

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

CARLOS GONZALES JR., *Applicant*

vs.

**ABF FREIGHT SYSTEM, INC., permissibly self-insured;
administered by ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ13935939
Anaheim District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
REMOVAL AND
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration/removal of the Findings, Award, and Orders (FA&O) issued on May 22, 2026 wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that while employed by defendant on November 10, 2020 as a truck driver, applicant sustained injury arising out of and occurring during the course of employment (AOE/COE) to the head, brain, lumbar spine, nervous system, psyche, ears, circulatory system, and sleep, resulting in one-hundred percent (100%) permanent and total disability, and that the permanent disability rating schedule (PDRS) is rebutted. The WCJ further held that defendant is "not entitled to further discovery" including "a rebuttal Vocational Rehabilitation Evaluation."

Defendant contends that due process requires the FA&O be rescinded to allow defendant further development of the record and evaluation and reporting as to applicant by a defense vocational expert (VE). (Petition for Reconsideration (Petition), pp. 4-5.)

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition and Answer, the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petition.

FACTS

Applicant filed an Application for Adjudication of Claim (Application) alleging that while employed by defendant on November 10, 2020, he sustained injury AOE/COE to the jaw, teeth, scalp, head, back and nervous system. Applicant later filed an amended Application adding the brain, ears, psyche, and sleep disorder.

Applicant sought treatment with Soheil Aval, M.D. and the parties proceeded with discovery, retaining neurology Agreed Medical Evaluator (AME), Kenneth Nudleman, M.D., neuro-psyche AME, Nicholas Thaler, Ph.D, internal Panel Qualified Medical Evaluator (PQME), Keyvan Yousefi, M.D., and otolaryngology PQME, Steven Burres, M.D. Applicant also retained VE, Enrique Vega. Defendant did not retain their own VE.

Dr. Nudleman evaluated applicant on several occasions and issued numerous reports from 2021 – 2025. In a report dated August 29, 2021, he indicated that applicant reached maximum medical improvement/permanent and stationary (MMI/P&S) status as of May 19, 2021 with six percent (6%) whole person impairment (WPI) relative to applicant's posttraumatic head syndrome, seven percent (7%) WPI for dizziness, and one percent (1%) WPI for post trauma headaches, all of which were 100% attributable to the work injury. (Joint Exhibit 2, p. 4.) In a report dated December 19, 2021, he noted an additional three percent (3%) WPI for pain related to the post trauma headaches and 3% WPI for trigeminal pain, all 100% attributable to the work injury. (Joint Exhibit 3, p. 3.) In his report dated April 10, 2025, "from a neurological perspective, these systems are different per Vigil and are synergistic. As such, the impairment ratings neurologically should be additive." (Joint Exhibit 10, p. 2.)

Neuro-psyche AME, Dr. Thaler also evaluated applicant on multiple occasions and issued various reports from 2022 – 2024. In his report dated January 7, 2022, he indicated that applicant sustained a 6% WPI due to cognitive disorder of which 100% is attributable to work. (Joint Exhibit 12, p. 13.) In his report dated February 6, 2023, he noted that applicant had a GAF score of fifty (50) which corresponds to a thirty percent (30%) WPI of which sixty percent (60%) was due to industrially related post-concussion syndrome, ten percent (10%) to pain secondary to the

orthopedic work injury, 10% to weight gain, 10% to poor sleep and apnea, five percent (5%) to lack of work post injury and 5% to the workers' compensation system. (Joint Exhibit 13, p. 13.) In his report dated February 21, 2023, he noted that "based upon substantial evidence...Kite is not indicated for [applicant's] cognitive or psychological disability, as well as how his overall disability might relate to his sleep issues or headaches, as these all overlap in nature. Kite is indicated for his neuropsychological disability as a whole and his orthopedic, cardiovascular, vestibular, and hearing disabilities as these are distinct disorders that synergize to result in rather substantial disability[.]" (Joint Exhibit 14, p. 3.)

Otolaryngology PQME, Dr. Burres, evaluated applicant on March 3, 2022 and issued a report on the same date as well as a supplemental report dated June 8, 2022. In his June 8, 2022 report, Dr. Burres indicated that applicant had a 7.5% impairment to the right ear for loss of monaural hearing, 0.6% impairment for both ears for loss of binaural hearing, and thirteen percent (13%) WPI for tinnitus, all of which were 100% attributable to work. (Joint Exhibit 22, pp. 4-5.)

