WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

GREGG RADER, *Applicant*

vs.

TICKETMASTER CORPORATION, care of ROBERT MONROE;
STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ7138762
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the December 17, 2024 Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a regional manager from November 12, 1991 to November 12, 1992, sustained industrial injury to his psyche and in the form of emotional stress. The WCJ found that the Workers' Compensation Appeals Board (WCAB) lacks jurisdiction to amend the applicant's prior Award of permanent disability, and that applicant has not proven that additional indemnity payments are due beyond what is specified in the Award.

Applicant contends that the WCAB has jurisdiction over its prior awards pursuant to Labor Code[1] section 5803, and that the aggregate reductions in his weekly permanent disability payments exceeds the amount of attorney fees awarded based in the Award of January 19, 2011.

We have received an Answer from defendant State Compensation Insurance Fund (SCIF). The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

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 will grant applicant'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

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

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 January 14, 2025, and 60 days from the date of transmission is Saturday, March 15, 2025. The next business day that is 60 days from the date of transmission is Monday, March 17, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, March 17, 2025, so that we have timely acted on the petition as required by section 5909(a).

[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.

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 January 14, 2025, and the case was transmitted to the Appeals Board on January 14, 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 January 14, 2025.

II.

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

Applicant sustained industrial injury to the psyche and in the form of emotional stress while employed by Ticketmaster Corporation on November 12, 1992 (ADJ7568718) and from November 12, 1991 to November 12, 1992 (ADJ7138762).

On November 19, 2011, a WCJ approved the parties' Stipulations with Request for Award and awarded 100 percent permanent and total disability. (Award, dated January 19, 2011.) Therein, applicant's attorney requested a fee of $39,444.71, based on applicant's life expectancy. The WCJ approved the attorney fee request and ordered that the amount of attorney fees commuted from weekly indemnity payments by uniform weekly reduction. Accordingly, while applicant's nominal weekly permanent disability rate was $336.00, defendant reduced each payment by $50.40, yielding a net weekly payment of $285.60. (Exhibit A, Printout of Benefits, dated February 14, 2024.)

Applicant contends that the amount commuted from his permanent disability award has been fully satisfied, and that his weekly permanent disability indemnity should return to the nominal rate without reduction for additional attorney fees. Applicant's calculations begin with

the sum of $39,444.71, divided by the weekly commutation amount corresponding to his attorney fees of $50.40. Applicant adds the resulting 782.63 weeks to the initial date of payment of June 6, 2008, resulting in the date of June 5, 2024 as "the date when the commutation of attorneys fees stops." (Petition, at p. 3:15.) Applicant further contends that he is entitled to statutory interest per section 5800 on any sums improperly withheld and to penalties pursuant to section 5814 for defendant's unreasonable delay in the payment of the disputed benefits. (*Id.* at p. 5:1.)

Defendant's Answer responds that applicant's Award is silent as to the end date of commutation and any inference otherwise is improper. (Answer, at p. 3:15.) SCIF further contends that the WCAB lacks jurisdiction to alter or amend the Award at this juncture pursuant to section 5804. (*Id.* at p. 4:6.)

The WCJ's Report acknowledges that a certain level of imprecision is inherent to any estimate of life expectancy, and that "the gross amount of the weekly reductions has now exceeded the amount paid out … But this is ok … This is what is supposed to happen. One of the two parties inevitably ends up on the financial 'wrong side' of the estimate. Luckily for applicant, in his case, this means he has beaten his projected life expectancy." (Report, at p. 5.) In addition, the WCJ observes that "[p]ursuant to Labor Code § 5804, applicant's attempt to undo the rate reduction at this juncture is many years outside of the permissible period … [t]he Court lacks jurisdiction to amend the Award, and so found." (*Ibid*.)

"The WCAB is vested with the authority and jurisdiction to conduct proceedings for the recovery of compensation. (§ 5300 et seq.) Concomitantly, it is empowered with continuing jurisdictional authority over all of its orders, decisions and awards. (§ 5803.) However, this power is not unlimited. The [Board's] authority under section 5803 to enforce its awards, including ancillary proceedings involving commutation, penalty assessment and the like, is not to be confused with its limited jurisdiction to alter prior awards by benefit augmentation at a later date. The latter action is subject to the provisions of sections 5410 and 5804." (*Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288, 297 [56 Cal.Comp.Cases 476], italics in original.)

