

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ANTHONY ALBA, *Applicant*

vs.

FRANK DELGADO ROOFING CORP.;
STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ10414695
Pomona District Office

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings of Fact issued by the workers' compensation administrative law judge (WCJ) on March 27, 2026. Therein, the WCJ found that, while employed as a roofer helper, applicant sustained admitted injury arising out of and occurring in the course of employment (AOE/COE) to the right femur, right lower extremity, ears, lower back, head and headaches, and claims to have sustained injury (AOE/COE) in the form of high blood pressure/hypertension and psyche. The WCJ further found that applicant worked for the employer less than six months per stipulation of the parties at trial; that the psychology report by Lawrence Lyons, Ph.D., is admissible; and that applicant failed to meet the burden of proof of the claimed psych injury as compensable under Labor Code¹ section 3208.3 as a result of a sudden and extraordinary event of employment or a violent act. While the applicability of section 5410 was not raised at trial, and while no explicit finding on that issue was made in the Findings of Fact, the WCJ stated in the Opinion on Decision that applicant's claim is "barred based on the five year rule set forth in Labor Code Section 5410."

Applicant contends that the WCJ erred in failing to find his injury compensable pursuant to section 3208.3, as a sudden and extraordinary employment condition and/or a violent act. Applicant further contends that the WCJ erred in invoking section 5410 to exclude Dr. Lyon's

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

psychology report from evidence. Alternatively, applicant contends that the case should be remanded to the trial level for further development of the record.

Defendant filed an Answer. The WCJ issued a Joint Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration be denied.

We have considered the Petition for Reconsideration, the Answer, 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 the 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 section 5950 et seq.

I.

Preliminarily, we note that 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.

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 April 16, 2026 and 60 days from the date of transmission is Monday, June 15, 2026. This decision is issued by or on Monday, June 15, 2026, 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.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on April 16, 2026, and the case was transmitted to the Appeals Board on April 16, 2026. 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 April 16, 2026.

II.

The WCJ provided the following discussion in the Report:

FACTS

Applicant, ANTHONY ALBA, while employed on April 19, 2016 as a roofer helper by Frank Dlgado Roofing Corp, sustained injury arising out of and in the course of employment to the right femur, right lower extremity, ears, lower back, head and headaches, and **claims** to have sustained injury arising out of and in the course of employment to high blood pressure/hypertension and psyche.

The case proceeded to trial on the following sole issue: whether the applicant's claimed psyche injury is compensable under Labor Code Section 3208.3 as a result of a sudden and extraordinary event of employment or a violent act. All other issues deferred without prejudice.

The Findings of Fact and Opinion on Decision issued March 25, 2026 concluded applicant failed to meet the burden of proof of injury as to the limited issues for trial. It was concluded applicant did not sustain the burden of proof of the claimed psyche injury as compensable under Labor Code Section 3208.3 as a

result of a sudden and extraordinary event of employment or a violent act. As to those claims the applicant shall take nothing with all other issues deferred without prejudice.

The Findings of Fact and Opinion on Decision did state the applicant's offered exhibit 4, identified as Psychology STP report by Dr. Lawrence Lyons dated May 2, 2025, previously marked for identification was not to be admitted into evidence and therefore was not part of the record at trial. Applicant's Petition for Reconsideration noted that report was excluded but made no argument that report should have been admitted.

The Findings of Fact and Opinion on Decision should be corrected to note a trial brief was filed by applicant. The arguments and case and statutory authority set forth in applicant's trial brief are not persuasive nor are they compelling as to the issues set for trial.

Applicant filed a Petition for Reconsideration on the following grounds:

1. By the Order, Decision or Award, the Board acted without or in excess of its powers;
2. The evidence does not justify the Findings of Fact;
3. The Findings of Fact do not support the Order, Decision or Award;
4. The Order, Decision or Award is not based on substantial evidence.

