

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

WADE LAWSON, *Applicant*

vs.

CITY OF EUREKA, Permissibly Self-Insured, *Defendant*

**Adjudication Number: ADJ16907298, ADJ16905076
Eureka District Office**

**OPINION AND ORDER
GRANTING PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of October 22, 2024 in case ADJ16907298¹, wherein it was found that while employed on February 17, 2021 as a maintenance worker, applicant sustained industrial injury to his left foot and left ankle, including Charcot joint syndrome. Defendant admitted injury to the left foot and ankle. The only issue at trial is whether the Charcot joint syndrome is industrial.

Defendant contends that the WCJ erred in finding that applicant sustained industrial injury in the form of Charcot joint syndrome. Defendant argues that the WCJ should have followed the opinions of qualified medical evaluator orthopedist David M. Broderick, M.D. rather than the opinions of primary treating physician orthopedist Mark E. Schakel, M.D. We have not received an answer. The WCJ who issued the Findings and Award has retired, so a different WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will grant reconsideration, rescind the decision, and return this matter to the trial level for further development of the record and decision.

Preliminarily, we note that former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days

¹ For reasons that are not clear, defendant's Petition also contains case number ADJ16905076 in the caption. Case ADJ169050876 concerns an alleged September 1, 2020 industrial injury to the hand. Cases ADJ16907298 and ADJ16905076 were not consolidated for trial, and no issues in the Petition have been raised with regard to case ADJ16905076.

from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code 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 Labor Code 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 November 26, 2024, and 60 days from the date of transmission is Saturday, January 25, 2025. The next business day that is 60 days from the date of transmission is Monday, January 27, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, January 27, 2025, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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 November 26, 2024, and the

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.

case was transmitted to the Appeals Board on November 26, 2024. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on November 26, 2024.

Turning to the merits, previously in this matter, on February 27, 2024, the WCJ who ultimately issued the October 22, 2024 Findings and Award issued an Order Vacating Submission and to Further Develop the Record. In the Order, the WCJ wrote, “In this case neither the opinion of Dr. Broderick nor that of Dr. Schakel is based on a review of the entire medical record. Dr. Schakel did not have an opportunity to review all of Mr. Lawson’s medical records, which are substantial.” (Order at p. 2.) The WCJ determined that further development of the record from Dr. Schakel and Dr. Broderick was necessary to have a full record upon which to base a decision.

Although Dr. Schakel did author a supplemental report, it is not clear whether he reviewed all of the available records pertinent to the applicant’s alleged injury, nor whether these records were made available to him.³ Although Dr. Schakel acknowledges that applicant had pre-existing conditions that predisposed him to Charcot joint syndrome, Dr. Schakel opines that applicant’s industrial trip and fall contributed development of Charcot joint syndrome. (Undated report of Dr. Schakel, Ex. 2 at pp. 1-2.) Nevertheless, in order for this matter to be determined on a full record, and in order to ensure compliance with the WCJ’s earlier February 27, 2024 Order, Dr. Schakel should review all pertinent medical records and issue a supplemental report documenting the documents reviewed and any conclusions based on the records review.

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) evidence on an issue. The WCAB has a constitutional mandate to ensure “substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.*

³ In the Report, the new WCJ states that defendant breached its obligation to provide medical records to Dr. Schakel pursuant to Administrative Rule 9781 (Cal. Code Regs., tit. 8, § 9781.) It is unclear from the record whether this regulation is applicable to this case, or whether defendant breached it. In any event, all findings of the WCAB must be based on substantial evidence. (*Le Vesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620 [Appeals Bd. en banc].) Regardless of any fault by either party, this matter should be determined on a full record.

(2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) In accordance with that mandate, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further proceedings and decision on the issue of industrial causation of Charcot joint syndrome. We express no opinion on the ultimate resolution of any matter in this case.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings and Award of October 22, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of October 22, 2024 is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALWESKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 27, 2025

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

**WADE LAWSON
PETERSEN LAW OFFICES
MULLEN & FILIPPI**

DW/oo

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