WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

DANA JOHNSON, *Applicant*

vs.

NEW YORK & COMPANY;
THE HARTFORD, administered by SEDGWICK CMS, *Defendants*

Adjudication Numbers: ADJ19425135 (MF), ADJ13486537
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Joint Finding(s), Order(s) issued by the workers' compensation administrative law judge (WCJ) on May 11, 2026. Therein, the WCJ found that "[t]here is no good cause at this time to order a replacement panel…" and that "defendant has not acted in bad faith to warrant sanctions at this time."

Applicant contends that the WCJ erred in failing to find defendant acted in bad faith in unilaterally cancelling the panel qualified medical reevaluation with Phillip Conwisar, M.D., and in failing to replace Dr. Conwisar as the panel qualified medical evaluator (PQME).

Defendant filed an Answer. 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, 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 Labor Code[1] 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.
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> (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 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).

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.

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

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) 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 June 22, 2026.

II.

Next, we note that if a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not 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 Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd*. (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB 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.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ's decision includes a final finding as to defendant's liability for sanctions. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

III.

The WCJ questions the petition's timeliness. However, we find it timely. Pursuant to WCAB Rule 10605 "When any document is served by mail, fax, ***e-mail*** or any method other than personal service, the period of time for exercising or performing any right or duty to act or respond shall be extended by… (2) Ten calendar days from the date of service, if the place of address and

the place of mailing of the party, attorney or other agent of record being served is outside of California but within the United States. (Cal. Code Regs., tit. 8, § 140605(a)(2), emphasis added.)

Here, the WCJ's decision issued on May 11, 2026. Applicant was served by mail and applicant's attorney was served by email to addresses inside California. However, defendant was served to an address outside of California. Accordingly, and to observe due process for all parties, we interpret WCAB Rule 10605 as extending the time to file for all parties being served to ten days rather than five.[2] Based on the authority cited above, applicant had until Wednesday, June 10, 2025 to seek reconsideration. Therefore, the petition filed on June 5, 2026 was timely.

IV.

The WCJ provided the following discussion in the Report:

> **FACTS & DISCUSSION**
>
> The relevant facts in this case are that Dr. Conwisar acted as the PQME in this case since 2021, with about 5 reports issuing and at least one deposition. The matter went to trial before the undersigned on March 30, 2026, and the Findings and Orders issued on May 11, 2026, whereby I found that the panel shall not be replaced for alleged misconduct, unavailability, and/or *ex parte* communications by defense counsel. …
>
> In this case, there is no question that a specific injury claim existed for a while. The CT was later filed in June 2024. The PQME at deposition said he would evaluate applicant for the CT if requested but he did not say he 'needed to see' her again. This is not entirely accurate. The doctor was asked about a CT and if he would evaluate her and he said yes. But then he later issued a subsequent report that did not discuss a reevaluation, albeit it was a supplemental "record review" report and the doctor obviously did not go back and review his own deposition testimony. So in the supplemental report, he did not mention a reevaluation being needed. And this is where the problems arose. When the doctor was deposed in May 2024, applicant later a CT claim in June 2024. There WAS no CT claim made or filed at the time of the doctor deposition. Applicant scheduled the reevaluation after filing the claim in June 2024, set for 11/18/2024. Then, the doctor issued a supplemental report in July 2024, reviewing records, making no mention of needing to see applicant again. In August 2024, defendant canceled the November 2024 appointment. Applicant did not know about the cancelation and appeared for that November 2024 reevaluation. The doctor would not and could not see her, as she was not on his schedule that day.

[2] We also clarify that service by email does not reduce the time for filing to two days as suggested by the WCJ in the Report.

Applicant's attorney requested to replace Dr. Conwisar and also filed for sanctions and costs for defendant's canceling the appointment in bad faith and for having had alleged *ex parte* communication with the doctor's office and also asserting that the doctor was 'unavailable' and so he should be replaced. I did not agree with applicant on this and I recommended the parties now go back to Dr. Conwisar for a reevaluation now that the CT has been filed and there would/could be additional records sent to him. I say this also because Dr. Conwisar provided a retroactive MMI date with the whole person impairments (WPIs). HE should issue the MMI report contemporaneous to his MMI evaluation, and he should address AOE/COE on the CT and also address the hips (if they are/were involved at all, in either industrial injury or non-industrial, or any combination thereof).

