

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

ANTONIO GUZMAN, *Applicant*

vs.

**HARRIS REBAR NORTHERN CALIFORNIA;
BITCO INSURANCE/OLD REPUBLIC GENERAL INSURANCE, administered by
GALLAGHER BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ12909831; ADJ12910091
San Jose District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Defendant BITCO Insurance/Old Republic General Insurance Corporation seeks reconsideration of the Arbitrator's Findings and Award issued by the workers' compensation arbitrator (WCA) on January 15, 2026. Therein, the WCA found that (1) the December 10, 2024 report of Dr. Dhesi is admissible and is allowed into evidence; (2) the April 29, 2025 report of vocational expert Evan Oemeke is admissible and is allowed into evidence; (3) the body parts injured in this claim are: the low, thoracic and cervical spine, bilateral knees, shoulders, bilateral hips, bilateral wrists, psychiatric injury and loss of hearing; (4) permanent disability is 100%; (5) there is no apportionment to non-industrial factors; (6) outstanding medical bills and medical/legal charges are defendant's responsibility; (7) applicant is entitled to future medical care for his injured body parts in accordance with the expert medical opinion of his treating physicians; and (8) applicants attorney is entitled to a fee of 15%.

Defendant contends that the WCA erred in finding industrial causation of injury to the thoracic spine, right knee, bilateral hips, bilateral wrists, and psychiatric injury. Defendant also contends that the WCA should have found the injury herein caused 66% permanent disability after apportionment. Finally, defendant contends that the record does not contain stipulations regarding applicant's average weekly wage or the date of maximum medical improvement making payment of the Award impossible.

Applicant filed an Answer. The WCA issued an Arbitrator’s Report on Reconsideration (Report) 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 defendant’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 Code¹ 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.”

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

Here, according to Events, the case was transmitted to the Appeals Board on March 6, 2026 and 60 days from the date of transmission is May 5, 2026. This decision is issued by or on May 5, 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 by the WCA, the Report was served on April 10, 2026, and the case was transmitted to the Appeals Board on March 6, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on March 6, 2025.

However, a notice of transmission was served by the district office on March 6, 2026, which is the same day as the transmission of the case to the Appeals Board on March 6, 2026. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1), and consequently they had actual notice as to the commencement of the 60-day period on March 6, 2026.

II.

The WCA provided the following discussion in the Report:

The case being appealed is the continuing trauma filed by Antonio Guzman for injuries over the last 25 years working as a Rebar Ironworker, He claims, injury to his spine, knees shoulders, hips, wrists, loss of hearing and psych, The matter was tired and as arbitrator I found the applicant to be 100% disabled and in need of future medical treatment.

Applicant was evaluated by Dr, Charles Xeller as defendants QME, Dr. Xeller found injury to the left knee, low back, neck and bilateral shoulders. Defendant asserts that there is no basis for finding of injury to the thoracic spine, right knee, bilateral hips, bilateral wrists and psychiatric injury. Without further review of the medical evaluations, the arbitrator must point out the absurdity of that opinion. Defendants are missing the 5 00 pound guerrilla in the room. Mr Guzman was the ultimate laborer. His title was “Rebar Ironworker”, which

is one of the most arduous job in our labor market. When asked by his attorney what his job duties were, he replied, "... It's like you carry a few tons of rebar and then you have to bend over and tie them" for 25 years! He was not exaggerating about the weight. Depending upon the diameter and length, a rod of re bar can weight over 100 pounds and he does not carry one at a time. Is it realistic to claim that he only hurt his low back and not his thoracic spine, or his right knee but not the left. This is especially true when he complains about pain in all his joints and his QME doctors, Dr. Henri and Dr. Newton have no problems embracing these complaints as being valid. Dr. Newton the AME in neurology found the opinion of Dr. Henri to be more accurate than that of Dr. Xeller. I have absolutely no doubt that applicant's job duties could have caused the injuries in the complaint.

Defendant asserts the applicant does not have 100% disability. This is where defendants argument comes apart. Since their own doctors have found a 69% disability, defendants are desperately close to a life pension or even worse the 100% disability award that I have issued. In their pursuit to lower the permanent disability, defendants have played fast and lose with their interpretation of the evidence in trying to find some transferable skill to place this man in another job or assert that the apportionment found in their medical report is valid.

First, transferable skills. Does defendant really believe that a third grade math education is a positive on a job application? However, even more concerning is defendants claim that the applicant has a GED? Applicant denies this and states that he does not have a GED certificate, and that all he had was a business card that someone gave him, while telling him he had a GED. No certificate or business card was offered, and no questions were asked as to what kind of school, or test he took. A GED test covers 4 subjects and usually takes about 7.5 hours. After watching applicant during the trial it is my feeling that Mr. Guzman would not be able to even take such a test, let alone pass it.

