

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

ROY GARCIA, *Applicant*

vs.

**RICHARD J. DONOVAN CORRECTIONAL FACILITY;
legally uninsured, administered by STATE COMPENSATION INSURANCE FUND,
*Defendants***

**Adjudication Number: ADJ9599561
San Diego District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the August 19, 2025 Findings and Order issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found, based on the parties' stipulations, that applicant sustained industrial injury to his "neck, lumbar spine, right knee, and additional body parts of psyche and urinary incontinence" while employed as a registered dental assistant on July 8, 2013; that this case was resolved, on April 5, 2018, by way of a Stipulation and Award of 41% permanent disability and future medical care; that a timely petition to reopen was filed on April 23, 2018; and that the Labor Code precludes an award of psychiatric permanent disability due to the injury occurring in 2013, and being the consequence of a physical injury. The WCJ further found that:

"[a]pplicant is permanently and totally disabled. However, the medical reports submitted into evidence do not indicate how and why applicant's current total disability is due solely to the industrial injury of July 8, 2013. The medical reporting of the various treating and examining physicians establishes that applicant is suffering from numerous other non-industrial physical and non-compensable psychiatric disabilities that do not arise from the date of injury in this claim. The WCJ is therefore unable to award any additional benefits for this date of injury based upon the current medical record.

Based on this finding, the WCJ ordered that “Applicant’s prior award of 41% permanent partial disability plus further medical care shall remain in effect. No additional benefits are awarded pursuant to the petition to reopen.”

Applicant contends that the WCJ should have relied on the opinions of Harvey Wieseltier, M.D., and James McSweeney, M.D., to find new and further permanent disability and permanent total disability.

We received an Answer. The WCJ issued a Report and Recommendation recommending that we deny reconsideration.

We have considered the Petition for Reconsideration 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 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 former Labor Code¹ 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.

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

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 August 29, 2025 and 60 days from the date of transmission is October 28, 2025. This decision is issued by or on October 28, 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. 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 August 29, 2025, and the case was transmitted to the Appeals Board on August 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 August 29, 2025.

II.

The WCJ provided the following summary of facts in the Report:

FACTS

1. Roy Garcia, born [...], while employed on July 8, 2013, as a registered dental assistant, Occupational Group No. 212, at San Diego, California, by Richard J. Donovan Correctional Facility, sustained injury arising out of and in the course of employment to his neck, lumbar spine, right knee, and additional body parts of psyche and urinary incontinence.
2. At the time of injury, the employer was legally uninsured.
3. At the time of injury, the employee's earnings were \$857.77 per week, warranting indemnity rates of \$596.92 for temporary disability and \$230.00 for permanent disability.
4. The employer has paid compensation as follows:

IDL was paid during the period July 9, 2013, through July 8, 2014.
Temporary disability was paid at the weekly rate of \$596.92 during the period

July 9, 2014, through July 8, 2015.

Permanent disability was paid at the weekly rate of \$230.00 during the period

July 9, 2015, through July 7, 2018.

5. The employer has furnished all medical treatment.
6. Attorney fees were paid pursuant to the Stipulation and Award in this case.
7. This case was resolved on April 5, 2018, by way of a Stipulation and Award at 41% permanent disability and future medical care.
In addition, a companion case ADJ10254830 for injuries to the bilateral wrist, was also resolved on April 5, 2018, with an award of 11% permanent partial disability.
8. A timely petition to reopen was filed in this case on April 23, 2018. No petition to reopen was filed in Case No. ADJ10254830.
9. The labor code precludes an award of psychiatric permanent disability due to the injury occurring in 2013, and being the consequence of a physical injury.
10. On August 19, 2025, the WCJ issued the following Finding of Fact:

“Applicant is permanently and totally disabled. However, the medical reports submitted into evidence do not indicate how and why applicant’s current total disability is due solely to the industrial injury of July 8, 2013. The medical reporting of the various treating and examining physicians establishes that applicant is suffering from numerous other non-industrial physical and non-compensable psychiatric disabilities that do not arise from the date of injury in this claim. The WCJ is therefore unable to award any additional benefits for this date of injury based upon the current medical record.”

DISCUSSION

The WCJ emphasizes at the outset that there is little doubt that applicant is permanently and totally disabled. However, it is applicant’s burden to demonstrate, through substantial medical evidence, that the industrial injury of July 8, 2013, is the cause of applicant’s alleged new and further disability.