It appears that Petitioner is contending there was significant prejudice and irreparable harm by the undersigned's Findings and Order, because the PQME is not being replaced. It is noted that the trier of fact has discretion on whether to replace the PQME in circumstances such as in this case. At pages 2 and 3 of the F&O and Opinion, I discussed the factors involved with replacing a panel PQME, namely pursuant to CCR §31.5 (16 grounds to replace). Defendant's communication with the PQME's office regarding cancelation of the evaluation does not constitute an impermissible communication, as it pertains only to cancelation of the appointment and defendant's objection to the unilateral appointment scheduling by applicant's attorney. There was no other discussion about the case in that cancelation communication.

The applicant was not aware of the cancelation and appeared in November 2024 but was turned away. This does not mean the PQME was "unavailable" either, so as to warrant a replacement. It just means the appointment was canceled, unfortunately unbeknownst to her. Had defendant agreed to the reevaluation, then the doctor would have seen her. Or rather, there is no evidence that the doctor would not have seen her if defendant hadn't canceled it. It was not the doctor's doing. Therefore, the request to replace the PQME under the guise of "unavailability" is not proper here.

Despite the finding that the doctor was NOT unavailable for purposes of this section, the Court, in its discretion on whether to replace a PQME, would have to consider the factors outlined in *VASQUEZ v. INOCENSJO RENTERIA (2025) 90 CCC 514:*

1. *The length of delay caused by unavailability:* He wasn't unavailable – defendant canceled the appointment 3 months before, unbeknownst to applicant. There is no showing that Dr. Conwisar is or was "unavailable" for a properly scheduled, agreed upon, reevaluation.

2. *The amount of prejudice caused by the delay in availability versus the amount of prejudice caused by restarting the PQME process:* In this case, it would be

significant prejudice to start over, considering this PQME has issued 5 reports in this case since 2021, and sat for deposition in May 2024 with yet another supplemental report issuing in July 2024. It would be unreasonable to start the entire PQME process over with a new doctor when Dr. Conwisar has familiarity with the applicant, reviewed multiple records, and was deposed.

3. *What efforts were made to remedy the problem:* The attorneys should meet and confer over the reevaluation with Dr. Conwisar and the fact that there was a newer-filed CT in June 2024 and that the hips would probably need to be examined. The doctor was not 'unavailable' for these purposes - the issue was between the parties.

4. *Factual reasons to justify keeping or replacing the PQME:* The history since 2021 in this case would reflect an extensive involvement with this particular PQME and to replace him and start over is unreasonable at this point, especially since he is not truly "unavailable" for a reevaluation.

5. *Consider the WCAB 's constitutional mandate to accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character:* In this regard, I found that it would unreasonable to remove the PQME at this time for what is an alleged improper *ex parte* communication (the cancelation notice/email by defense), plus the doctor was not truly unavailable so as to allow the replacement and start the process over. It would delay the case further to start over and cost defendant thousands of dollars more to have a new doctor review subpoenaed records and medical reports that Dr. Conwisar already reviewed. It would be most beneficial to the parties instead to reschedule the evaluation with Dr. Conwisar to address the CT, his own deposition transcript and his 5 or 6 reports, discuss the potential CT with the applicant and also provide an analysis regarding the hip(s).

It should be noted here that the 8/7/2024 letter by defense to the PQME regarding cancelation of the evaluation was copied on the applicant's attorney, and there is no requirement for this letter to be served. I do believe the letter was issued and was copied upon applicant's attorney's office, and perhaps he simply did not see it. The applicant testified at trial that she was not aware the appointment was canceled and she therefore appeared at the doctor's office on 11/18/2024. The problem here is that there is no real significant prejudice to applicant because of this, nor is there any irreparable harm shown by the communication or by the cancelation. The issue at trial (or perhaps an Expedited Hearing) should have been instead to compel defendant to allow the PQME reevaluation to proceed forward. Instead, now we are in June 2026 with an enormous amount of time having been spent on this replacement / sanctions issue.

With regard to the sanctions, defendant could also claim sanctions if they were to allege applicant's attorney, unilaterally and without the agreement with defense counsel, set a reevaluation with Dr. Conwisar when he did in June 2024

(setting the appointment for November 2024, which was later canceled by defense counsel in August 2024). The parties need to take a step back and look at the big picture here - getting this case to a place where they can finalize the discovery and litigate the case before the WCAB with a complete, substantial medical record, OR settle the case/issues amicably, expeditiously, and with fairness to both parties. They cannot do that if they are going to attack each other at ~very chance, and they also cannot complete the case and move forward without a final and complete medical-legal (Dr. Conwisar) report.

