WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

RICHARD GREENE, *Applicant*

vs.

AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA; THE HARTFORD, administered by CCMSI, *Defendants*

Adjudication Number: ADJ9271259
Marina Del Rey District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant Automobile Club of Southern California/The Hartford and third-party administrator CCMSI seeks removal of the September 2, 2025 Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found, in pertinent part, that applicant Richard Greene was entitled to an additional Qualified Medical Evaluator (QME) panel in the specialty of neurosurgery without limitation as to the examination, and that there was no evidence that applicant engaged in waiver or estoppel of his right to obtain an additional QME panel. The WCJ further found that applicant was entitled to an order quashing the subpoena for applicant to appear at trial and issued an order confirming same.

Petitioner contends that there is a lack of good cause for an additional QME panel order and that defendant was denied due process when applicant was excused from testifying despite defendant's notice to appear and testify pursuant to Code of Civil Procedure section 1987. (Code Civ. Proc., § 1987; see also Cal. Code Regs., tit. 8, § 10642.) Defendant also requests replacement of the WCJ alleging irreparable harm and/or substantial prejudice due to a denial of due process.

We received an Answer from applicant. The WCJ issued a Report and Recommendation by Workers' Compensation Judge on Petition for Removal (Report) recommending that we deny applicant's Petition for Removal.

We have considered the allegations of the Petition for Removal, the Answer, and the contents of the Report of the WCJ with respect thereto. Based on our review of the record and as

discussed below, we will treat defendant's Petition as one for reconsideration, grant reconsideration, and order that this matter be referred to a workers' compensation administrative law judge or designated hearing officer of the Appeals Board for a status conference. Our order granting defendant's petition 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.

DISCUSSION

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).) 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 Workers' Compensation Appeals Board (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. 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, 1075 [65 Cal.Comp.Cases 650].)

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the order issued by the WCJ is a hybrid decision that included final findings on issues of employment and industrial injury. (F&O, p. 1, Stipulated Finding of Fact No. 1.) While these

findings were not challenged, the inclusion of final findings renders the decision a final order for purposes of reconsideration, and thus we treat the petition as one seeking reconsideration.

I.

Preliminarily, we note that 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.
> >
> > (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 October 6, 2025, and 60 days from the date of transmission is Friday, December 5, 2025. This decision is issued by or on Friday, December 5, 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

[1] All further references are to the Labor Code unless otherwise stated.

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 October 6, 2025, and the case was transmitted to the Appeals Board on October 6, 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 6, 2025.

II.

Preliminarily, we note the following in our review:

Applicant Richard Greene sustained a cumulative injury during the period of January 1, 1991 through September 7, 2012, to his psyche, cervical spine, and hearing loss, while employed as an underwriter by defendant Automobile Club of Southern California. The QME in the specialty of orthopedics is Ronald Perelman, M.D., and the QME for neurology is Michael Bronshvag, M.D.

In November of 2024, an MRI revealed a lesion/mass at C1-2 on applicant's cervical spine. (Exh.11 and 12.) The applicant sought treatment from a neurosurgeon within defendant's medical provider network.

On February 6, 2025, applicant's attorney filed a Declaration of Readiness to Proceed requesting a mandatory settlement conference for a neurosurgery evaluation.

On February 14, 2025, defendant filed an Objection to the Declaration of Readiness to Proceed and Petition for Sanctions and Costs. (Exh. X.)

The mandatory settlement conference was held on March 27, 2025. On the same day, the parties jointly filed a signed Pretrial Conference Statement, dated March 27, 2025. The Pretrial Conference Statement lists applicant as a witness. The Minutes of Hearing dated March 27, 2025, continues the case to trial on May 21, 2025.

The Minutes of Hearing from May 21, 2025 show only that the applicant was not present; the trial was continued until June 30, 2025.

