

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

**LEE HINTON, *Applicant***

**vs.**

**SONY PICTURES ENTERTAINMENT; TOKIO;  
MARINE INSURANCE COMPANY; ADMINISTERED BY TRISTAR RISK  
MANAGEMENT, *Defendants***

**Adjudication Number: ADJ11102439  
Van Nuys District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the November 25, 2024 Findings and Award issued by the workers' compensation administrative law judge (WCJ). Therein and as relevant here, the WCJ found that applicant sustained admitted industrial injury to the cervical spine, lumbar spine and left shoulder while employed as a production coordinator on October 6, 2017. The WCJ additionally found that applicant sustained industrial injury the thoracic spine, head, bilateral lower extremities, right and left hips, dental, and injury in the form of "hypertension/cardiovascular aggravated by workplace injury, gastritis/GERD, vertigo, anxiety disorder and sleep disorder." In addition, the WCJ found that the injury herein caused 73% permanent disability and need for further medical treatment.

Defendant contends that the WCJ erred in finding industrial injury to the additional body parts and in finding 73% permanent disability arguing that these findings are not supported by substantial evidence, that the medical legal reports relied upon were self-procured, and that the WCJ found injury to parts of the body that were not at issue.

Applicant did not file an answer. The WCJ issued a Recommendations on Petition for Reconsideration recommending that we deny reconsideration.

We have considered the Petition for Reconsideration 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 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 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."

Here, according to Events, the case was transmitted to the Appeals Board on January 8, 2025 and 60 days from the date of transmission is Sunday, March 9, 2025. The next business day that is 60 days from the date of transmission is Monday, March 10, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Monday, March 10, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

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

<sup>2</sup> WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

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 8, 2025, and the case was transmitted to the Appeals Board on January 8, 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 8, 2025.

## II.

The WCJ provided the following discussion in the Report:

Lee Hinton, while employed on October 6, 2017, as a production coordinator by Sony Pictures Entertainment, sustained injury arising out of and in the course of employment to his cervical spine, lumbar spine, and left shoulder; and claims to have sustained injury arising out of and in the course of employment to hypertension, gastrointestinal, vertigo, sleep, psyche, and dental. The carrier has paid compensation as temporary disability in broken periods as designated by the parties. There is no claim for temporary disability. The parties stipulated that Dr. Kevin Pelton is the primary treating physician and that the applicant reached maximum medical improvement as of July 22, 2019. The matter proceeded to trial on the issues of parts of body injured, permanent disability, apportionment, occupation group number, need for medical treatment, liability for self-procured medical treatment, attorney fees, substantially of medical reports and whether the alleged psychiatric claim resulted in an increase in permanent disability.

The undersigned Judge issued her Opinion on Decision on November 24, 2024, finding that applicant had sustained to his cervical spine, lumbar spine and left shoulder based on the parties' stipulations. The Judge also found injury to the thoracic spine, head, bilateral lower extremities, right and left hip, dental, hypertension/cardiovascular aggravated by workplace injury, gastritis/GERD, vertigo, anxiety disorder and sleep disorder. Injury was found to the pled body

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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.

parts of the bilateral lower extremities and headaches based on conformity with the applicant's testimony and the ratings of disability found in the substantial medical evidence relied upon. Defendant/Petitioner filed a timely, verified Petition for Reconsideration. Applicant did not file a response. The WCJ now offers the following recommendations on the Petition. Essentially, Petitioner raises two main issues. They will be addressed in turn.

## **I.**

### **THE WCJ CONSIDERED ALL OF THE MEDICAL EVIDENCE, THE ISSUES RAISED, AND THE APPLICANT'S CREDIBLE AND UNREBUTTED TESTIMONY IN REACHING HER DECISION ON THE ISSUES BEFORE THE COURT.**

Petitioner argues that WCJ must scrutinize the underlying facts relied upon by the physician, to determine whether his opinions constituted substantial medical evidence. However, as pointed out by the WCJ, she is entitled to choose among conflicting medical reports and rely on that which she deems most persuasive. *Jones v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 476 [33 Cal.Comp.Cases 221]. Petitioner generally asserts throughout the Petition that the WCJ should have relied upon Dr. Fait in this matter. However, the WCJ did not find his report to be the most persuasive in this matter. In fact, Dr. Fait's report contained numerous unsupported findings. He based his initial conclusion on an incomplete medical report as he did not have "any medical records." (Exhibit "C") page 1. He stated under "Discussion," I have no medical records of any kind upon which to formulate an opinion ... " Para 1. Despite this, he formed a conclusion regarding injuries sustained by the applicant and never wavered from that, even when evidence of the orthopedic injuries was presented.

