

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

**JOSE BERRIOS, *Applicant***

**vs.**

**JERRYS FAMOUS DELI;  
CALIFORNIA INSURANCE COMPANY in liquidation, administered by INTERCARE  
HOLDINGS INSURANCE SERVICES for CALIFORNIA INSURANCE GUARANTEE  
ASSOCIATION; CENTRE INSURANCE; *Defendants***

**Adjudication Number: ADJ3547384; ADJ1113447  
Van Nuys District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION**

Petitioner, applicant's current attorney, on his own behalf, seeks reconsideration of the March 26, 2025 Joint Findings of Fact, Joint Order issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found as follows:

1. A reasonable attorney's fee was previously found to be \$90,000 by way of an amended order approving compromise and release approved on April 22, 2021. The fee was ordered held in trust by defendants (\$36,275.85 held by CIGA and \$53,724.15 held by Centre Insurance Company) pending written agreement between applicant's present and prior attorneys or further order of the court."
2. Pursuant to Labor Code §4906 (i) appeals board is precluded from allowing a fee to applicant's present counsel, Ronald Nolan.
3. The reasonable value of the services performed by applicant's prior counsel, Ronald Ehrman, is \$90,000.00.

Based on these findings, the WCJ ordered the entire \$90,000 attorney fee be paid to applicant's former attorney and none to be paid to petitioner. Petitioner has requested and filed a supplemental pleading. We accept that request to file supplemental pleading pursuant to our authority. (Cal. Code Regs., tit. 8, § 10964.)

Petitioner contends the WCJ erred in allowing the entire \$90,000 attorney fee be paid to applicant's former attorney.

We received an Answer. The WCJ issued a Recommendations on Petition for Reconsideration recommending that we deny reconsideration.

We have considered the Petition for Reconsideration, 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 petitioner'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 Code<sup>1</sup> 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."

---

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

Here, according to Events, the case was transmitted to the Appeals Board on May 5, 2025 and 60 days from the date of transmission is Friday, July 4, 2025. The next business day that is 60 days from the date of transmission is Monday, July 7, 2025 (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Monday, July 7, 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 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 May 5, 2025, and the case was transmitted to the Appeals Board on May 5, 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 May 5, 2025.

## **II.**

The WCJ's Report states as follows:

### **I INTRODUCTION**

In Case No. ADJ1113447 Jose Berrios, age 23 on the Date of Injury, March 7, 1996, while employed as a Deli Clerk, at Sherman Oaks, California, by Jerry's Famous Deli, sustained injury arising out of and in the course of employment to various body parts, and claimed to have sustained injury arising out of and in the course of employment to other body parts. In case number ADJ3547384 [] Jose Berrios, age 24 on the Date of Injury, on July 2, 1997, while employed as a Deli Clerk, at Sherman Oaks, California, by Jerry's Famous Deli, sustained injury arising out of and in the course of employment to various body parts, and claims

---

<sup>2</sup> 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.

to have sustained injury arising out of and in the course of employment to other body parts.

Ronald Ehrman represented the applicant from approximately May 20, 1998 through approximately October 29, 2018 when a notice of dismissal of attorney and substitution of Ronald Nolan as applicant's attorney was filed. These cases were settled by way of an amended joint compromise and release initially approved on April 19, 2021, with an amended order approving compromise and release (to correct case numbers) approved on April 22, 2021. The amended order approving compromise and release allowed attorney's fees in the amount of \$90,000.00 with \$36,275.85 to be held by CIGA and \$53,724.15 to be held by Centre/Tristar pending a written agreement of the parties or further order of the court regarding division of fees between applicant's present and prior counsel.

Trial on the issue of division of attorney's fees was initially held on October 26, 2023. The issue of compliance with Labor Code § 4906 (e) was bifurcated and was the sole [issue] heard at that time. On January 16, 2024 findings of fact issued in which it was found that Attorney Ronald Ehrman filed a disclosure statement with the appeals board on May 20, 1998 which substantially complied with the requirements of the 1998 version of Labor Code § 4906 (e), that Attorney Ronald Nolan filed a document entitled "DISCLOSURE STATEMENT" with the appeals board on October 29, 2018 which did not comply with the requirements of the 2018 version of Labor Code §4906 (e), and that Attorney Ronald Nolan filed a disclosure statement with the appeals board on October 16, 2023 (approximately 2 1/2 years after the compromise and release in this matter was approved) which complied with the requirements of the 2018 version of Labor Code § 4906 (e).

