WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ASHLEY THURMOND, *Applicant*

vs.

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, permissibly self-insured, adjusted by TRISTAR, *Defendants*

Adjudication Numbers: ADJ19265320, ADJ19267101
San Jose District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Cost petitioner Jack Yen, M.D. seeks reconsideration of the Joint Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) in this matter on October 22, 2025. In that decision, the WCJ found that payment of $4,946.26 issued on January 13, 2025 by defendant to Alexa Healthcare for the Qualified Medical Evaluator (QME) report by Jack Yen, M.D for psychiatric injury, dated October 17, 2024[1], was not unreasonably delayed, and that nothing further is due. Additionally, the WCJ found that any complaints regarding the payment in this case by cost petitioner should have been the subject of the Independent Bill Review procedure set forth in Labor Code[2] section 4603. The WCJ denied cost petitioner's claims for interest, penalties, sanctions, and attorney fees.

Cost petitioner contends that the WCJ did not properly weigh the evidence, incorrectly found the claim form billing of cost petitioner inadmissible, failed to distinguish between a "bill" and a "billing statement," and improperly admitted defendant's Explanation of Review (EOR) by

[1] The F&O and Report repeatedly reference Dr. Yen's report, identified as Exhibit 2, as dated 10/27/24, but this appears to be in error.
[2] All further statutory references are to the Labor Code, unless otherwise noted.

a third party which did not include a proof of service on cost petitioner. Cost petitioner requests interest, penalties, sanctions and fees as well as oral argument on its Petition.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, the contents of the Report, and 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 Labor Code 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 December 1, 2025 and 60 days from the date of transmission is Friday, January 30, 2026. This decision is issued by or on Friday, January 30, 2026, 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 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 December 1, 2025, and the case was transmitted to the Appeals Board on December 1, 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 December 1, 2025.

II.

FACTS

Applicant was employed with defendant Santa Clara Valley Transportation Authority (VTA) on May 26, 2021 (case number ADJ19265320) and during the period of January 11, 2021 through May 7, 2024 (case number ADJ19267101) as a human resources assistant and claimed to have sustained injury arising out of and in the course of employment (AOE/COE) in the form of psychiatric injury in both cases, as well as injury to the back and neck in the cumulative injury case (ADJ19267101).

Both cases were resolved by a joint Compromise and Release (C&R) which was approved by a WCJ on March 20, 2025, for the sum of $50,000, less attorney fees.

On March 26, 2025, defendant filed a Declaration of Readiness to Proceed (DOR) requesting a hearing on the cost petition filed by petitioner Jack Yen, M.D., as the matter was inadvertently taken off calendar due to settlement of the case in chief. (DOR, March 26, 2025, at p.7.)

On September 24, 2025, the matter was set for trial on the issue of the cost petition. At that time, exhibits were offered by the parties, and the WCJ deferred admissibility of cost petitioner's exhibit 2. The WCJ admitted into evidence all of defendant's proposed exhibits, over the objection of cost petitioner, and the matter stood submitted for decision. (Minutes of Hearing and Order of Consolidation (Minutes), September 24, 2025, at pp. 1, 5-6.)

On October 22, 2025, the WCJ issued his F&O, in which he ordered part of cost petitioner's exhibit 2 inadmissible as unsigned, and denied Dr. Yen's January 30, 2025 cost petition for penalties, interest, sanctions, and attorney fees. Defendant's June 4, 2025 counter petition for sanctions was also ordered denied.

It is from this F&O that cost petitioner seeks reconsideration.

DISCUSSION

The WCJ states the following in the Report:

> Jack Yen, MD, acted as a panel QME in psychiatry in both cases, and issued a single QME report in that capacity, dated 10/27/2024, in evidence as part of Cost Petitioner Exhibit 2. The report of Jack Yen, MD, dated 10/27/2024, is in evidence as part of Cost Petitioner Exhibit 2, and on page 3 of the report sets forth a billing total for the report, under penalty of perjury, in the sum of $ 4,030.00; the Health Insurance Claim Form in said Exhibit 2 is unsigned, and is from Alexa Healthcare Inc., and sets forth a total billing amount for the report in the sum of $4,946.26. Because that report is unsigned, and in accordance with Labor Code Section 5703 (a)(l), it is inadmissible and I so held.
>
> . . .
>
> Defendant issued an Explanation of Review with respect to said billing from Alexa Healthcare, Inc., on 10/30/2024, in evidenced as defense Exhibit E, with a request for additional documentation. There is a question as to whether that EOR was in fact received by Jack Yen, and no direct evidence to confirm such receipt or sending. Irregardless, the EOR is indicative of a reasonable question on the part of defendant to the billing, especially in view of the fact that the body of the report of Dr. Yen, under the penalty of perjury, he sets forth a different billing amount than the one set forth on the unsigned Health Claim Form.
>
> Jack Yen, MD, Petitioner, wrote a 12/26/2024 letter demanding payment including penalty and interest and enclosing a copy of the Health Insurance Claim Form (Cost Petitioner Exhibit 4). Defendant, to its credit, and notwithstanding the discrepancy in the billing amounts referenced above, issued a check on 1/13/2025 to Alexa Healthcare for $4,946.26.