Therefore, I did not find Applicant was harmed by my finding that the doctor should not be replaced (at this time), and that sanctions were not warranted against defendant, but that they should go back to Dr. Conwisar for reevaluation.

The parties should schedule the reevaluation now, get Dr. Conwisar to address the now filed CT, and have him review his own reports and deposition transcript, and discuss the hip(s) again, and then provide the parties with an updated comprehensive MMI report contemporaneous to his physical examination of the applicant.

I also indicated in the Opinion that applicant likely should see a rheumatologist because of psoriatic arthritis and what this can do the body/joints and whether there is any interplay here. Whether it is industrial is a question for a different day. Also, applicant has not worked in quite some time, so there may be some improvement in her condition. Dr. Conwisar has not seen her in a long time now. He may need to revise his MMI/WPI findings.

(Report, at pp. 2-7, emphasis in original.)

V.

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

Administrative Director (AD) Rule 31.5(a) enumerates 16 circumstances under which a party may request a replacement QME panel. It states:

(a) A replacement QME to a panel, or at the discretion of the Medical Director a replacement of an entire panel of QMEs, shall be selected at random by the Medical Director and provided upon request whenever any of the following occurs:

(1) A QME on the panel issued does not practice in the specialty requested by the party holding the legal right to request the panel.

(2) A QME on the panel issued cannot schedule an examination for the employee within ninety (90) days of the initial request for an appointment,

or if the 90 day scheduling limit has been waived pursuant to section 31.3(e) of Title 8 of the California Code of Regulations, the QME cannot schedule the examination within one-hundred and twenty (120) days of the date of the initial request for an appointment.

(3) The injured worker has changed his or her residence address since the QME panel was issued and prior to date of the initial evaluation of the injured worker.

(4) A physician on the QME panel is a member of the same group practice as defined by Labor Code section 139.3 as another QME on the panel.

(5) The QME is unavailable pursuant to section 33 (Unavailability of the QME).

(6) The evaluator who previously reported in the case is no longer available.

(7) A QME named on the panel is currently, or has been, the employee's primary treating physician or secondary physician as described in section 9785 of Title 8 of the California Code of Regulations for the injury currently in dispute.

(8) The claims administrator, or if none the employer, and the employee agree in writing, for the employee's convenience only, that a new panel may be issued in the geographic area of the employee's work place and a copy of the employee's agreement is submitted with the panel replacement request.

(9) The Medical Director, upon written request, finds good cause that a replacement QME or a replacement panel is appropriate for reasons related to the medical nature of the injury. For purposes of this subsection, "good cause" is defined as a documented medical or psychological impairment.

(10) The Medical Director, upon written request, filed with a copy of the Doctor's First Report of Occupational Injury or Illness (Form DLSR 5021 [see 8 Cal. Code Regs. §§ 14006 and 14007]) and the most recent DWC Form PR-2 ("Primary Treating Physician's Progress Report" [See 8 Cal. Code Regs. § 9785.2]) or narrative report filed in lieu of the PR-2, determines after a review of all appropriate records that the specialty chosen by the party holding the legal right to designate a specialty is medically or otherwise inappropriate for the disputed medical issue(s). The Medical Director may request either party to provide additional information or records necessary for the determination.

(11) The evaluator has violated section 34(Appointment Notification and Cancellation) of Title 8 of the California Code of Regulations, except that the evaluator will not be replaced for this reason whenever the request for a replacement by a party is made more than fifteen (15) calendar days from either the date the party became aware of the violation of section 34 of Title 8 of the California Code of Regulations or the date the report was served by the evaluator, whichever is earlier.

(12) The evaluator failed to meet the deadlines specified in Labor Code section 4062.5 and section 38 (Medical Evaluation Time Frames) of Title 8 of the California Code of Regulations and the party requesting the replacement objected to the report on the grounds of lateness prior to the date the evaluator served the report. A party requesting a replacement on this ground shall attach to the request for a replacement a copy of the party's objection to the untimely report.

(13) The QME has a disqualifying conflict of interest as defined in section 41.5 of Title 8 of the California Code of Regulations.
(14) The Administrative Director has issued an order pursuant to section 10164(c) of Title 8 of the California Code of Regulations (order for additional QME evaluation).