The parties then returned to trial on December 16, 2024 on the issue of division of attorney's fees. They were given until January 3, 2025 to submit trial briefs on the issue of whether the appeals board may allow an applicant's attorney fees for services or expenses incurred prior to the filing of the disclosure form described in Labor Code § 4906 (e). On March 26, 2025 Joint Findings of Fact issued in which it was found, inter alia, that pursuant to Labor Code § 4906 (i) the appeals board is precluded from allowing a fee to applicant's present counsel, Ronald Nolan. Mr. Nolan filed a timely verified petition for reconsideration contending the WCJ erred by 1) finding that pursuant to Labor Code §4906 (i) the appeals board is precluded from allowing a fee to him, and 2) finding that the reasonable value of the services performed by applicant's prior counsel, Ronald Ehrman, is \$90,000.00. In making these arguments petitioner asserts factual statements that are not part of the evidentiary record in violation of Appeals Board Rule 10945.

## **II FACTS**

The two cases in this matter were settled by way of an amended joint compromise and release initially approved on April 19, 2021, with an amended order approving compromise and release (to correct case numbers) issuing on April 22, 2021. The WCJ who issued the order approving found that a reasonable attorney's fee was \$90,000.00. Based on a dispute between Applicant's present and prior counsel, the attorney's fees were ordered held in trust by Defendant pending written agreement between Applicant's present and prior attorneys or further order of the court. With no agreement regarding division of fees having been reached, the matter first proceeded to trial on this issue on October 26, 2023. The issue of compliance with Labor Code §4906 (e) was bifurcated and was the sole issue heard at that time. On January 16, 2024 findings of fact issued in which it was found that Attorney Ronald Ehrman filed a disclosure statement with the appeals board on May 20, 1998 which substantially complied with the requirements of the 1998 version of Labor Code §4906 (e), that Attorney Ronald Nolan filed a document entitled "DISCLOSURE STATEMENT" with the appeals board on October 29, 2018 which did not comply with the requirements of the 2018 version of Labor Code §4906 (e), and that Attorney Ronald Nolan filed a disclosure statement with the appeals board on October 16, 2023 (approximately 2 1/2 years after the compromise and release in this matter was approved) which complied with the requirements of the 2018 version of Labor Code §4906 (e). A subsequent trial took place on December 16, 2024 []. On March 26, 2025 Joint Findings of Fact issued in which it was found, inter alia, that pursuant to Labor Code §4906 (i) the appeals board is precluded from allowing a fee to applicant's present counsel, Ronald Nolan. His Petition for Reconsideration followed.

### III DISCUSSION

#### A

#### **Nolan Did Not File a §4906 (e) Disclosure Statement until October 16, 2023, Approximately 2 1/2 Years after the Compromise and Release Was Approved**

Petitioner appears to both acknowledge that he failed to file a proper disclosure statement until October 16, 2023 (Petition for Reconsideration dated April 18, 2025, page 2, lines 14-16), and at the same time argue that the document which he filed on October 29, 2018 entitled "Disclosure Statement" substantially complied with labor code section 4906. (Petition for Reconsideration dated April 18, 2025, page 5, lines 11-22). Nolan's characterization of his October 29, 2018 document entitled "Disclosure Statement" as containing "minor technical omissions" or "minor defects" is misleading. (See Petition for Reconsideration dated April 18, 2025, page 5, lines 11-12 and 18). A cursory review might fool the reader into believing that the document is in fact a disclosure statement as promulgated by the administrative director. However, upon closer inspection it

can be seen that it is nothing of the sort. Nolan's so called "disclosure statement" appears to be a document of his own making. (See Nolan's Exhibit 71, EAMS Doc ID 68532221). Typed at the top of the document are the words "Department of Industrial Relations Division of Worker's Compensation" which may lead the reader to believe that it is an official form. It does not substantially or even minimally comply with the requirements of Labor Code §4906 (e) in effect in 2018. The document submitted by Nolan doesn't actually indicate what fee the applicant would be charged. It indicates that ". . . Depending on the complexity of the case and time spent, this office may request in excess of 35%." (See Nolan's Exhibit 71). Additionally, the "disclosure statement" was not signed by Nolan or any other attorney under penalty of perjury. Lastly, it should be noted that it has already been judicially determined that the document entitled "DISCLOSURE STATEMENT" which Nolan filed with the appeals board on October 29, 2018 did not comply with the requirements of the 2018 version of Labor Code §4906 (e). (See Joint Findings of Fact dated 1/16/2024, EAMS Doc ID 77539807). No petition for reconsideration was filed. Thus the January 16, 2024 Findings of Fact and Order are final. The failure of an aggrieved party to seek judicial review of a final order of the WCAB bars later challenge to the propriety of the order or decision before either the WCAB or the court. Therefore petitioner Nolan is barred by res judicata from relitigating the issue of whether the document which he filed on October 29, 2018 entitled "Disclosure Statement" substantially complied with Labor Code § 4906.