The Petition states that defendant served the applicant with a Notice, dated June 4, 2025,[2] to appear at the trial on June 30, 2025. (Petition, p. 5:12-13.) On June 10, 2025, applicant filed a Petition to Quash Notice to Attend. Defendant filed a Response to Applicant's Petition to Quash Defendant's Notice to Appear and Testify at Trial dated June 27, 2025, stating that defendant has a due process right to cross-examine applicant at trial. (Exh. BB.)

Minutes of Hearing dated June 30, 2025, show only that the applicant was not present; the trial was continued until August 11, 2025.

On July 1, 2025, defendant served applicant with another Notice to Attend Trial on the continued trial on August 11, 2025, at 8:30 a.m.[3]

On July 10, 2025, applicant filed a Petition to Quash Notice to Attend. (Exh. 17.)

On the day of trial, August 11, 2025, an Amended Pretrial Conference Statement was filed; and again, applicant was listed as a witness.

The Minutes of Hearing of August 11, 2025, memorialize the trial via videoconference and state that applicant was not present. (Minutes, dated August 11, 2025, p. 1.) In addition to the issue of entitlement to an additional QME panel, the Minutes of Hearing memorialize that the WCJ took no action on the Notice to Attend nor on the Petition to Quash, specifically listing the following issues:

> 3. Is there evidence that Applicant has engaged in waiver or estoppel of his right to obtain an additional QME panel?
>
> . . .
>
> 7. In a situation where defense attorney send a Request for Applicant to Appear at trial on 6/27/25 and where applicant's attorney timely filed a Petition to Quash dated 7/9/25 but defense attorney did not respond to the 7/9/25 Petition to Quash and the WCJ never issued a Quash Order, is applicant entitled to an Order Quashing, or is applicant required to appear for trial.
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> 8. In a situation where the dispute is over entitlement of applicant for neurosurgical additional panel, is applicant's testimony relevant?

(*Id.,* at pp. 2-3.)

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[2] Defendant's Notice to Appear dated June 4, 2025, was not admitted as an exhibit and does not appear to have been filed in EAMS.

[3] Defendant's Notice to Appear dated July 1, 2025, was not admitted as an exhibit and does not appear to have been filed n EAMS.

The Minutes also contain lists of exhibits including joint exhibits as well as exhibits filed by applicant and defendant, respectively, with some exhibits marked as withdrawn and one marked for identification only (Ex. CC), however, while the WCJ makes a finding of admissibility as to that exhibit, no order issued to admit same. (*Id.,* at pp. 3-7.) No testimony was taken. The parties were instructed to file concurrent trial briefs on the issues by August 25, 2025. (*Id.,* at p. 1.)

The decision dated September 2, 2025, provides in relevant part:

FINDINGS OF FACT

1. It is found that the applicant is entitled to an additional panel in neurosurgery.

2. It is found that the PQME examination in neurosurgery for the applicant in this case will have no limitations on it.

3. It is found that there is absolutely no credible evidence that the applicant has engaged in a waiver or an estoppel of his right to obtain an additional panel qualified medical evaluation in the specialty of neurosurgery.

. . .

7. It is found that in a situation where the defense attorney sent a request for applicant to appear at trial in lieu of subpoena on June 27, 2025, and where the applicant's attorney timely filed a petition to quash dated July 9, 2025, and defendant's attorney did not respond to the July 9, 2025 petition to quash, then the WCJ never issued a quash order, the applicant is entitled to an order quashing and the applicant was not required to appear at trial.

8. It is found that in a situation where the dispute is over the entitlement of applicant to a neurosurgical additional panel, the applicant's testimony is in no way relevant. The WCJ further determined that where there was no quash order, the applicant is now entitled to an order quashing and was not required to appear at trial and further found that applicant's testimony is not relevant to the proceeding.

(F&O, p. 2.)

With respect to Finding number 7, petitioner argues that it had no statutory obligation to respond to a petition to quash but defendant verbally objected and argued against the petition to quash at the continued trials. (Petition, p. 7.) There is no record of such discussions documented on Minutes of Hearing with continued trial dates.