Section 5804 grants the Board continuing jurisdiction for five years from the date of injury to reopen the case in order to "rescind or amend an order or award, or increase, diminish, or terminate the compensation awarded." (Lab. Code, § 5804.) The statute provides, in relevant part: "No award of compensation shall be rescinded, altered, or amended after five years from the date of the injury except upon a petition by a party in interest filed within such five years and any

counterpetition seeking other relief filed by the adverse party within 30 days of the original petition . . . ." (*Ibid*.)

In contrast to the limitations imposed by the statute on the Appeals Board to *set aside* an entire award, the Appeals Board continues to have jurisdiction after five years to *enforce* its awards. (*Barnes v. Workers' Comp. Appeals Bd.* (2000) 23 Cal.4th 679, 687.) Consequently, collateral changes may be made to an award so long as the merits of the basic decision determining the worker's right to benefits are not altered, and the amount of benefits remains unchanged. (*Hodge v. Workers' Comp. Appeals Bd.* (1981) 123 Cal.App.3d 501, 509 (*Hodge*).)

In *Hodge*, the applicant sustained severe back injuries from a fall while working and filed a claim for workers' compensation benefits. (*Hodge, supra,* 123 Cal.App.3d at p. 504.) Two years later, the applicant had surgery as a result of his back injury. (*Id*.) Following the surgery, the ambulance service dropped applicant while transporting him on a stretcher into his home. (*Id*.) Two years after that, the WCJ found that as a result of the industrial injury, the applicant sustained total permanent disability. (*Id*.) Subsequently, the applicant obtained a judgement against the ambulance company in a civil case. (*Id*. at p. 505.) The WCJ then granted the employer's petition for a credit from the civil suit, and the Appeals Board denied reconsideration. (*Id.* at pp. 505-506.)

The Court of Appeal agreed with the Appeals Board on this issue and found that a credit could be allowed beyond the five year limitation of section 5408. (*Hodge, supra,* 123 Cal.App.3d at pp. 507-508.) "[Al]lowing the employer a credit for sums paid which are properly attributable to a third party tortfeasor's negligence does not alter the award of compensation to the injured employee within the meaning of section 5804." (*Id*. at p. 508.) Thus, this change was collateral and therefore allowable beyond the time limit.

Similarly, in *Garcia*, the Court of Appeal concluded that the "award of compensation to the employee is not altered or amended within the intended meaning of sections 5803 and 5804 by the allowance of the attorneys' lien after the five-year period." (*Garcia v. Industrial Acci. Com.* (1958) 162 Cal.App.2d 761, 767.) In *Garcia*, new attorneys substituted in more than five years after the date of injury to assist the injured worker in resisting a petition to reopen the case by defendant Subsequent Injuries Fund (now Subsequent Injuries Benefits Trust Fund). (*Id*. at pp. 762-763.) The Court determined that the ultimate award of compensation remained the same even if a lien for attorney's fees was allowed. (*Id*. at p. 767.)

Here, we must determine in the first instance whether the issue in contention, the reduction in applicant's weekly permanent disability indemnity for attorney fees, falls under our jurisdictional authority over our prior orders, decisions and awards, or whether applicant's request is tantamount to an alteration or amendment of the Award more than five years from the date of injury. (Lab. Code, §§ 5803; 5804.) If the Appeals Board is vested with jurisdiction over the dispute, we must then determine whether defendant's aggregate credit for the full sum commuted for attorney's fees in 2011 precludes further reduction in applicant's current permanent disability payments for attorney fees.

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"].)

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 Findings and Order issued by a workers' compensation administrative law judge on December 17, 2024 is **GRANTED**.

T 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/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 17, 2025

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

GREGG RADER
GOLDSCHMID, SILVER & SPINDEL
STATE COMPENSATION INSURANCE FUND

SAR/abs

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