Internal PQME, Dr. Yousefi, evaluated applicant on September 22, 2022, and issued a report dated September 26, 2022, wherein he indicated that applicant sustained a six percent (6%) WPI due to hypertensive cardiovascular disease, of which twenty-five percent (25%) was due to industrial intake of Ibuprofen, 25% was due to stress and psyche factors, and the remaining fifty percent (50%), nonindustrial. (Joint Exhibit 20, p. 35.)

Applicant's VE, Mr. Vega, evaluated applicant on December 13, 2023, and issued a report dated February 5, 2024. In his report, he indicated that "[t]he medical and vocational evidence support that [applicant] [can]not maintain a work pace that would be competitive in the open labor market" and "[a]s a result[, he] is not a feasible candidate for vocational rehabilitation services" as he "has no access to occupations and should [thus] be considered 100% permanently and totally disabled from the labor market." (Applicant Exhibit 1, p. 17.)

On October 8, 2025, applicant filed a Declaration of Readiness to Proceed (DOR) to a Mandatory Settlement Conference (MSC). The matter proceeded to hearing and was ultimately set for trial, to be held January 22, 2026, later continued to February 24, 2026.

At trial, the parties stipulated to employment; injury AOE/COE; earnings; disability periods paid and compensation; and the primary treating physician. Issues set for determination included permanent disability; apportionment; need for further medical treatment; whether defendant is entitled to procure their own vocational rehabilitation evaluation; whether, based on

the medical evidence, testimony, and/or vocational evidence, the PDRS is rebutted; whether there is a qualified brain injury per section 4662; and attorney fees. The parties submitted as joint exhibits, the reports of Drs. Nudleman, Thaler, Yousefi and Burres, a transcript of Dr. Thaler's July 9, 2024 deposition, a Notice of Terminating Temporary Disability dated November 8, 2022, and a benefit printout dated January 23, 2025. Applicant also submitted as exhibits, reports from Dr. Soheil and photos of steel load bars 1 and 2 dated January 19, 2026.

On May 22, 2026, WCJ issued a FA&O wherein she found, in relevant part, that while employed by defendant on November 10, 2020, as a truck driver, applicant sustained injury AOE/COE to the head, brain, lumbar spine, nervous system, ears, circulatory system, and sleep resulting in 100% permanent and total disability based upon a rebuttal of the PDRS by Mr. Vega and the reports of Drs. Nudleman, Thaler, Yousefi, Burres, and Soheil.

It is from this FA&O that defendant seeks reconsideration/removal.

DISCUSSION

I.

Preliminarily, up through July 1, 2024, petitions for reconsideration were subject to former Labor Code¹ section 5909, which provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within sixty (60) days from the date of filing.

During the period from July 2, 2024 through June 30, 2026, petitions for reconsideration were subject to former section 5909, which stated 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 will be to the Labor Code unless otherwise indicated.

Under section 5909(a) (in effect from July 2, 2024 through June 30, 2026), 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 June 22, 2026, and 60 days from the date of transmission is August 21, 2026. This decision is issued by or on August 21, 2026, so that we have timely acted on the petition as required by section 5909(a) (in effect from July 2, 2024 through June 30, 2026).

Section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026) 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) (in effect from July 2, 2024 through June 30, 2026) 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 June 22, 2026, and the case was transmitted to the Appeals Board on June 22, 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) (in effect from July 2, 2024 through June 30, 2026), because service of the Report in compliance with section 5909(b)(2) (in effect from July 2, 2024 through June 30, 2026) provided them with actual notice as to the commencement of the 60-day period on June 22, 2026.

II.

Given that defendant filed a Petition for both removal and reconsideration, we find it relevant here to discuss the distinction between a petition for reconsideration and a petition for removal. A petition for reconsideration is taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order is defined as one that determines “any substantive right or liability of those involved in the case” or a “threshold” issue fundamental to a claim for

benefits. (*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]; *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold issues include, but are not limited to, injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of limitations. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian, supra*, at 1075 ["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"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, and other similar issues.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Bd. en banc).) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the Appeals Board or Court of Appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

Here, the WCJ's decision pertains to both final threshold and intermediate evidentiary issues, including findings as to permanent disability and an award of benefits. Accordingly, it is a "final" decision. Thus, to the extent that defendant seeks removal, defendant's Petition is dismissed, and we will treat it instead as one for reconsideration.

