WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

PAUL STEPHENS, *Applicant*

vs.

COUNTY OF SAN BERNARDINO, *Defendants*

Adjudication Number: ADJ14145123
Riverside District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings and Award (F&A) issued September 22, 2025, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that (1) applicant while employed on December 11, 2020 as a Collections Officer at San Bernadino, California, by County of San Bernadino, sustained injury arising out of and occurring in the course of employment (AOE/COE) to his respiratory system with disputed body parts deferred, (2) applicant is entitled to reimbursement of self-procured Home Health Care Services (HHC) to applicant's wife pursuant to the 60 days from date of approval of the Request for Authorization on October 2, 2024, (3) the provision of ongoing HHC services after 60 days is not substantiated by the evidence, and (4) applicant will require further medical treatment to cure or relieve from the effects of the injury.

Applicant contends that the Trial Judge erred in failing to find that applicant is entitled to ongoing HHC services for which defendant is liable, and that defendant has not met their burden to rebut the need for same per *Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910, 2014 Cal. Wrk. Comp. LEXIS 98.

Defendant filed an Answer to the Petition for Reconsideration (Answer) requesting the Petition be denied.

The WCJ issued a Report and Recommendation (Report) recommending that the Petition be denied.

We have considered the Petition, the Answer, and the contents of the Report. Based upon our preliminary review of the record, we will grant applicant's Petition for Reconsideration. Our order granting applicant's 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 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.[1]

I.

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. (Lab. Code, § 5909.)

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 October 29, 2025, and 60 days from the date of transmission is Sunday, December 28, 2025. The next business day that is 60 days from the date of transmission is Monday December 29, 2025. (See Cal. Code Regs., tit. 8 § 10600(b).)[2] This decision is issued by or on December 29, 2025, so that we have timely acted on the petition as required by section 5909(a).

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

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that 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'

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, the Report was served on October 29, 2025, and the case was transmitted to the Appeals Board on October 29, 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 October 29, 2025.

II.

Preliminarily, we note the following in our review.

This matter went to trial on August 14, 2025, following a Declaration of Readiness to Proceed (DOR) filed by applicant requesting an expedited hearing on the issue of authorization for home health care treatment. (DOR,7/17/25.) On the day of trial, the parties stipulated, in relevant part, that:

> 1. Paul Stephens, born [], while employed on 12-11-2020, as a collections officer, Occupational Group Number 111, at San Bernardino, California, by the County of San Bernardino, sustained injury arising out of and in the course of employment to the respiratory system.
>
> …
>
> 5. Home healthcare was recommended on 3-14-2023 by AME Dr. Tomaszewski for four (4) hours per day.
>
> 6. On 10-9-2024, Utilization Review approved the requested home health aide four (4) hours per day, five (5) days a week for 60 days post covid sequelae.
>
> 7. To date, home healthcare has not been provided to the applicant.

Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

8. To date, no payments have been made to applicant or his family for his home healthcare needs or reimbursement of home healthcare services.

9. Defendant is to reimburse applicant's wife at $28.75 per hour for four (4) hours per day x 60 days for a total of $6,900.00 and $690.00 for self-imposed penalty to resolve the 60 days of home healthcare.

(Minutes of Hearing/Summary of Evidence (MOH/SOE), 8/14/25, p. 2.)

The pertinent issues were identified as follows:

…

3. Liability for self-procured medical treatment, including the cost for retroactive home healthcare services provided by Cheri Stephens, Guardia Ad Litem and wife, from 10-9-24 to date and ongoing less the agreed upon amounts stipulated to.

…

5. Retroactive payments for home healthcare for services from 10-9-24 to date and ongoing less attorney fees of 15%

6. Whether home healthcare requires renewed RFA's for an ongoing chronic condition per *Patterson*?

…

8. Whether the scope of UR approval for home healthcare be expanded in violation of CCR 35.5?

(MOH/SOE, 8/14/25, at pp. 2: 22, 3: 1-11.)

On September 22, 2025, the WCJ issued an F&A in which it was found that (1) applicant sustained injury AOE/COE while employed by defendant on 1211/2020 to his respiratory system, additional disputed parts of body deferred; (2) applicant is entitled to reimbursement of self-procured HHC services by applicant's wife; (3) provision of ongoing Home Health Care Services after the 60 days is not substantiated by the evidence, (4) applicant will require further medical treatment to cure or relieve from the effects of this injury, and (5) the reasonable value of the services and disbursements of Applicant's Attorney is 15% of any benefits paid to the applicant for Home Health Care Services during the 60-day period, an exact amount to be adjusted by and between the parties, with the WCAB retaining jurisdiction in the event of a dispute.

It is from this F&A that applicant seeks reconsideration.

(F&A, at p. 1-2)

III.

Applicant asserts defendant has an obligation to provide ongoing HHC beyond the October 4, 2024 Notice of Utilization Review (UR), which approved 4 hours per day, 5 days of week of HHC, for a period of 60 days. (Ex. 4.)

At trial applicant's wife, who is also his guardian ad litem, testified to his compromised mental state and resulting safety issues. She supervises him for safety, cooks, washes his clothes, and cleans the house. She is micromanaging him, because it is like having a toddler and she must be there and step in in case something happens. She does have experience in home healthcare but there is a difference going somewhere to do home healthcare then leaving as a job, because it is a completely different thing "when you're taking care of a spouse as it doesn't stop, and you don't get a break". (MOH/SOE, 8/14/25, p. 4 :18-20, p. 5:22-24, p. 6: 12-15,19-21.)