(Report, at pp. 6-7.)

According to the Minutes, the case was submitted on the record with no witness testimony. Based on the evidence submitted, the WCJ could not resolve why Dr. Yen's report of October 27, 2024 sets forth a billing in the sum of $4,030.00 whereas the Health Insurance Claim Form by Alexa Healthcare sets forth a billing in the sum of $4,946.26 for the same report. (*Id*., at pp. 7-8.) In addition, the WCJ could not determine the relationship between Dr. Yen and Alexa Healthcare. (*Ibid*.)

We note that cost petitioner's exhibit 2, totals 41 pages and contains multiple documents, including Dr. Yen's QME report of October 17, 2024, an HICFA CMS-1500 Claim Form by Alexa Healthcare dated October 17, 2024, a signed W-9 Form, QME Form 121 Declaration Regarding Protection of Mental Health Record dated October 17, 2024, defendant's QME Cover/authorization letter received on August 29, 2024, QME Form 122 AME or QME Declaration of Service of Medical-Legal Report dated October 17, 2024, applicant's cover letter dated September 13, 2024, and a Proof of Service of the documents, executed by Sarah Hudson in Bakersfield, California and dated October 17, 2024. This exhibit was marked for identification only with admissibility deferred. (Minutes, at pp. 5.) In the F&O, the WCJ admitted only part of the document, the report by Dr. Yen with the billing amount of $4,030.00. (F&O, at p. 4.) The WCJ specifically did not admit the "Claim Form Billing" dated October 17, 2024, which provided a billing amount of $4,946.26 and the order does not address the other parts of the exhibit. (*Ibid*.)

We further note that defendant's exhibit B, a one-page EOR dated October 25, 2024, was admitted into evidence over cost petitioner's objection, although the document has no received date, no review date, no proof of service, and no addressee. (Minutes, at pp. 5-6; Exh. B.)

Defendant's exhibit E is an EOR addressed to Alexa Healthcare by EK Health, a different entity than defendant TRISTAR, but the document contains instructions to have the bill reconsidered and to submit such request to TRISTAR Risk Management. (*Id*.; Exh. E.) Although there is a "Received Date: 10/22/24" and a "Posted Date: 10/30/24," there is no proof of service for exhibit E. (*Ibid*.) The Minutes state there is no evidence that defendant's EOR was served on Dr. Yen. (Minutes, at p. 6.)

III.

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

A defendant has 60 days to review and analyze a medical-legal bill or invoice. (Lab. Code, § 4622(a)(1).) A defendant has two options within this 60-day window: It may pay the bill or invoice in full or pay less than the full amount. Should a defendant decide to pay less than the full amount within the 60-day window, it may still avoid the imposition of a penalty and interest by including an EOR with its payment. Section 4622 requires that a defendant object to the invoice or billing with an EOR as described in section 4603.3. (Lab. Code, §§ 4622(a)(1), (e)(1); 4603.3.) Objecting to an invoice with an EOR within the 60-day window is defendant's burden. If a defendant does not pay a proper medical-legal invoice in full or fails to provide an EOR within the 60-day window, then a defendant has waived all objections, other than compliance with sections 4620 and 4621, to the medical-legal provider's billing. (Cal. Code Regs., tit. 8, § 10786(e).) A defendant is then liable for the reasonable value of the medical-legal services as well as a 10 percent penalty and 7 percent per annum interest.

Here, the existing evidence does not reflect that the EOR in evidence was ever properly served on cost petitioner.

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 v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *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 Hospital v. Workers' Comp. Appeals Bd (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

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 Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (§§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [65 Cal. Rptr. 2d 431, 62 Cal.Comp.Cases 924] ["The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims."]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [72 Cal. Rptr. 2d 898, 63 Cal.Comp.Cases 261]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805]; *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

The Appeals Board also has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Based on our review, we are not persuaded that the record is properly developed or whether the existing record is sufficient to support the decision, order, and legal conclusions relating to whether defendant provided an EOR to Dr. Yen and, if so, when. The Appeals Board has the discretionary authority to order development of the record when appropriate to provide due process or fully adjudicate the issues consistent with due process. (See *San Bernardino Community Hosp. v. Workers' Comp. Appeals Bd. (McKernan*) (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986]; *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117, 1121–1122 [63 Cal.Comp.Cases 261, 264-265].)

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 cost petitioners' 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 cost petitioner's Petition for Reconsideration of the Findings and Order issued on October 22, 2025 by a workers' compensation administrative law judge 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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 30, 2026

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

ASHLEY THURMOND
WITKOP LAW GROUP
JACK YEN
FREEBURG LAW
MCLAUGHLIN DIXON
SANTA CLARA VALLEY TRANSPORTATION
TRISTAR

TD/bp

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