Chagas disease and this has resulted in multiple systemic complaints." (Joint Trial Exhibit #101, Report of Robert J. MacArthur M.D., March 16, 2022, at p.5.) In the supplemental report, Dr. MacArthur opined that causation would depend on whether applicant did have a bug bite in 2008, there were no focal orthopedic findings in the physical exam, and that applicant's diffuse pain in his cervical spine, bilateral shoulders, bilateral upper extremities, bilateral wrists and hands, thoracic spine, lower back, bilateral lower extremities, bilateral legs, and bilateral legs would either be psychological or related to the Chagas disease. (Joint Trial Exhibit #102, Report of Robert J. MacArthur M.D., June 13, 2022, at pp. 4, 7.)

On June 12, 2025, parties proceeded to trial on the issues of injury arising out of and in the course of employment and parts of body.

DISCUSSION

I.

Former Labor Code 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 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 September 3, 2025, and 60 days from the date of transmission is November 2, 2025, which is a Sunday. The next business day that is 60 days from the date of transmission is Monday, November 3, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, November 3, 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

[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.

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 September 3, 2025, and the case was transmitted to the Appeals Board on September 3, 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 September 3, 2025.

II.

We highlight several legal principles that may be relevant to our review of this matter.

The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297 298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a) & 3202.5.) An injury must be proximately caused by the employment in order to be compensable. (Lab. Code, § 3600(a)(3); see also *Clark*, *supra*, 61 Cal.4th at pp. 297-298.) Proximate cause in workers' compensation requires the employment be a contributing cause of the injury. (*Clark*, *supra*, 61 Cal.4th at pp. 297-298 [outlining this standard and analyzing the difference between causation in tort law and causation in workers' compensation].)

It has long been the law that separate disabilities arising out of a single injury are rated together, even if those disabilities do not become permanent and stationary at the same time. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93] [chef suffered specific back injury but, as a result of blood transfusions given during later back surgery, contracted hepatitis; employee's spinal disability and liver disability were rated together in one combined award, with consideration being given to duplicate or overlapping work limitations]; *Morgan v. Workers' Comp. Appeals Bd.* (1978) 85 Cal.App.3d 710 [43 Cal.Comp.Cases 1116] [police officer suffered a cumulative injury causing hypertension, peptic ulcer, hepatitis, gastrointestinal bleeding, and hernia; employee's separate disabilities were rated together in one combined award, with consideration being given to duplicate or overlapping work limitations];

Mihesuah v. Workers' Comp. Appeals Bd. (1976) 55 1 Cal.App.3d 720 [41 Cal.Comp.Cases 81] [employee's chest and left knee injuries rated together].)

The general rule is that when an employee suffers contemporaneous injury to different body parts over an extended period of employment, the employee has suffered one cumulative injury. For example, in *Norton v. Workers' Comp. Appeals Bd.* (1980) 111 Cal.App.3d 618 [45 Carl.Comp.Cases 1098], a deputy sheriff£ suffered trauma to his back from July 22, 1968 through November 9, 1977 and trauma to his esophagus and stomach from 1974 to November 1977. The Court of Appeal found a single cumulative injury, stating among other things: "we conclude that the cumulative back injury and cumulative esophagus and stomach injury cannot be said to be truly successive injuries, they must be treated as contemporaneous and therefore rated as multiple factors of disability from one injury." (*Norton*, *supra*, 111 Cal.App.3d at p. 629.)

Similarly, in *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Hurley*) (1977) 70 Cal.App.3d 599 [42 Cal.Comp.Cases 481], a welder employed from April 30, 1959 to January 5, 1973 suffered trauma to his eyes due to the heat and flashes of the welding torches, to his ears due to the noises of the shop, and to his lungs due to exposure to dust and fumes he inhaled. The Court of Appeal found a single cumulative injury, stating among other things: "From all of the foregoing we conclude that Hurley suffered repetitive physically traumatic experiences extending throughout his employment, ... , the combined effect of which resulted in bodily injury, and permanent disability. (See Lab. Code, § 3208.1.)." (*Hurley*, *supra*, 70 Cal.App.3d at pp. 606.) The Court further held that the disabilities had to be rated together because the various traumas the employee had suffered were not "separate and independent," but "instead suffered contemporaneously." (*Hurley*, *supra*, 70 Cal.App.3d at pp. 605; cf. *Morgan*, *supra*, 85 Cal.App.3d 710 [police officer employed from November 1, 1946 through April 30, 1974 suffered trauma causing hypertension, peptic ulcer, hepatitis, gastrointestinal bleeding, and hernia; employee's separate disabilities were rated together in one combined award].)

