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

**JOSE CHUR, *Applicant***

**vs.**

**THE COPPER MINE;**
**APRICODE KDS, INC.; EMPLOYERS ASSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ14559862; ADJ9728061**
**Van Nuys District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the August 25, 2025 Findings of Fact and Orders 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 low back, while employed as a dishwasher on October 27, 2019. The WCJ further found that the normal workers' compensation issues were resolved by a compromise and release on July 20, 2022; that lien claimant FMR Interventional Quality Pain Management, APC provided medical care; that lien claimant Joyce Altman Interpreters provided Spanish interpreting services for the care at FMR; and that the WCJ does not have jurisdiction to adjudicate the lien claims herein pending UR procedures. Based on these finding, the WCJ ordered defendant to perform retrospective UR services on the services provided by FMR and Joyce Altman within the time limits set forth in Cal. Code of Regs. § 9792.9.1.

Defendant contends that the WCJ should not have relied on the primary treating physician (PTP) opinion of Marina Russman, M.D., arguing that it is not substantial medical evidence.

We did not receive an answer. The WCJ issued a Report and Recommendation 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 defendant's Petition for Reconsideration. Our order granting the Petition for

Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code[1] 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 September 5, 2025 and 60 days from the date of transmission is November 4, 2025. This decision is issued by or on November 4, 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

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

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 5, 2025, and the case was transmitted to the Appeals Board on September 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 September 5, 2025.

**II.**

The WCJ stated following in the Report:

> **I. INTRODUCTION**
>
> This case involves a lien trial. The injured employee was a 63-year-old dishwasher who claimed cumulative trauma to the back, hips and legs ending on 1/31/2021. The normal issues were resolved by compromise and release on 7/20/2022.
>
> The Petitioner is the Defendant who has filed a timely and verified Petition for Reconsideration claiming that the undersigned erred by finding injury aoe/coe.
>
> All other issues pertaining to the Lien Claims of FMR Interventional Medical Group and Joyce Altman Interpreters (who provided interpreting services for FMR) were deferred pending Utilization Review procedures.
>
> **II. STATEMENT OF FACTS**
>
> FMR provided conservative medical care for the alleged injuries herein from 6/14/2021 through February 2022. The original report from Dr. Marina Russman is dated 6/14/2021 (Ex. 8). After the case was settled, the matter came on for lien trial on 8/18/2025 before the undersigned. No witnesses were called. The only medical evidence was the reports from Dr. Russman and her associates (Exs. 1 – 15).
>
> The history provided by the undersigned was gleaned completely from the initial report by Dr. Russman dated 6/14/2021 (Ex. 8).
>
> The Applicant worked as a dishwasher for the Defendant full time. He describes a 60-hour work week. He reported a spinal injury to the employer. He claimed he

reported symptoms in his back, right hip and right leg that he ascribed to his work. The employer sent him "to the doctor." He continued to work. He received no notices regarding a claim form or any rights. He self-procured treatment at a "clinica" where he was prescribed meds. His attorney referred him to the lien claimant FMR Interventional Medical Group. By that time, he had apparently changed employers. Dr. Marina Russman took him off of work. The claim was denied (Ex.C). His job duties were described in detail by Dr. Russman.

The doctor found that the Applicant was in need of treatment for injuries that arose from his ongoing employment with the Defendant.

No other medical evidence was proffered.

Based upon the history taken and the findings of Dr. Russman in the report of 6/14/2021 the undersigned found that the Applicant had sustained a cumulative trauma injury to his back. This finding was made under Cal. Lab. Code sec. 3208.1 in that there was a need for treatment.

The undersigned thereafter found that the Defendant would then have time to undertake Utilization Review per Cal. Code of Regs. sec. 9792.9.1.

Petitioner claims that it was error to find that an industrial injury took place at all since (1) the history provided is not "certified or under oath," (2) Dr. Russman did not include "intake forms, (3) there was no evidence of an interpreter, (4) there were no medical records reviewed, (4) the patient suffers from diabetes and obesity, and (5) Dr. Russman has a biased financial interest in finding injury.

