WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARTINA VARELAS, *Applicant*

vs.

PALMDALE LODGING ASSOCIATES; ZURICH AMERICAN INSURANCE COMPANY; GREAT AMERICAN INSURANCE COMPANY; EMPLOYERS ASSURANCE COMPANY; SECURITY NATIONAL INSURANCE COMPANY, administered by AMTRUST NORTH AMERICA, *Defendants*

Adjudication Number: ADJ13021836; ADJ13022571; ADJ17282642; ADJ20509785; ADJ20509813
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant Security National Insurance Company (Security National) seeks reconsideration of the June 2, 2025 Joint Findings of Fact and Orders issued by the workers' compensation administrative law judge (WCJ). Therein, in Case No. ADJ13022571, the WCJ found that applicant sustained injury arising out of and in the course of employment (AOE/COE) to her excretory system and reproductive system, while employed on July 26, 2015, by Palmdale Lodging Associates, insured by Security National Insurance Company. The WCJ also found that Great American Insurance Company (Great American), Zurich American Insurance Company (Zurich), and Employers Assurance (Employers Assurance) do not have coverage in this case and dismissed them. In Case No. ADJ20509785, the WCJ found that applicant sustained injury AOE/COE to her excretory system and reproductive system, while employed during the period July 26, 2015 to January 5, 2016, by Palmdale Lodging Associates, insured by Security National from April 25, 2015 to August 21, 2015 and by Employers Assurance from August 6, 2018 to August 6, 2019. The WCJ also found that the Labor Code[1] section 5412 date of injury is May 1, 2024 and that Great American and Zurich do not have coverage in the last year of the continuous trauma period.

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

In Case No. ADJ20509813, the WCJ found that applicant sustained injury AOE/COE to her excretory system and reproductive system, while employed during the period June 1, 2016, to November 9, 2017, by Palmdale Lodging Associates, insured by Zurich. The WCJ also found that Great American, Security National, and Employers Assurance do not have coverage in the last year of the continuous trauma period. In Case No. ADJ13021836 (Master File (MF)), the WCJ found that applicant did not sustain injury AOE/COE to her excretory system and reproductive system, while employed during the period March 1, 2018 to March 1, 2020, by Palmdale Lodging Associates, insured by Employers Assurance from August 6, 2018 to August 6, 2019 and by Great American from August 6, 2019 to August 6, 2021. Finally, in Case No. ADJ17282642, the WCJ found that applicant did not sustain injury AOE/COE to her excretory system and reproductive system, while employed on August 26, 2017, by Palmdale Lodging Associates, insured by Employers Assurance.

Security National contends that the record does not support a finding that applicant sustained a specific injury by way of a slip and fall on July 26, 2015 nor the finding of two subsequent cumulative traumas (CTs) of July 16, 2016 to January 5, 2016 and June 1, 2016 to November 9, 2017. Security National alternatively requests removal be granted for an order joining Zurich in Case No. ADJ20509785.

We did not receive an answer. The WCJ issued a Joint Report and Recommendation of Workers' Compensation Administrative Law Judge on Petition for Reconsideration (Report) recommending that we deny reconsideration.

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 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 8, 2025 and 60 days from the date of transmission is September 6, 2025. The next business day that is 60 days from the date of transmission is Monday, September 8, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, September 8, 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 July 8, 2025, and the case was

[2] 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.

transmitted to the Appeals Board on July 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 July 8, 2025.

II.

The WCJ stated following in the Report:

> **INTRODUCTION:**
>
> On June 26, 2025, Defendant Security National Insurance Company filed a timely verified Petition for Reconsideration of the Joint Finding of Fact and Order dated June 2, 2025. The Defendant contends:
>
> (a) There is insufficient evidence to prove the applicant sustained a specific injury of July 26, 2015;
>
> (b) There is insufficient evidence to make a reasonable inference that the applicant had a slip and fall on July 26, 2015 that caused her industrial injury;
>
> (c) There is insufficient medical evidence to find a continuous trauma from July 16, 2016 to January 5, 2016 and June 1, 2016 to November 9, 2017; and,
>
> (d) If reconsideration is not granted, defendant seeks an Order of Removal allowing joinder of Zurich American Insurance Company to ADJ20509785.
>
> **STATEMENT OF RELEVANT FACTS:**
>
> The parties appeared via courtcall for trial on April 9, 2025. Issues were framed, testimony was heard, documentary evidence was admitted, and the matter was submitted on the issues of the injuries arising out of and in the course of employment. On June 2, 2025, the undersigned WCJ issued a Finding of Fact stating that the continuous trauma injuries arose out of and in the course of employment and the specific injury did not arise out of and in the course of employment. It is from these findings that Defendant seeks relief.