## **B**

### **Payment of Attorney's Fees Not Allowed for Services Incurred Prior to Filing of Disclosure Form with Appeals Board**

The authority of the appeals board to allow liens against compensation is set forth in Labor Code §4903 which provides that:

The appeals board may determine and allow as a lien against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (i).

This authority extends to the determination of liens for attorney's fees with Labor Code §4903 providing:

The liens that may be allowed hereunder are as follows:

(a) A reasonable attorney's fee for legal services pertaining to any claim for compensation either before the appeals board or before any of the appellate courts, and a reasonable distribution in connection there with.

However, the authority of the appeals board to allow a lien for attorney's fees is limited by Labor Code §4906 which provides in subdivision (a) that:

A charge, claim, or agreement for the legal services or disbursements mentioned in subdivision (a) of Section 4903 . . . is not enforceable, valid, or binding in excess of a reasonable amount. The appeals board may determine what constitutes a reasonable amount, but *payment* pursuant to subdivision (a) of Section 4903 . . . *shall not be allowed for any services or expenses incurred prior to the filing of the disclosure form described in subdivision (e) with the appeals board . . .* (Italics added)

Subdivision (e) mandates that:

At the initial consultation, an attorney *shall* furnish the employee a written *disclosure form promulgated by the administrative director . . .* A copy of the disclosure form shall be signed by the employee and the attorney and filed with the appeals board . . . within 15 days of the employees and attorneys executions thereof. (Italics added)

Subdivision (i) provides that when an attorney substitutes in, they too must complete the disclosure form, and it reiterates that:

*Payment* pursuant to subdivision (a) of Section 4903 . . . *shall not be allowed for any services or expenses incurred prior to the filing of the disclosure form* described in subdivision (e) with the appeals board . . . . (Italics added)

On January 16, 2024, findings of fact issued in which it was found that Attorney Ronald Nolan did not file a written disclosure form promulgated by the administrative director until approximately 2 1/2 years after the compromise and release in this matter was approved. Any claim by Nolan to a portion of the fee ordered to be held by defendants would necessarily be based upon services Nolan contends he performed prior to issuance of the order approving compromise and release, and more than 2 1/2 years prior to Nolan's required filing of the disclosure form. Thus, pursuant to Labor Code §4906 (i) this WCJ is precluded from allowing a fee to Nolan for those services. On the other hand, attorney Ronald Ehrman filed the required disclosure statement with the appeals board on May 20, 1998. His representation of the applicant continued for over 20 years, through approximately October 29, 2018. His claim to a portion of the fees ordered held by defendants would be based upon services he contends he performed during the more than 20 years between the time he filed the required disclosure statement and the time the compromise and release was approved.

Petitioner argues that Labor Code §4906 is ambiguous. It is not. It clearly states that payment for certain services or expenses “. . . shall not be allowed . . . .” It goes on to describe those services and expenses as ones that are “incurred prior to the filing of the disclosure form described in subdivision (e) with the appeals board . . . .”

Petitioner argues that should the board find Nolan not entitled to any fees Ehrman should receive only a portion of the fees with the remainder released to applicant, José Berrios. This argument fails to recognize that the issue of the amount of attorney's fees was determined by then WCJ Velzy when she issued the Amended Order Approving Compromise and Release on April 22, 2021. No appeal of this order was filed and thus it became final. Judge Velzy's determination of the amount of attorney's fee cannot now be disturbed. Applicant, a non-attorney, is statutorily prohibited from sharing awarded attorneys fee. (*Foster v. Performance Holdings, Inc.*, 2024 Cal. Wrk. Comp. P.D. LEXIS 249).

(Report, at pp. 1-7.)