DISCUSSION

Defendant objected at trial to the medical report offered by applicant marked for identification, the report listed as psychology STP report by Dr. Lawrence Lyons dated May 2, 2025. The Petition for Reconsideration suggests it is the responsibility of the trier of fact to consider further development of the record. That report was dated May 2, 2025 following a tele health evaluation that same date. No offer of proof was made by applicant at time of trial January 15, 2026 as to any efforts made to supplement that portion of the medical record if it was found to be necessary or if the medical record was incomplete or inadequate. No offer of proof was made by applicant at time of trial to suggest there was further discovery needed or why that was not done prior to moving these issues to trial. Applicant's trial brief did not make any offer of proof or argument as to the basis for that report to be admitted into evidence.

The Opinion on Decision noted the report of Dr. Lyons listed as a telehealth evaluation which took place on May 2, 2025. The report stated at page 3 the applicant was unable to complete the online psychosocial packet due to technological issues which were not identified or explained, also that applicant did not have access to a computer. There was no explanation given by Dr. Lyons how the applicant who was unable to complete the online psychosocial packet and had no access to a computer was able to complete hours of testing listed at the end of the report. Any deficiency in the reporting of Dr. Lyons should have

been known to applicant at the time the report was issued and could have been addressed with Dr. Lyons well in advance of the trial. To suggest after trial that it is the responsibility of the WCJ to order further development of the record is not supported by the evidence.

Applicant's Petition for Reconsideration under Statement of Facts argues the mechanism of injury as a fall from a two-story roof onto concrete with a shattered femur (page 3). That does not address the actual mechanism of injury as it does not describe the conditions or circumstances which they allege caused the applicant to fall from the roof. There is no argument offered by applicant as to what it was that they alleged caused the applicant to fall from the roof.

The mechanism of injury as testified to by applicant at trial was that while working on the roof he lost his footing because the roof was really steep and that he fell when he reached forward to pick something up. At trial under cross examination applicant did agree his recall of the events of the fall were likely more fresh in his head at the time of deposition than at time of trial (Minutes of Hearing and Summary of Evidence January 15, 2026).

Defense exhibit "B" provided designated pages from the applicant's deposition November 4, 2016. That was much closer in time to the injury as opposed to trial. The deposition testimony of the applicant described that he was sliding off the roof, described as really steep, and that he lost his balance and fell.

The AME reports of Dr. Wertheimer (exhibit 1) offered by applicant state the applicant lost his balance and fell.

Applicant's trial brief and Petition for Reconsideration contend a described fall from a two story roof is by definition a sudden and extraordinary act, not a routine hazard of the applicant's employment. They argue the applicant suffered a violent act, again as a result of a fall off the roof, without any analysis of or reference to what caused the applicant to fall off the roof.

Applicant did not offer any evidence at trial as to what was the violent act alleged to have caused the fall from the roof. Again, the only evidence at trial was applicant's testimony that he lost his balance and fell. No evidence was argued or offered as to any actions which would constitute a violent act. Applicant's argument that the fall itself was the violent act is not supported by the evidence.

The trial argument and Petition for Reconsideration was that applicant's fall was a sudden and extraordinary event. As with the violent act argument no evidence was offered as to what they contend was the sudden and extraordinary event which caused the applicant to fall from the roof.

In the matter of Travelers Casualty & Surety Co. v. Workers' Compensation Appeals Board (Dreher) (2016) 246 Cal. App. 4th 1101, it was concluded that

the injured worker's accident was not extraordinary within the meaning of Labor Code Section 3208.3 and therefore the applicant's claim for psychiatric injury was denied.

In the above case the relevant facts are the applicant Mark Dreher, while working as a live in maintenance supervisor for an apartment complex, slipped and fell on a slippery concrete parkway and sustained multiple injuries. He had worked for the employer less than six months. In addition to the six month rule the WCJ found the injured worker sustained an industrial injury but denied the psyche claim because the injury did not result for a sudden and extraordinary employment condition.