2). His report stated that the applicant presented, alleging injury to teeth, neck, back, hips and shoulders and that there was reference to MRIs of the lumbar and thoracic spine noted on the medical records schedule. However, he failed to address findings regarding the thoracic spine separate from the lumbar spine but did ultimately note resolved injury to the right ankle. (Exhibit D, page 12, para 4.)

3. In the same report, Exhibit D, dated 1/4/2019, beginning on Page 10 applicant is diagnosed with cervical, lumbar, left shoulder, tooth fracture, non-Hodgkin's lymphoma, right knee ACL tear, left ankle tendonitis, bilateral shoulders, low back and swelling of the left shoulder. He apportions some complaints to rheumatoid arthritis while noting that the applicant has not been diagnosed with Rheumatoid arthritis. He also apportions to lymphoma without explaining how or why these conditions arose due to the cancer.

4. In Exhibit F, dated 9/25/2019, he stated on page 2 that applicant complained of pain in his neck, shoulder, back and hips under his interim history. Yet, he does not ever address the "hip" issue specifically.

5. In his final report of May 26, 2021, Exhibit G, he noted his disagreement with Dr. Pietruszka's ratings based on applicant's lack of verifiable radicular complaints, however, he himself notes that applicant complained of hip pain and shoulder pain.

The applicant testified credibly at trial that he had some complaints which started subsequent to the original date of injury. Dr. Fait does not address that component at all. His own assessment of the applicant's injuries does not change, despite having received medical records and having evidence of treatment. The WCJ thus did not find his opinion to be the most persuasive evidence. The WCJ did consider the myriad of medical reports here and relied upon those which were most persuasive in the specialty noted.

## **II.**

### **THE WCJ GAVE FULL WEIGHT TO THE MEDICAL OPINION OF THE DOCTOR IT RELIED UPON**

The Workers' Compensation Appeals Board may choose among conflicting medical reports those which it deems most persuasive, but having done so, the board must, in all fairness to the applicant, give full weight to the findings of the doctor whose report it relies on. (*Marm , . Workers' Comp. Appeals Bd.* (1968) 265 Cal.App.2d 333, 334 [71 Cal.Rptr. 237].). It is well settled that the board, if it relies at all on the report and testimony of a medical examiner must give full weight to all of the findings of that doctor, and may not omit a factor of disability described by him. An award which ignores such factors lacks substantial evidence to support it. (*Franklin v. Workmen's Comp. Appeals Bd.* (1971) 18 Cal.App.3d 682, 684 (96 Cal. Rptr. 201, 36 Cal. Comp. Cases 429].) *Robles v. Workers Compensation Appeals Bd.*, 63 Cal. Comp. Case 265, 268-269. Dr. Pietruszka was applicant's treating physician and the court may rely upon his opinion if found to be credible and more persuasive than the PQME report. The applicant had numerous treating physicians during the course of this lengthy litigation.

## **III.**

### **THE WCJ IS NOT OBLIGATED TO PROVIDE RATING INSTRUCTIONS WHEN NO FORMAL RATING IS REQUESTED FROM DEU**

The court's ratings of the reports relied upon took into consideration the findings of disability given by the doctor. These findings were consistent with the

applicant's testimony and the medical evidence considered. The evidence provided at trial by way of applicant's credible testimony was found to be persuasive and supported by substantial medical evidence. Dr. Pietruszka offered ratings of orthopedic injuries and the WCJ, having relied on his report, awarded the applicant permanent disability based on those ratings. With respect to the ratings, the Judge is not obligated to obtain a formal rating from the DEU and none was obtained here. No formal instruction were required.

It is the WCJ's recommendations that the Petition for Reconsideration be denied.

(Report at pp 1-5.)

### III.

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

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 medical 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, it is unclear from our preliminary review that there is substantial medical evidence to support the WCJ's decision without additional development of the record. The WCJ does not

sufficiently explain the basis of the decision, the evidence relied upon, or the apparent inconsistencies in the applicant's testimony. In addition, it is not clear what role Marvin Pietruszka, M.D., had in this case.

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](mailto: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/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



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

**March 10, 2025**

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

**LEE HINTON  
GLAUBER BERENSON GLENDALE  
PEARLMAN BROWN ENCINO**

**PAG/kl**

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