### III.

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

The Appeals Board has exclusive jurisdiction over fees to be allowed or paid to applicants' attorneys. (*Vierra v. Workers' Comp. Appeals Bd. (Vierra)* (2007) 154 Cal.App.4th 1142, 1149 [72 Cal.Comp.Cases 1128]; Cal. Code Regs., tit. 8, § 10840.) In calculating attorney fees, our basic statutory command is that the fees awarded must be "reasonable." (Lab. Code, §§ 4903, 4906(a), (d).)

Section 4903 states:

The appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (i). If more than one lien is allowed, the appeals board may determine the priorities, if any, between the liens allowed. The liens that may be allowed hereunder are as follows:

(a) A reasonable attorney's fee for legal services pertaining to any claim for compensation either before the appeals board or before any of the appellate courts, and the reasonable disbursements in connection therewith. No fee for legal services shall be awarded to any representative who is not an attorney, except with respect to those claims for compensation for which an application, pursuant to Section 5501, has been filed with the appeals board on or before December 31, 1991, or for which a disclosure form, pursuant to Section 4906, has been sent to the employer, or insurer or third-party administrator, if either is known, on or before December 31, 1991.

(Lab. Code, § 4903(a).)

Section 4906 states:



(a) A charge, claim, or agreement for the legal services or disbursements mentioned in subdivision (a) of Section 4903, or for the expense mentioned in subdivision (b) of Section 4903, is not enforceable, valid, or binding in excess of a reasonable amount. The appeals board may determine what constitutes a reasonable amount, but payment pursuant to subdivision (a) of Section 4903 or Section 5710 shall not be allowed for any services or expenses incurred prior to the filing of the disclosure form described in subdivision (e) with the appeals board and the sending of that form to the employer, or to the insurer or third-party administrator, if either is known, by the attorney.

....

(e) At the initial consultation, an attorney shall furnish the employee a written disclosure form promulgated by the administrative director which shall clearly and prominently describe the procedures available to the injured employee or his or her dependents. The disclosure form shall describe this section, the range of attorney's fees customarily approved by the appeals board, and the attorney's fees provisions of Section 4064 and the extent to which an employee may receive compensation without incurring attorney's fees. The disclosure form shall include the telephone number of the administrative director together with the statement that the employee may receive answers at that number to questions concerning entitlement to compensation or the procedures to follow to receive compensation. A copy of the disclosure form shall be signed by the employee and the attorney and filed with the appeals board and sent to the employer, or insurer or third-party administrator, if either is known, by the attorney within 15 days of the employee's and attorney's execution thereof.

....

(i) An attorney who subsequently assumes the representation of the employee in the same action or proceeding shall complete a disclosure form that meets all of the requirements of this section and the statement required by subdivision (h). Both the form and the statement shall be signed under penalty of perjury by the attorney or an attorney licensed by the State Bar of California who is regularly employed by his or her firm. Both the disclosure form and the statement shall be filed with the appeals board and sent to the employer, or insurer or third-party administrator, if either is known, by the attorney within 15 days of the employee's and attorney's execution of the form and statement. Payment pursuant to subdivision (a) of Section 4903 or Section 5710 shall not be allowed for any services or expenses incurred prior to the filing of the disclosure form described in subdivision (e) with the appeals board and the sending of that form to the employer, or to the insurer or third-party administrator, if either is known, by the attorney.

(Lab. Code, § 4906(a), (e), (i).)

Code of Civil Procedure section 473 permits the trial court to relieve a party from a judgment, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect. (Code of Civ. Proc., § 473(b).) A motion seeking relief under section 473 is addressed to the sound discretion of the trial court; its decision will not be overturned on appeal absent a clear showing of abuse of discretion. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478; *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.) We acknowledge that this issue was not raised at trial, however as discussed in more detail below, once reconsideration is granted, the Appeals Board has the power to address all issues, raised or not. We note the following equitable considerations: the former attorney did not contest the substitution of attorney or object to petitioner's representation of applicant but rather filed a lien; petitioner was allowed to represent applicant at hearings for more than two years ultimately submitting and obtaining approval for what appears to be a favorable Compromise and Release (C&R); and the WCJ did not raise the absence of a compliant disclosure notice at the time of the C&R's approval.

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.)

Based on our review, we are not persuaded that there is substantial 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 petitioner’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 petitioner’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/ KATHERINE A. ZALEWSKI. CHAIR**

**/s/ PAUL KELLY. COMMISSIONER**



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

**JULY 7, 2025**

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

**JOSE BERRIOS  
LAW OFFICES OF RONALD J. NOLAN, APC  
LAW OFFICES OF RONALD P. EHRLMAN**

**PAG/bp**

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