Defendant also claims Mr. Guzman is bilingual. That is a real stretch of his abilities. He can understand English, but has a difficult time speaking English, He testified that "... whenever people talking it's hard for me to concentrate and catch up what they're saying". It appears to the arbitrator that any job that requires conversational skills (ticket taker) would be a bridge too far.

Defendant also felt that having a "smartphone" is an important transferable skill, However defense counsel did not ask Mr. Guzman what he used the smart phone for. Applicant's attorney did ask that question. Mr. Guzman said he used it as telephone and played games downloaded by his daughter. He didn't know how to do that "other stuff". I don't think his smart phone enhances his employability, As for computers, he has no ability or the desire to use them.

Defendant also tried to assert that Mr. Guzman developed special skills in the performance of his job. Defense counsel asked whether he was sometime required to use special skills. He replied that it does so require, but "...I never, never, learned to do any of that stuff". Counsel continued by asking if he had to use his mind and his critical thinking skills. His answer was "... When you send hours carrying rebar on your shoulders, I don't think you need too much Thinking".

The attorney making the applicant into someone he isn't continued into the evaluation of what doctor said in their reports. The classic example is the report of Dr. Kearns' 09/06/25, defendant's hearing specialist. Dr. Kearns found a hearing loss, 60% related to his work, but also noted that a 59 years old nan could be expected to have some decline due to prebycusis. Therefore, without commenting on the logic used to make this finding, Dr. Kearns apportioned 40% of the disability to preexisting prebycusis. Apparently because 40% of the population has non-industrial prebycusis. There was no showing that this problem even existed in applicant, who denies any hearing loss before his work as an ironworker,

The bottom line after review of this position is that my decision is supported by Applicant's testimony and the expert medical opinion of Dr. Henri and Dr. Newton (AME-neurology) has not been refuted by defendant. Instead defendant has tried to reshape applicant into something he is not. This attempt taints defendant's entire argument. I see nothing that would compel me to change [my] decision. As Dr. Henri states that Mr. Guzman wore out his bone and joints from 25 years of carrying rebar. His physical skills were totally depreciated and he must be rightfully compensated.

(Report, at pp. 1-4.)

III.

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

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).)

A petition for reconsideration of an arbitrator’s decision or award made pursuant to the mandatory or voluntary arbitration provisions of sections 5270 through 5275 shall be filed in EAMS or with the district office having venue in accordance with section 5501.5. (Cal. Code Regs., tit. 8, § 10995.)

WCAB Rule 10995 further provides that if the arbitrator does not rescind the order, decision or award within 15 days of receiving the petition for reconsideration, the arbitrator is required to forward an electronic copy of their report and the complete arbitration file within 15 days after receiving the petition for reconsideration pursuant to WCAB Rule 10995(c)(3). (Cal. Code Regs., tit. 8, § 10995(c)(1)-(3).)

WCAB Rule 10914 requires the arbitrator to make and maintain the record of the arbitration proceeding, which must include the following:

- (1) Order Appointing Arbitrator;
 - (2) Notices of appearance of the parties involved in the arbitration;
 - (3) Minutes of the arbitration proceedings, identifying those present, the date of the proceeding, the disposition and those served with the minutes or the identification of the party designated to serve the minutes;
 - (4) Pleadings, petitions, objections, briefs and responses filed by the parties with the arbitrator;
 - (5) Exhibits filed by the parties;
 - (6) Stipulations and issues entered into by the parties;
 - (7) Arbitrator’s Summary of Evidence containing evidentiary rulings, a description of exhibits admitted into evidence, the identification of witnesses who testified and summary of witness testimony;
 - (8) Verbatim transcripts of witness testimony if witness testimony was taken under oath;
 - (9) Findings, orders, awards, decisions and opinions on decision made by the arbitrator;
- and

(10) Arbitrator's report on petition for reconsideration, removal or disqualification.

(Cal. Code Regs., tit. 8, § 10914(c).)

WCAB Rule 10803(a)(2) states in relevant part that:

(a) The Workers' Compensation Appeals Board's adjudication file shall consist of:

(2) The record of proceedings, which consists of: the pleadings, minutes of hearing, summaries of evidence, certified transcripts, proofs of service, admitted evidence, exhibits identified but not admitted as evidence, notices, petitions, briefs, findings, orders, decisions and awards, opinions on decision, reports and recommendations on petitions for reconsideration and/or removal, and the arbitrator's file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered as evidence are not part of the record of proceedings.