Finally, defendant also requests replacement of the WCJ alleging irreparable harm and/or substantial prejudice due to a denial of due process, alleging that the proceedings were marred by

the applicant attorney's bullying, threatening behavior and harassment of the defense attorney and that the WCJ did nothing about it. In the Report and Recommendation, the WCJ describes a "lack of civility" between the litigants requiring the WCJ to raise his voice and issue stern instructions to the parties that ad hominem attacks were not to be tolerated in the courtroom, but the WCJ denies unfair or impartial treatment. The WCJ states:

> Also, according to 8 CCR 10960, a Petition for Disqualification must be filed within 10 days "after grounds for disqualification are known." Presumably, grounds for potential disqualification were known on the date of trial, or arguably the latest they could have been known was by the time of the Findings and Order on September 2, 2025, or at the absolute latest by September 7, 2025, which allows five days for mailing the Findings and Order. Therefore, the latest date for filing a Petition for Disqualification was September 17, 2025. Here, the Petition for Removal that contained a prayer for relief that included what was in effect a Petition for Disqualification was dated September 26, 2025, which therefore would have been nine days too late. One of the purposes behind the very short timeframe on the Petition for Disqualification is to discourage such petitions based on disappointing decisions.
>
> Based on the entire record plus what is set out in the defense attorney's Petition for Removal and the defense attorneys' failure to set out any specific allegations let alone evidence of bias or prejudice by the WCJ, this Petition for Disqualification should be dismissed.

(Report, p. 9.)

III.

WCAB Rule 10642 expressly states: "A notice to appear or produce in accordance with Code of Civil Procedure section 1987 is permissible in proceedings before the Workers' Compensation Appeals Board." (Cal. Code Regs., tit. 8, § 10642.)

Pursuant to Code of Civil Procedure 1987:

> (b) In the case of the production of a party to the record of any civil action or proceeding or of a person for whose immediate benefit an action or proceeding is prosecuted or defended or of anyone who is an officer, director, or managing agent of any such party or person, the service of a subpoena upon any such witness is not required if written notice requesting the witness to attend before a court, or at a trial of an issue therein, with the time and place thereof, is served upon the attorney of that party or person. The notice shall be served at least 10 days before the time required for attendance unless the court prescribes a shorter time. If entitled thereto, the witness, upon demand, shall be paid witness fees and mileage before being required to testify. **The giving of the notice shall have the same effect as service of a subpoena on the witness**, and the parties shall have those

> rights and the court may make those orders, including the imposition of sanctions, as in the case of a subpoena for attendance before the court.

(Code. Civ. Proc, § 1987(b) (emphasis added).)

The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (Cal. Const., art. XIV, § 4 ["[T]he administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character(.)"]; *Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].)

All parties to a workers' compensation proceeding retain the fundamental right to due process, including notice and an opportunity to be heard, and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805]; *Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) A fair hearing includes the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd*. (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acc. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin, supra,* 5 Cal.App.4th at p. 710.)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra,* 66 Cal.Comp.Cases at p. 475.) 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 WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *see also Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924].)

Here, it is unclear whether the existing record is sufficient to support the decision, order, and legal conclusions of the WCJ; and/or whether further development of the record may be necessary. Thus, we will order the matter to a status conference before a workers' compensation administrative law judge or designated hearing officer of the Appeals Board.

IV.

Finally, we observe that 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 [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"].)

Labor Code 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, order that this matter be set for a status conference, 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.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings of Fact, Award, and Orders issued on September 2, 2025, by a workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED that this matter will be set for a Status Conference with a workers' compensation administrative law judge or assigned designee of the Appeals Board. Notice of date, time, and format of the conference will be served separately, in lieu of an in-person appearance at the San Francisco office of the Appeals Board.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 2, 2025

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

RICHARD GREENE
BERKOWITZ COHEN LOS ANGELES
CANNON COCHRAN IRVINE
WEITZMAN ESTES CYPRESS

TD/bp

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