The analysis of the WCAB was although the injuries were more serious than might be expected, it did not constitute nor was it caused by a sudden and extraordinary employment event within the meaning of Labor Code Section 3202.3(d). The evidence showed the injured worker routinely walked between buildings on concrete walkways at the work site and that he slipped and fell while working on a rain slicked pavement. Mr. Dreher's slip and fall was the kind of incident that could reasonable be expected to occur.

In the present case the applicant's testimony and the report of the AME was that he lost his balance and fell because the roof he was working on was slippery. No evidence has been submitted herein of any violent act or sudden and extraordinary employment event.

The Petition for Reconsideration does not address the argument that Labor Code Section 5410 bars the psychiatric injury claim because it was filed more than five (5) years after the date of injury. In fact that claim was made nine (9) years after the date of injury. The applicant's injury occurred April 19, 2016. Applicant was evaluated by the Agreed Medical Examiner Dr. Laura Werthheimer and applicant offered into evidence reports dated May 21, 2018 and November 6, 2023 (exhibit 1). None of those reports by AME Dr. Werthheimer stated the applicant presented any psychiatric complaints nor did either report suggest the need for a referral for a psychiatric evaluation. The Finding that applicant's claimed psychiatric injury was barred by the statute of limitations pursuant to Labor Code Section 5410 has not been rebutted by the Petition for Reconsideration.

(Report, at pp. 1-4.)

III.

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

An employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297–298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a), 3202.5.)

As relevant here, section 3208.3(b) provides:

(a) A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2 or, until these procedures are promulgated, it is diagnosed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.

(b)

(1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.

(2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.

(3) For the purposes of this section, "substantial cause" means at least 35 to 40 percent of the causation from all sources combined.

(c) It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division.

(d) Notwithstanding any other provision of this division, no compensation shall be paid pursuant to this division for a psychiatric injury related to a claim against an employer unless the employee has been employed by that employer for at least six months. The six months of employment need not be continuous. This subdivision shall not apply if the psychiatric injury is caused by a sudden and extraordinary employment condition. Nothing in this subdivision shall be construed to authorize an employee, or the employee's dependents, to bring an action at law or equity for damages against the employer for a psychiatric injury, where those rights would not exist pursuant to the exclusive remedy doctrine set forth in Section 3602 in the absence of the amendment of this section by the act adding this subdivision.

(Lab. Code, § 3208.3 (a) - (d).)

“Predominant as to all causes” for purposes of section 3208.3(b)(1) has been interpreted to mean more than 50 percent of the psychiatric injury was caused by actual events of employment. (*Dep’t of Corr. v. Workers’ Comp. Appeals Bd. (Garcia)*, 76 Cal.App.4th 810, 816, 64 Cal.Comp.Cases 1356[.]) Whether a psychiatric injury is caused by a ‘violent act’ lowers the threshold for proving industrial causation of psychiatric injury from predominate causation (51%) to substantial causation (35%). (Lab. Code, § 3208.3(b).) Furthermore, psychiatric injury that arises from a physical injury, which is caused by a ‘violent act’ is compensable as an exception to section 4660.1. (Lab. Code, § 4660.1(c)(2)(A).) The concepts of ‘sudden and extraordinary’ and ‘violent act’ are not interchangeable and should not be confused. Sudden and extraordinary events of employment include accidents with no third-party actor. (See *Matea v. Workers’ Comp. Appeals Bd.*, (2006) 144 Cal.App.4th 1435 [an injury incurred by lumber falling from a store rack is ‘sudden and extraordinary’].)

Here, it appears from our preliminary review that the record may not be complete regarding the issues of ‘sudden and extraordinary’ and ‘violent act.’ It also appears that section 5410 may have been inappropriately applied. 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 WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 15, 2026

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

**ANTHONY ALBA
PEREZ LAW, P.C.
STATE COMPENSATION INSURANCE FUND**

PAG/cm

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