## III. DISCUSSION

With the passage of Cal. Lab. Code secs. 3202.5 and 5705 it is now well-established that a lien claimant has the burden of proof on all necessary issues including aoe/coe in order to obtain payment of its lien. In essence, the lien claimant stands in the shoes of the Applicant when proceeding to trial on a lien. *Tito Torres v. AJC Sandblasting* (2012) 77 CCC 1113, *en banc; Tapia v. Skill Master Staffing* (2008) 73 CCC 1338, *en banc; Kunz v. Patterson Floor Coverings* (2002) 67 CCC 1588, *en banc.*

In *Tito Torres* the Appeals Board agreed that the mere provision of the billing did not constitute substantive evidence of an injury. However, in this case the lien claimant has produced a substantive medical-legal report from Dr. Russman based upon a credible history, a physical exam, and reasonable conclusions. The report follows the report requirements of Cal. Code of Regs. sec. 10682. X-rays and MRI studies were ordered (Ex.3). Functional Capacity Testing was reviewed (Ex.2). Lower extremity EMG testing was reviewed (Ex.4 and 35). The history taken includes diabetes and obesity.

As often stated,

"substantive medical evidence is 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. WCAB (Bolton)* (1983) 34 Cal. 3rd 159; 48 CCC 566.

There is no rule that requires in court or sworn testimony from a physician to find injury.

There is no rule that requires additional evidence to support or corroborate the findings of a physician so long as the evidence is substantive. On the contrary, a single report from one physician is sufficient to find injury so long as the report is substantive medical evidence.

The lien claimant need not produce a physician's notes or intake forms. A subpoena would certainly have produced such evidence if the Defendant had felt it was germane.[1]

Contrary to Petitioner's assertion, Ex. 20 displays the billing from Joyce Altman Interpreters for the services rendered on 6/14/2021 when Dr. Russman's exam took place.

No medical records were provided to Dr. Russman despite the passage of eight months of treatment and the passage of three years before the lien trial took place. No records were placed into evidence by Defendant that would raise any doubts as to the substantive nature of the opinion voiced by the doctor. Hence the lack of any records fails to dispel the credibility of the report.

[1] The soap notes of the therapists were included in the evidence (Exs. 32-34).

The doctor was aware of the diabetes diagnosis. She noted the weight of the patient. Hence this evidence was available to the doctor when the report was written.

Lastly, there is no evidence that Dr. Russman was biased. It is obvious that had she found no injury then no treatment under WC law could be had. Nonetheless the original report of 6/14/2021 is a medical-legal report that would be payable regardless of the doctor's findings.

In addition, the evidence of bias would need to be demonstrated in some fashion or else treating physicians throughout would face the same allegation. Without some actual evidence of bias, the allegation is mere speculation at this point.

It was the undersigned's findings that Dr. Russman's report on 6/14/2021 complied with reporting guidelines of Cal. Code of Regs. sec. 10682 and that the

report was credible and based upon an essentially accurate history. Hence it was substantive medical evidence to support the finding of injury aoe/coe.

**Supplemental Proceedings**

Cal. Code of Regs. sec. 9792.9.1(b) permits the employer to delay any utilization review analysis when liability for the entire claim is in issue. This claim was originally denied (Ex. C).

Sec. 9792.9.1(b)(2) indicates that when liability for the claim is determined against the employer, UR procedures and time limits commence when the finding of fact determining liability is final.

Hence the undersigned made a finding of facts and order that UR procedures should be undertaken consistent with the time limits set forth therein.

**Satellite Licensing Issues**

Petitioner cites *Zenith Ins. Co. v. WCAB (Capi)* (2006) 138 Cal App. 4th 373, 71 CCC 374 to claim that this lien from FMR should be denied due to "failure of Dr. Ro to have a wall license specific to his work location and Dr. Azimzadeh for failure to post in a conspicuous place at work his active license." Some of the reports from FMR were penned by Drs. Ro and Azimzadeh. Petitioner cites in a footnote 16 CCR 308 and Bus. & Prof. Code sec. 4961.

The *Capi* case only requires that practitioners be properly licensed in their field. Ex. A and Ex. B show that Drs. Ro and Azimzadeh are or were licensed acupuncturists and chiropractors respectfully.

There is no rule that would deny a lien claim for failure to post such a license in the office.

(Report, at pp. 1-5.)

**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 defendant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. ***While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to*** WCABmediation@dir.ca.gov.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration is **GRANTED**.

**IT IS FURTHER ORDERED** that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

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

**NOVEMBER 4, 2025**

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

**LIENING EDGE, INC.**
**MULLEN & FILIPPI**

**PAG/bp**

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