III.

Turning now to the merits of the Petition, defendant avers that they were denied their due process rights when they were prevented from proceeding with a defense vocational evaluation and report. We note that subdivision (d) of section 5903 includes as a basis for a petition for

reconsideration “[t]hat the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and produced at the hearing.” Here, we treat defendant’s request to rescind the FA&O and reopen discovery as a request under section 5903(d).

Further, with respect to the presentation of evidence at trial, subdivision (d)(3) of section 5502 states as follows:

If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party’s proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

“The purpose of the disclosure requirement in section 5502 is obvious: ‘to guarantee a productive dialogue leading, if not to expeditious resolution of the whole dispute, to thorough and accurate framing of the stipulations and issues for hearing.’” (*San Bernardino Community Hosp. v. Workers’ Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986]), quoting *Zenith Insurance Co. v. Ramirez* (1992) 57 Cal.Comp.Cases 719.)

It is well established that the Appeals Board has a duty to further develop the record where there is insufficient evidence on a threshold issue. (Lab. Code, §§ 5701, 5906; *Nunes (Grace) v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741, 752; *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 392-394 [62 Cal.Comp.Cases 924]; *McDonald v. Workers’ Comp. Appeals Bd., TLG Med. Prods.* (2005) 70 Cal.Comp.Cases 797, 802.) The Appeals Board has a constitutional mandate to ensure “substantial justice in all cases” and may not leave matters undeveloped where it’s clear that additional discovery is needed. (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404.) Sections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141-143 (Appeals Bd. en banc).)

While the Appeals Board has the power to develop the record pursuant to sections 5701 and 5906 to provide for an adequate record and ensure substantial justice, this must be balanced

against the clear intent and language of section 5502(d)(3) that the parties disclose all relevant evidence at the MSC. (See *Telles Transport, Inc. v. Workers' Compensation Appeals Board (Zuniga)* (2001) 92 Cal.App.4th 1159 [66 Cal.Comp.Cases 1290]; McKernan, *supra*, 74 Cal.App.4th 928.) Thus, in keeping with section 5502(d)(3), the proponent for the admission of additional evidence must prove that the evidence was either not available or could not have been discovered prior to the conference.

Here, defendant provides no basis in his Petition as to why a defense VE could not have been retained, an examination completed, and corresponding report produced, prior to the MSC. According to the report of applicant's VE, applicant was evaluated on December 13, 2023, and a corresponding report was produced on February 5, 2024. The MSC immediately preceding the January 22, 2026 trial was not held until November 4, 2025. Thus, a period of one year and nine months passed between the vocational examination and report by Mr. Vega and the MSC, and there is no indication defendant made any efforts to secure rebuttal evidence during that time.

Further, to the extent that defendant asserts that the existing record is incomplete, we agree with the following statements made by the WCJ in her Report:

Defendant's contention that the record was incomplete is disingenuous. The decision considered the substantial medical evidence, which was based on reasonable medical probability, of the two Agreed Medical Evaluators, two Panel Qualified Medical Evaluators, and a Primary Treating Physician. In total there were 42 medical reports/depositions. In addition, there was a vocational rehabilitation expert report and credible testimony from Applicant, which included a full cross examination performed by Defendant. The fact that Defendant failed to exercise due diligence and procure rebuttal evidence does not make the record incomplete or require development of the record for rebuttal, particularly when Defendant had almost 2 years to obtain rebuttal evidence and failed to do so.

(Report, p. 5.)

Accordingly, defendant's Petition is denied.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal of the Findings, Award, and Orders issued by the workers' compensation administrative law judge on May 22, 2026, is **DISMISSED**.

IT IS FURTHER ORDERED that defendant's Petition for Reconsideration of the Findings, Award, and Orders issued by the workers' compensation administrative law judge on May 22, 2026, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 21, 2026

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

**CARLOS GONZALEZ JR.
DIXON LAW, APC
LAUGHLIN, FALBO, LEVY & MORESI**

RL/cs

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