DISCUSSION

THE DEFENDANT HAS CONFUSED NO INJURY WITH NO INDUSTRIAL INJURY

It is defendant's contention that if there was no slip and fall on July 26, 2015, then there is no industrial injuries. To support the contention, Defendant relies on the deposition of panel qualified medical examiner Richard Leff, M.D. dated September 4, 2024, hereinafter "The Depo", at 41:6 where the doctor says "No slip and fall, there's no injury." That response was to the hypothetical question "Now, assuming the trier of fact finds that she has a fall, you explained your opinions about everything just now … If that's the case and the trier of fact, the judge, says there's no slip and fall, how would you apportion the injury?" (The Depo at 40:16 to 41:5.)

The problem with the contention is that the undersigned WCJ found only three industrial injuries contributed to Applicant's injury to her excretory and reproductive systems. There was no finding that the slip and fall did not take place.

Any defect contained in the Opinion on Decision under Labor Code section 5313 is cured by the herein WCJ's Report and Recommendation on Reconsideration. (*Smales* v. *Workers' Comp. Appeals Bd*. (1980) 45 Cal. Comp. Cases 1026 (writ denied)). The Applicant credibly testified that at 11:30 p.m. she walked back to see if the back door was closed and tripped on a plastic bag. (Minutes of Hearing summary of evidence dated April 9, 2025, hereinafter MOH, at 7:13.) There was a slip and fall, it just did not contribute to the industrial injury and therefore was not an injury arising out of and the course of employment.

THERE IS EVIDENCE TO SUPPORT THE SPECIFIC INJURY OF JULY 26, 2015.

The credible testimony of Applicant is evidence of a specific non-industrial injury on July 26, 2015.

Furthermore, when panel qualified medical examiner Richard Leff, M.D. was asked if there is no fall, would it only be due to the four children? The doctor responded "Yes. And – yes. And probably and possibly her cumulative work, whatever work she's doing." (The Depo at 41:14 to 41:19.) If the slip and fall took place is not relevant to the existence of the cumulative traumas.

THERE IS NO SUBSTANTIAL PREJUDICE OR IRREPARABLE HARM IF ZURICH AMERICAN INSURANCE COMPANY IS NOT JOINED TO ADJ20509785

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez* v. *Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann* v. *Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez*, supra;

> *Kleemann*, supra.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).) Here, there is no substantial prejudice or irreparable harm because if needed for contribution, Zurich American Insurance Company can be joined by the contribution arbitrator or in further proceedings.

(Report, at pp. 1-3.)

III.

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

The employee bears the initial burden of proving injury arising out of and in the course of employment (AOE/COE) by a preponderance of the evidence. (Lab. Code, § 5705; *South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3202.5, 3600(a).) Moreover, 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.) 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).)

Moreover, pursuant to section 5412, "[t]he date of injury in cases of...cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment." (Lab. Code, § 5412.)

Section 5412 requires a convergence of two elements: (1) the date when the employee first suffers disability; and (2) the employee's acquisition of knowledge that such disability was caused by the employee's present or prior employment. Relevant to the first element, there is no "disability" within the meaning of section 5412 until there has been either compensable temporary disability or permanent disability. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (2004) 119 Cal.App.4th 998, 1003 [69 Cal.Comp.Cases 579] ("*Rodarte*"); *Chavira v. Workers' Comp. Appeals Bd*. (1991) 235 Cal.App.3d 463, 474 [56 Cal.Comp.Cases 631].) Relevant to the second element, it is settled law that "an applicant will not be charged with knowledge that his disability is job related without medical advice to that effect unless the nature of the disability and applicant's training, intelligence and qualifications are such that applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability." (*Sylves*, *supra*, 10 Cal.App.5th at pp. 124-125, quoting *City of Fresno v. Workers' Comp. Appeals Bd.* (1985) 163 Cal.App.3d 467, 473.)

Under section 5500.5, liability for cumulative injury claims is limited to those employers who employed the employee during a period of one year immediately preceding either the date of injury, as determined pursuant to section 5412, or the last date on which the employee was employed in an occupation exposing him or her to the hazards of the occupational disease or cumulative injury, whichever occurs first. (Lab. Code, § 5500.5.)

Based on our review, we are not persuaded that the WCJ sufficiently explained the basis for his decision on the issues of injury AOE/COE and liability or that the record is properly developed.

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 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/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 8, 2025

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

MARTINA VARELAS
LAW OFFICES OF AZARAKHSH
MAVREDAKIS PHILLIPS
SAPRA & NAVARRA, LLP
TOBIN LUCKS LLP
LLARENA MURDOCK LOPEZ & AZIZAD, APC

PAG/bp

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