WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

PAULA EASTON, *Applicant*

vs.

THE PERMANENTE MEDICAL GROUP, INC., permissibly self-insured, administered by ATHENS ADMINISTRATORS, *Defendants*

Adjudication Number: ADJ19616091
Santa Rosa District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks removal in response to the Findings Orders (F&O) issued on May 1, 2025, wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that applicant, while employed for the period ending May 9, 2024, by defendant The Permanente Medical Group, claims to have sustained injury arising out of and in the course of employment to her neck, bilateral hands and back; that Labor Code section 4060 "requires that a compensability evaluation can only be requested 'after the filing of the claim form'"; that applicant requested a qualified medical evaluator (QME) panel in chiropractic at the same time that the claim form was filed, and it was invalid.

Applicant contends that she demonstrated that a medical evaluation was required after the filing of the claim form and the WCJ's conclusion that the request for a medical evaluation and the filing of the claim could not be simultaneous is not based on the clear language of Labor Code section 4060.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation (Report), recommending that we deny reconsideration.

We have considered the Petition for Removal 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 applicant's Petition as one 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 if a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) 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. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd*. (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

Here, the WCJ made a finding that applicant claimed industrial injury while employed for the period ending May 9, 2024 by defendant The Permanente Medical Group, which are final findings as to the last date of injurious exposure and the employer. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Former Labor Code[1] 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.
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> (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 June 10, 2025, and 60 days from the date of transmission is Sunday, August 10, 2025. The next business day that is 60 days from the date of transmission is Monday, August 11, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, August 11, 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 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.

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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:

> 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.

Here, according to the proof of service for the Report and Recommendation by the WCJ, the Report was served on June 10, 2025, and the case was transmitted to the Appeals Board on June 10, 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 June 10, 2025.

II.

As set forth in the WCJ's Report:

> Applicant allegedly sustained injury on a cumulative basis. She became represented by counsel on or about July 30, 2024. At the time, applicant had not filed a DWC-1 claim form. Applicant's counsel sent the defendant a packet of documents on July 30, 2024. Among the documents included was the initial filing of the claim form (See Defense Exhibit A), and written notice that they intended to request a compensability evaluation (See Joint Exhibit Jl at pg. 6). The panel requested included the ADJ number in place of the claim number.
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> Applicant's counsel waited the requisite number of days and on August 15, 2024, requested a panel selecting chiropractic as the specialty. (See Joint Exhibit J1 at pg. 1).The dispute type selected was "compensability dispute." (*Id.* at pg. 2).
>
> Defendant thereafter requested and obtained a second panel choosing the specialty of orthopedic surgery. (See Defense Exhibit B) The defendant used the actual claim number, presumably explaining how two panels were generated for the same case.
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> [T]he issue in a nutshell is whether a party may request a compensability evaluation when the request is made contemporaneously with the filing of the claim form. Labor Code § 4060 indicates, in relevant part: "If a medical evaluation is required to determine compensability at any time after the filing of the claim form, and the employee is represented by an attorney, a medical evaluation to determine compensability shall be obtained only by the procedure provided in Section 4062.2." (Labor Code § 4060(c))(emphasis added). The court reads this as preluding the simultaneous filing of a claim form and request for a compensability evaluation.
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> The court relied on *Rodriguez v. Taylor Fresh Foods*, 2024 Cal. Wrk. Comp. P.O. LEXIS 5, a split panel decision addressing the essentially the exact same issue [*sic*], even down to the same applicant's firm. In that case a two person majority

found the panel request was invalid because it was made at the same time as service of the claim form and not "after the filing of the claim form."

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(Report, June 10, 2025, pp. 2-3.)

III.

We highlight several legal principles that may be relevant to our review of this matter. Section 4060, subsection (c) provides that:

> (c) If a medical evaluation is required to determine compensability at any time after the filing of the claim form, and the employee is represented by an attorney, a medical evaluation to determine compensability shall be obtained only by the procedure provided in Section 4062.2.

Here, applicant contends that she demonstrated that a medical evaluation was required after the filing of the claim form and the WCJ's conclusion that the request for a medical evaluation and the filing of the claim could not be simultaneous is not based on the clear language of the statute.

Applicant contends that:

> A careful reading of Labor Code §4060(c), however, reveals that there is no language, express or implied that states that a claim form must be filed prior to party requesting a compensability evaluation. All that §4060(c) states is that at any time after the filing of the claim form a medical *evaluation* is required to determine compensability (as opposed to a *request* for a medical evaluation), the medical evaluation shall be obtained only by following the procedure set forth in Labor Code section 4062.2. The requesting of the compensability evaluation is not the operative that creates the requirement for a compensability evaluation, it is the status of being denied or delayed that does. In this case, a medical evaluation to determine compensability was indeed required *after* the filing of the claim, as the claim was on delay *after* the filing of the claim form and the chiropractic panel to effectuate the compensability evaluation was requested 16 days *after* the filing of the claim form. Therefore, there was no contravention of either the letter or spirit of Labor Code §4060(e).

(Petition for Reconsideration, pp. 4-5.)

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 14 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 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 May 1, 2025 Findings and Orders 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 SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 11, 2025

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

PAULA EASTON
KNOPP·PISTTOLAS
MULLEN & FILIPPI, LLP

AS/mc

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