In turn, section 5412 states: "The date of injury in cases of ... cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment." Therefore, in cumulative injury cases, there is no "date of injury" until there is a concurrence of both disability and knowledge. (*Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal. App. 3d 1102, 1110 [53 Cal.Comp.Cases 502].) As used in section 5412,

"disability" means either compensable temporary disability or permanent disability. (*State Compensation Insurance Fund v. Workers' Comp. Appeals Bd.* (Rodarte) (2004) 119 Cal.App.4th 998, 1002-1004, 1005-1006 [69 Cal.Comp.Cases 579]; *Chavira v. Workers' Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463, 473-474 [56 Cal.Comp.Cases 631].)

Section 3208.2 provides:

> When disability, need for medical treatment, or death results from the combined effects of two or more injuries, either specific, cumulative, or both, all questions of fact and law shall be separately determined with respect to each such injury, including, but not limited to, the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit.

Section 5303 provides, in pertinent part:

> There is but one cause of action for each injury coming within the provisions of this division.... [N]o injury, whether specific or cumulative, shall, for any purpose whatsoever, merge into or form a part of another injury; nor shall any award based on a cumulative injury include disability caused by any specific injury or by any other cumulative injury causing or contributing to the existing disability, need for medical treatment or death.

The issue of how many cumulative injuries an employee sustained is a question of fact for the WCAB. (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (*Austin*) (1993) 16 Cal.App.4th 227, 234-235 [58 Cal.Comp.Cases 323]; *Aetna Casualty & Surety Co. v. Workmen's Comp. Appeals Bd.* (*Coltharp*) (1973) 35 Cal.App.3d 329, 341 [38 Cal.Comp.Cases 720].) In *Coltharp*, the applicant's initial work duties, which he described as "heavy labor," caused cumulative trauma resulting in disability and a need for medical treatment, including back surgery. After the applicant returned to work, he was assigned "lighter work," but he still had to do some lifting as well as crawling through pipe. He said of his post-return work duties, "regardless of everything I did, it was aggravating on my back." A physician stated that applicant's post-return cumulative work activities were "the immediate precipitating factor that necessitated" another back surgery. Based on these facts, the *Coltharp* court found that the applicant had sustained two separate cumulative injuries, i.e., one before and one after the initial period of disability and need for treatment, and that to conclude, otherwise would violate the anti-merger provisions of sections 3208.2 and 5303.

In *Austin*, the applicant's increasing work responsibilities precipitated a major depression, resulting in temporary disability and a need for treatment, including psychiatric hospitalization.

After receiving psychiatric treatment and being off work for a period of time, the applicant returned to work. However, when the applicant returned to work, he had not fully recovered from his depressive episode, he remained under a doctor's care and on medication, and he became progressively worse. It was the same stress that resulted in the initial hospitalization that further exacerbated applicant's problem after he returned to work. Based on these facts, the *Austin* court concluded the applicant had only one continuous compensable injury because, unlike *Coltharp*, his two periods of temporary disability were linked by the continued need for medical treatment and the two periods were not "distinct."

When the holdings of *Austin* and *Coltharp* are harmonized and read in conjunction with the section 3208.1 definition of "cumulative injury" and the anti-merger provisions of sections 3208.2 and 5303, the following principles are revealed:

(1) if, after returning to work from a period of industrially-caused disability and a need for medical treatment, the employee's repetitive work activities again result in injurious trauma - i.e., if the employee's occupational activities after returning to work from a period of temporary disability cause or contribute to a new period of temporary disability, to a new or an increased level of permanent disability, or to a new or increased need for medical treatment - then there are two separate and distinct cumulative injuries that cannot be merged into a single injury (Lab. Code, §§ 3208.1, 3208.2, 5303; *Coltharp*, *supra*, 35 Cal.App.3d at p. 342); and

(2) if, however, the employee's occupational activities after returning to work from a period of industrially-caused disability are not injurious - i.e., if any new period of temporary disability, new or increased level of permanent disability, or new or increased need for medical treatment result solely from an exacerbation of the original injury - then there is only a single cumulative injury and no impermissible merger occurs. (Lab. Code, §§ 3208.1, 3208.2, 5303; *Austin*, *supra*, 16 Cal.App.4th at p. 235.)

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.

Here, based on our preliminary review, we are not persuaded that there is substantial evidence to support the WCJ's decision on the issue of AOE/COE and further development of the record regarding the number of and dates of injuries may be appropriate. For example, it is not entirely clear whether applicant is claiming a specific injury in the form of a bite or is claiming a cumulative injury as a result of his employment with defendant. 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

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. I. A.C.* (*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. I.A.C.* (*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. I.A.C.* (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.* (P*ointer*) (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.

IV.

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's Petition for Reconsideration of the F&O issued by the WCJ on July 25, 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/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 3, 2025

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

FRANCISCO MENDOZA OLIVARES
LAW FIRM OF ROWEN, GURVEY & WIN
GILSON DAUB

JL/abs

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