

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

MARIA RAMIREZ, *Applicant*

vs.

ROMAN CATHOLIC BISHOP OF MONTEREY, CALIFORNIA, Permissibly Self-Insured, *Defendant*

**Adjudication Number: ADJ19527341
Salinas District Office**

**OPINION AND ORDER GRANTING
PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

Applicant seeks reconsideration of a workers' compensation administrative law judge's Findings and Order of February 21, 2025, wherein it was found that applicant "has not proved the occurrence of an incident on 2/23/2024 which could have caused injury as alleged." In this matter, applicant claims that while employed on February 23, 2024 she sustained industrial injury to her right arm, right wrist, right hip, right leg and right foot. The WCJ issued an order that applicant take nothing by way of her workers' compensation claim.

Applicant contends that the WCJ erred in finding no industrial injury. We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further development of the record, analysis, and decision.

Preliminarily, we note that former Labor Code 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, Labor Code 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 Labor Code 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 March 4, 2025 and 60 days from the date of transmission is Saturday, May 3, 2025. The next business day that is 60 days from the date of transmission is Monday, May 5, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on May 5, 2025, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 March 4, 2025, and the case was transmitted to the Appeals Board on March 4, 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 Labor Code section 5909(b)(1) because

¹ 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.

service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on March 4, 2025.

Turning to the merits, applicant claims industrial injury based on an alleged event taking place on February 23, 2024. According to the medical records, applicant first sought medical care for the alleged injury on June 20, 2024 and told the medical provider, Douglas Fredona, NP that she sustained injury when “she was handing an object to a coworker, who swiped it harshly from her hand.” (June 20, 2024 report at p. 1.) Applicant told Nurse Fredona that she had been “continuing to work with the injury and just enduring the pain” and self-medicating with acetaminophen and ibuprofen. (June 20, 2024 report at p. 1.) At trial, applicant testified that “The pain in the wrist started at the time of the incident in February but was not bad until much later.” (Minutes of Hearing and Summary of Evidence of February 4, 2025 trial at p. 6.) Applicant was seen at the same medical clinic on March 6, 2024 and May 9, 2024 but the summaries of those visits do not document the incident or any complaints to affected body parts. (Ex. C, pp. 32-39.) However, applicant testified that she did complain of wrist pain at those appointments. (Minutes of Hearing and Summary of Evidence of February 4, 2025 trial at p. 6.)

At trial both applicant and her supervisor Hilda Farias Contreras testified. Applicant testified to the occurrence of the incident and Ms. Contreras testified that the incident did not occur. The WCJ found both witnesses not credible and found that applicant did not carry her burden of proof. Among the reasons that the WCJ found the WCJ not credible was that “the initial symptoms were mild and remained mild for approximately three months, becoming severe for no reason I am aware of in early June when treatment was finally sought.” (Opinion on Decision at p. 2.)

As the Court of Appeal has held:

Venerable precedent holds that, in a bench trial, the trial court is the “sole judge” of witness credibility. (*Davis v. Kahn* (1970) 7 Cal.App.3d 868, 874.) The trial judge may believe or disbelieve uncontradicted witnesses if there is any rational ground for doing so. (*Ibid.*) The fact finder’s determination of the veracity of a witness is final. (*People v. Bobeda* (1956) 143 Cal.App.2d 496, 500.) Credibility determinations thus are subject to extremely deferential review. (*La Jolla Casa deManana v. Hopkins* (1950) 98 Cal.App.2d 339, 345–346 [“[A] trial judge has an inherent right to disregard the testimony of any witness The trial judge is the arbiter of the credibility of the witnesses”].)

(*Schmidt v. Superior Court* (2020) 44 Cal.App.5th 570, 582.)

Similarly, in workers' compensation cases, a WCJ's credibility determinations are "entitled to great weight because of the [WCJ's] 'opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand' [Citation.]" (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].)

Nevertheless, it appears that part of WCJ's rationale for finding the applicant not credible was the worsening of her symptoms months after the alleged incident. Whether the condition could have worsened three to four months after the incident is a medical question requiring an expert opinion. "Expert testimony is necessary 'where the truth is occult and can be found only by resorting to the sciences.' [Citation.]" (*Peter Kiewit Sons v. Ind. Acc. Com. (McLaughlin)* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].) Since the answer to this question may alter the calculus of the WCJ's credibility determination, we will grant reconsideration, rescind the WCJ's decision and return this matter to the trial level for an opinion by a qualified medical evaluator, an agreed medical evaluator, or an independent medical evaluator regarding whether the onset of symptoms is consistent with the claimed mechanism of injury.

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) evidence on an issue. The WCAB has a constitutional mandate to ensure "substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) In accordance with that mandate, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further development of the record, analysis and decision. In addition to development of the medical record, the parties may consider development of the factual record regarding the alleged events of February 23, 2024 or the reporting of the events. We express no opinion on the ultimate resolution of this matter.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings and Order of February 21, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of February 21, 2025 is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 5, 2025

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

**MARIA RAMIREZ
REDULA & REDULA
HAWORTH, BRADSHAW, STALLKNECHT AND BARBER**

DW/oo

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