(Cal. Code Regs., tit. 8, § 10803(a)(2).)

WCAB Rule 10615 states in relevant part that:

All documents required or permitted to be filed under the rules of the Workers' Compensation Appeals Board shall be filed in EAMS2 or with the district office having venue, except as otherwise provided by these rules or ordered or allowed by the Workers' Compensation Appeals Board.

(Cal. Code Regs., tit. 8, § 10615.)

Here, we have received a Transcript of the proceedings on November 18, 2025. But, the record does not contain the minutes of the arbitration proceedings. (Cal. Code Regs., tit. 8, § 10914(c)(3).) Nor does the record reflect the pleadings, petitions, objections, briefs and responses filed by the parties with the arbitrator, if any. (Cal. Code Regs., tit. 8, § 10914(c)(4).) The record does not clearly reflect exhibits offered by each party or objection thereto, if any. (Cal. Code Regs., tit. 8, § 10914(c)(5).) Additionally, the record does not include stipulations and issues entered into by the parties. (Cal. Code Regs., tit. 8, § 10914(c)(6).) Finally, the record does not contain the arbitrator's summary of evidence containing evidentiary rulings, a description of exhibits admitted into evidence. (Cal. Code Regs., tit. 8, § 10914(c)(7).)

The Appeals Board may not ignore due process for the sake of expediency. (*Barri v. Workers' Comp. Appeals Bd.* (2018) 28 Cal.App.5th 428, 469 [83 Cal.Comp.Cases 1643] [claimants in workers' compensation proceedings are not denied due process when proceedings are delayed in order to ensure compliance with the mandate to accomplish substantial justice];

Rucker v. Workers' Comp. Appeals Bd. (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805][all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions].) “Even though workers’ compensation matters are to be handled expeditiously by the Board and its trial judges, administrative efficiency at the expense of due process is not permissible.” (*Fremont Indem. Co. v. Workers’ Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965, 971 [49 Cal.Comp.Cases 288]; see *Ogden Entertainment Services v. Workers’ Comp. Appeals Bd. (Von Ritzhoff)* (2014) 233 Cal.App.4th 970, 985 [80 Cal.Comp.Cases 1].)

The Appeals Board’s constitutional requirement to accomplish substantial justice means that the Appeals Board must protect the due process rights of every person seeking reconsideration. (See *San Bernardino Cmty. Hosp. v. Workers’ Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986] [“essence of due process is...notice and the opportunity to be heard”]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) In fact, “a denial of due process renders the appeals board's decision unreasonable...” and therefore vulnerable to a writ of review. (*Von Ritzhoff, supra*, 233 Cal.App.4th at p. 985 citing Lab. Code, § 5952(a), (c).) Thus, due process requires a meaningful consideration of the merits of every case de novo with a well-reasoned decision based on the evidentiary record and the relevant law.

As with a workers’ compensation administrative law judge (WCJ), an arbitrator’s decision must be based on admitted evidence and must be supported by substantial evidence. (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Meaningful review of an arbitrator’s decision requires that the “decision be based on an ascertainable and adequate record,” including “an orderly identification in the record of the evidence submitted by a party; and what evidence is admitted or denied admission.” (*Lewis v. Arlie Rogers & Sons* (2003) 69 Cal.Comp.Cases 490, 494, emphasis in original.) “An organized evidentiary record assists an arbitrator in rendering a decision, informs the parties what evidence will be utilized by the arbitrator in making a determination, preserves the rights of parties to object to proffered evidence, and affords meaningful review by the Board, or reviewing tribunal.” (*Id.*; see also *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753 [a full and complete record allows for a meaningful right of reconsideration].)

Further, with limited exceptions, arbitrators shall have all of the statutory and regulatory duties and responsibilities of a workers’ compensation judge. (Cal. Lab. Code § 5272.) This may

include delegation to the petitioner and/or the parties, the responsibility of ensuring that an electronic copy of a complete arbitration file is forwarded directly to the presiding workers' compensation judge of the district office having venue over the matter. (Cal. Code. Regs., tit. 8 § 10995(c)(3).)

Here, we are unable to conduct meaningful review of the petition or render a decision until we have received a complete record including stipulations, issues and exhibits appropriately identified including the offering party. Thus, this is not a final decision on the merits of the Petition for Reconsideration, and 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.

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 sections 5950 et seq.

V.

Accordingly, we grant defendant’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.

For the foregoing reasons,

IT IS ORDERED that defendant’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/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

ANNE SCHMITZ, DEPTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 5, 2026

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

**JOHNSON FIRM
KARLIN HIURA
ROBERT E. DRAKULICH, ARBITRATOR**

PAG/bp

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