

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

**JAY MYERS, *Applicant***

**vs.**

**COUNTY OF ORANGE;  
permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT  
SERVICES, *Defendants***

**Adjudication Number: ADJ12344251  
Santa Ana District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION**

Lien claimant Tiare Brock seeks reconsideration of the June 4, 2025 Findings and Order issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant sustained injury arising out of and in the course of employment (AOE/COE) to his skin, psyche and injury in the form of PTSD, while employed as a Sheriff Deputy Sergeant, during the periods of October 17, 1994 through July 4, 2019. The WCJ further found that lien claimant failed to establish entitlement to penalties pursuant to section 5813 and that, pursuant to Labor Code<sup>1</sup> section 4610 and 8 CCR § 9792.6.1(t), lien claimant's lien is deficient and disallowed.

Lien claimant contends that the WCJ erred in disallowing its lien arguing that the decision elevates a procedural formality over the substantive mandate of section 4600 to provide all reasonable and necessary medical care.

We did not receive an answer. The WCJ issued a Recommendations on Petition for Reconsideration recommending that we deny reconsideration of lien claimant's petition.

We have considered the Petition for Reconsideration, the contents of the Report, and have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant

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<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise noted.

lien claimant'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 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 July 7, 2025 and 60 days from the date of transmission is September 5, 2025. This decision is issued by or on September 5, 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 July 7, 2025, and the case was transmitted to the Appeals Board on July 7, 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 July 7, 2025.

## **II.**

The WCJ stated following in the Report:

### **REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

Lien claimant, Tiare Brock filed a verified Petition for Reconsideration of the Findings and Order dated June 4, 2025. Lien claimant asserts that this WCJ erred in failing to disregard the requirements related to requests for authorization (RFA) for lien claimant and not precluding defendant from asserting control in their Medical Provider Network (MPN).

### **STATEMENT OF FACTS**

Jay Myers, while employed during the periods of 10/17/1994 through 07/04/2019, as a Sheriff Deputy Sergeant, at Orange, California, by the County of Orange, sustained injury arising out of and in the course of employment to his skin, psyche and injury in the form of PTSD. Initially, applicant filed an Application for Adjudication on August 16, 2019. (EAMS Doc ID: 70909636). On July 8, 2019, applicant amended his application to include nervous system, and PTSD. (EAMS Doc ID: 70909636). This matter initially resolved via Award of Stipulations with Request for Award on April 16, 2020. (EAMS Doc ID: 72618426 and 31942045). According to page 5, the applicant sustained injury in the form of post-traumatic stress disorder and skin cancer, at 47% permanent disability. (EAMS DOC ID: 31942045 pages 5 and 6). On April 14, 2023, applicant resolved his case for \$150,000.00 of new money. (EAMS Doc ID: 76639767 and 45922238).

This matter proceeded to lien trial on April 17, 2025 with the issues of the lien of Tiare Brock in the amount of \$13,150 with previous payments of \$5,000. Lien claimant raised the issue of reasonable expenses pursuant to section 4903(b), treatment of ongoing care pursuant to Regulation 9767.9(e), continuity of care for a serious chronic condition pursuant to section 4616.2(d)(3)(b) and penalties and interest pursuant section 5813. Defendant raised the issue of reasonable and

necessary treatment, reasonable fee schedule value, unrecoverable dates of services between 04/15/2019 through section 7/18/20219 pursuant to section 4903.1(b), and that lien claimant did not have request for authorizations for all dates of services.

The undersigned noted that the Medical Provider Network was not an issue for trial, therefore, Labor Code § 4903 § 4616.2(d)(3) and 8 CCR 9767.9 did not apply. Moreover, the undersigned found that lien claimant failed to provide any evidence that a request for authorization in any manner was served on defendant at any point. Therefore, pursuant to Labor Code section 4610 and 8 CCR § 9792.6.1(t), the lien claimant's lien was disallowed. These findings and orders prompted lien claimant in filing for Reconsideration.

### **DISCUSSION**

Lien claimant in its Petition for Reconsideration concedes that Lien claimant did not provide any request for authorization, either during the treatment provided nor retroactively after filing its lien or prior to setting the matter for trial. (Petition for Reconsideration, pages 1-3). Lien claimant fails to provide any authority that circumvents Labor Code section 4610 and 8 CCR § 9792.6.1(t) and urges the Appeals Board to ignore the requirements based on the type of services provided by lien claimant and to whom it was provided. (Petition for Reconsideration, pages 1-2).

Lien claimant's arguments over the Medical Provider Network are moot, as defendant never asserted medical control over the Medical Provider Network and did not seek a finding as such at trial. Therefore, lien claimant's arguments lack merit and standing.

### **RECOMMENDATION**

It is respectfully recommended that the defendant's Petitions for Reconsiderations be denied.

(Report, at pp. 1-3.)

### **III.**

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

Pursuant to section 5705, "The burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.) A lien claimant has the burden of proving all elements necessary to establish the validity of its lien. Section 3202.5 states that, "All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence." (Lab. Code, § 3202.5; *Boehm & Associates v. Workers' Comp. Appeals Bd. (Brower)* (2003) 108 Cal.App.4th 137, 150 [68 Cal.Comp.Cases 548, 557.]) A lien claimant treating physician's burden of proof includes the burden of showing that he or she provided medical

treatment “reasonably required to cure or relieve” the injured worker from the effects of an industrial injury. (Lab. Code, § 4600(a); *Williams v. Industrial Acc. Com.* (1966) 64 Cal.2d 618 [31 Cal.Comp.Cases 186]; *Beverly Hills Multispecialty Group, Inc. v. Workers’ Comp. Appeals Bd.* (1994) 26 Cal.App.4th 789 [59 Cal.Comp.Cases 461]; *Workmen’s Comp. Appeals Bd. v. Small Claims Court (Shans)* (1973) 35 Cal.App.3d 643 [38 Cal.Comp.Cases 748].) Where a lien claimant, rather than the injured worker, litigates the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured worker and the lien claimant must establish injury by preponderance of evidence. (*Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Martin)* (1985) 39 Cal.3d 57, 67 [50 Cal.Comp.Cases 411]; *Kunz, supra*, 67 Cal.Comp.CasAyes at p. 1592.)

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, supra*; *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 Hosp. v. Workers’ Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) To constitute substantial evidence “... a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions.” (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Based on our review, we are not persuaded that the record is properly developed. Where the 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, we are not persuaded that there is substantial evidence to support the WCJ’s decision.

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 lien claimant’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](mailto:WCABmediation@dir.ca.gov).*

For the foregoing reasons,

**IT IS ORDERED** that lien claimant’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/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**JOSÉ H. RAZO, COMMISSIONER**  
**CONCURRING NOT SIGNING**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**September 5, 2025**

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

**JAY MYERS  
FERRONE LAW GROUP  
COSTFIRST CORPORATION**

**PAG/bp**

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