While noting that applicant has completed 270 hours in an intense outpatient Brain Injury Program at Institutes of Health, with subjective and objective improvements in balance, cognition, headaches, and dizziness, he was still pending installation of a previously authorized durable medical equipment (DME) and provision of a home health care aide as recommended by his treating physicians.

(Ex. 6, April 7,4; Ex. 5, 6/5/25, at p. 4.)

However, the existing record appears to only contain one original request for authorization (RFA) dated August 22, 2024. (Exhibit 10, PDF page 1.)

We highlight several legal principles that may be relevant to our consideration of this matter.

Section 4600 requires the employer to provide reasonable medical treatment to cure or relieve from the effects of the industrial injury. (Lab. Code, § 4600(a).) If the employer neglects to do so, "the employer is liable for reasonable expenses incurred by or on behalf of the employer in providing treatment." (Lab. Code §4600(a).) The Supreme Court has discussed the consequences of an employer's refusal to provide medical treatment:

> [T]he employer is given initial authority to control the course of the injured employee's medical care. Section 4600 requires more than a passive willingness on the part of the employer to respond to a demand or request for medical aid. This section requires some degree of active effort to bring to the injured employee the necessary relief. Upon notice of the injury, the employer must specifically instruct

> the employee what to do and whom to see, and if the employer fails or refuses to do so, then he loses the right to control the employee's medical care and becomes liable for the reasonable value of self-procured medical treatment.

(*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 159, 165 (internal citations omitted).)

In *Ramirez v. Workers' Comp. Appeals Bd.* (1970) 10 Cal.App.3d 227 [35 Cal.Comp.Cases 383], the court of appeal observed that:

> Upon notice or knowledge of a claimed industrial injury an employer has both the right and duty to investigate the facts in order to determine his liability for workmen's compensation, but he must act with expedition in order to comply with the statutory provisions for the payment of compensation which require that he take the initiative in providing benefits. He must seasonably offer to an industrially injured employee that medical, surgical or hospital care which is reasonably required to cure or relieve from the effects of the industrial injury.

(*Ramirez*, *supra*, page 234, italics added.)

In *United States Cas. Co. v. Industrial Acc. Com.* (*Moynahan*) (1954) 122 Cal.App.2d 427, [19 Cal.Comp.Cases 8], the court similarly states:

> Section 4600 of the Labor Code places the responsibility for medical expenses upon the employer when he has knowledge of the injury….The duty imposed upon an employer who has notice of an injury to an employee is not … the passive one of reimbursement but the active one of offering aid in advance and of making whatever investigation is necessary to determine the extent of his obligation and the needs of the employee.

(*Moynahan*, *supra*, page 435.)

Generally, treatment requests are covered by the utilization review (UR) process contained in section 4610. An employer's review of an employees' medical treatment requests are governed solely by UR. (Lab. Code, § 4610(g); *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Sandhagen*) (2008) 44 Cal.4th 230, 236 [73 Cal.Comp.Cases 981].)

A defendant, however, has an affirmative duty to investigate the need for medical treatment. The UR processes do not abrogate the claims administrator's duty to investigate whether benefits are due. (Cal. Code Regs., tit. 8, § 10109; see also *Braewood Convalescent Hospital*, *supra*, at p. 165).

Here, where there is clear medical documentation of ongoing need for medical care that has not been provided by the employer, additional study of the record is necessary to evaluate the

employer's liability under the interplay of *Braewood Convalescent Hosp*. and section 4610. Thus, based on our preliminary review, we are not persuaded that there is substantial evidence in the record 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.

Any decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]*; Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [[35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [[35 Cal.Comp.Cases 16].)

The WCJ's decision must "set [] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id*. at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).)

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (§§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924] ["The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims."]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805]; *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

The Appeals Board also 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].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Agreed Medical Evaluator (AME) Robert Tomaszewski, M.D.,'s report dated March 15, 2023, indicates that applicant contracted COVID on December 11, 2020, and has residual cognitive, behavioral, and emotional sequela associated with long COVID. Dr. Tomaszewski's report includes diagnostics by QME Internal Medicine Eli Hendel, M.D., who found applicant to have post COVID-19 syndrome with cognitive dysfunction. Dr. Hendel concluded that the most common symptoms of COVID are severe fatigue and the crippling exhaustion which impairs the ability to perform activities of daily living. He summarized additional neurological symptoms resulting from the COVID infection and states that he considers applicant incompetent to care for himself. (Ex. 2, pp. 15-16.)

The Institutes of Health treatment report dated December 24, 2024, is a comprehensive summary of applicant's neurologic status after he completed 270 hours of participation in the Brain Rehabilitation Program (BIP) with subjective and objective progress documented. Applicant was discharged and transitioned to a fully independent home and fitness club-based exercise program. (Ex. 8, p.17.)

We note the absence of recent AME or QME reports which have received and digested the Institutes of Health records documenting applicant's current neurologic and physical capacity.

It also appears that the existing record may not address all of the relevant issues and include evidence sufficient to support the decision, findings, award, and legal conclusions of the WCJ, and it is thus unclear as to whether further development of the record may be necessary with respect to the issues noted above.

V.

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 *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 also 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 therefore.].)

"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 [62 Cal.Rptr. 757, 432 P.2d 365]; *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. …"

(Lab. Code § 5901.)

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.

Accordingly, we grant applicant'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 applicant's Petition for Reconsideration of the Findings of Fact and Award issued on September 22, 2025, 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 F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 29, 2025

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

PAUL STEPHENS
MITCHELL LAW CORPORATION
MICHAEL SULLIVAN

VC/bp

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