After a thorough review of the medical reporting of Dr. Wieseltier, Dr. McSweeney, and Dr. Ziegler, as well as the independent medical evaluation of Dr. John Lane, the WCJ finds that none of these physicians have provided clear and substantial evidence regarding how, why, and to what extent applicants’ current total disability is due to the injury of July 8, 2013. This case has been on this WCJ’s trial calendar on eight separate occasions. Therefore, applicant has had more than adequate opportunity to develop the record and provide the court with substantial evidence. The WCJ has repeatedly reviewed applicant’s evidence and determined that none of the medical reporting was substantial evidence on the issues presented, and further discovery was necessary. Therefore, after receiving no additional medical reporting that addresses the industrial causation issue, the WCJ eventually found it necessary to order an

independent medical evaluation with Dr. John Lane, who is widely used in this community as an agreed medical evaluator. The reporting of Dr. Lane is found to be the most substantial evidence concerning the issues before the court and bears careful consideration and reliance upon the physician's expert medical opinion on the issues presented.

At trial, applicant testified that he has been found to be 100% disabled by the Veterans Administration as a result of injuries he sustained in the Navy prior to the industrial injury in this case. The examining physicians have not indicated whether applicant's current disabilities are due to the effects of the prior injury in the Navy or a worsening of the industrial injury in question, or the natural progression of some other disease. The treating orthopedic physician has indicated that applicant is suffering from urinary incontinence, yet, after many months, there has been no examination or explanation from a urologist in order to determine whether this is caused by the industrial injury of July 8, 2013.

In addition, applicant is suffering from serious psychiatric disabilities. However, the psychiatric qualified medical evaluator has stated that applicant's psychiatric disability is a compensable consequence of applicant's industrial and nonindustrial physical injuries. Therefore, pursuant to the requirements of labor code section 4660.1(c)(1), the WCJ is precluded from considering the psychiatric disability in any award of permanent disability.

Applicant's remedy under these facts may possibly be through a petition to the Subsequent Injuries Benefit Trust Fund. However, applicant has failed to meet their evidentiary burden as required in the present case in order to obtain benefits for the date of injury that is currently before the court.

(Report, at p. 2-5.)

III.

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

Applicant holds the burden to establish the existence of new and further disability arising out the original injury, and arising within five years of the original injury. (Cal. Lab. Code §§ 5410; 5705.) The court of appeal has summarized the jurisdictional and burden of proof requirements as follows:

First, under section 5410, "an injured worker who has previously received workers' compensation benefits either voluntarily paid by the employer or pursuant to an award is entitled to claim benefits for 'new and further disability' within five years of the date of injury." (*Sarabi, supra*, 151 Cal.App.4th at p. 925, italics added.) Second, "[s]ection 5803 permits the reopening of a previously adjudicated case for 'good cause' upon a petition filed by [any] party, also within five years from the date of injury. If a petition to reopen under either section is filed within the five-year period, the [WCAB] has jurisdiction to decide the matter beyond the five-year period. (Ibid.)

To recover additional benefits, the injured worker must not only file a timely petition to reopen but must also have suffered a “new and further disability” within that five-year period, unless there is otherwise “good cause” to reopen the prior award. (*Sarabi, supra*, 151 Cal.App.4th at p. 926.) An injured worker cannot confer jurisdiction on the WCAB by filing a petition to reopen before the five-year period has expired for anticipated new and further disability that may occur after the five-year limitation period has run. (*Ibid.*) “New and further disability” means disability resulting from some demonstrable change in the employee’s condition, including a gradual increase in disability, a recurrence of TD, a new need for medical treatment, or the change of a temporary disability into a permanent disability. (*Applied Materials, supra*, 64 Cal.App.5th 1042, 1080.)

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, supra*; *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 Hosp. 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).)

Based on our preliminary review, we are not persuaded that there is substantial evidence in the record to make a determination regarding whether the increase in applicant’s disability is due to his industrial injury or to non-industrial causes. 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 Labor Code 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 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

OCTOBER 27, 2025

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

**ROY GARCIA
LAW OFFICE OF LESLIE S. SHAW, APC
STATE COMPENSATION INSURANCE FUND**

PAG/bp

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