(15) The selected medical evaluator, who otherwise appears to be qualified and competent to address all disputed medical issues refuses to provide, when requested by a party or by the Medical Director, either: A) a complete medical evaluation as provided in Labor Code sections 4062.3(i) and 4062.3(k), or B) a written statement that explains why the evaluator believes he or she is not medically qualified or medically competent to address one or more issues in dispute in the case.

(16) The QME panel list was issued more than twenty four (24) months prior to the date the request for a replacement is received by the Medical Unit, and none of the QMEs on the panel list have examined the injured worker.

(Cal. Code Regs., tit. 8, § 31.5(a).)

As relevant here, section 4062.3 provides as follows:

(a) Any party may provide to the qualified medical evaluator selected from a panel any of the following information:

(1) Records prepared or maintained by the employee's treating physician or physicians.

(2) Medical and nonmedical records relevant to determination of the medical issue.

(b) Information that a party proposes to provide to the qualified medical evaluator selected from a panel shall be served on the opposing party 20 days before the information is provided to the evaluator. If the opposing party objects to consideration of nonmedical records within 10 days thereafter, the records shall not be provided to the evaluator. Either party may use discovery to establish the accuracy or authenticity of nonmedical records prior to the evaluation.

…

(e) All communications with a qualified medical evaluator selected from a panel before a medical evaluation shall be in writing and shall be served on the opposing party 20 days in advance of the evaluation. Any subsequent communication with the medical evaluator shall be in writing and shall be served on the opposing party when sent to the medical evaluator.

(f) Communications with an agreed medical evaluator shall be in writing, and shall be served on the opposing party when sent to the agreed medical evaluator. Oral or written communications with physician staff or, as applicable, with the agreed medical evaluator, relative to nonsubstantial matters such as the scheduling of appointments, missed appointments, the furnishing of records and reports, and the availability of the report, do not constitute ex parte communication in violation of this section unless the appeals board has made a specific finding of an impermissible ex parte communication.

(g) Ex parte communication with an agreed medical evaluator or a qualified medical evaluator selected from a panel is prohibited. If a party communicates with the agreed medical evaluator or the qualified medical evaluator in violation of subdivision (e), the aggrieved party may elect to terminate the medical evaluation and seek a new evaluation from another qualified medical evaluator to be selected according to Section 4062.1 or 4062.2, as applicable, or proceed with the initial evaluation.

(Lab. Code, § 4062.3(a)-(b) and (e)-(g).)

"Section 4062.3 contains different procedural requirements depending on the nature of the documents or materials to be provided to the QME." (*Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803, 1810 (Appeals Board en banc).) Due to the differing treatment of information versus communication in the statute, the Appeals Board in *Maxham v. California Department of Corrections and Rehabilitation* (2017) 82 Cal.Comp.Cases 136 (Appeals Board en banc) delineated between the two as subsequently explained in *Suon*:

> The preliminary question is whether the documents or materials sent to the QME are "information" or "communication" as those terms are used in the Labor Code.
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> In *Maxham*, the Appeals Board distinguished between "information" and "communication" under section 4062.3 as follows:
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> 'Information,' as that term is used in section 4062.3, constitutes (1) records prepared or maintained by the employee's treating physician or physicians, and/or (2) medical and nonmedical records relevant to determination of the medical issues.
>
> A 'communication,' as that term is used in section 4062.3, can constitute 'information' if it contains, references, or encloses (1) records prepared or maintained by the employee's treating physician or physicians, and/or (2) medical and nonmedical records relevant to determination of the medical issues. (*Maxham, supra*, 82 Cal.Comp.Cases at p. 138.)
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> (*Suon, supra*, 83 Cal.Comp.Cases at p. 1810.)

In *Suon*, the Appeals Board opined that "[i]n contrast to the specific remedy provided by section 4062.3(g) for an ex parte communication, the Labor Code does not provide a specific remedy for a violation of section 4062.3(b)." (*Suon, supra*, 83 Cal.Comp.Cases at p. 1815.) The decision held that the trier of fact has wide discretion to determine the appropriate remedy for a violation of section 4062.3(b). (*Id*.)

Moreover, pursuant to section 5813(a), the Workers' Compensation Appeals Board has the discretionary power to order the payment of sanctions for "bad-faith actions or tactics which are frivolous or solely intended to cause unnecessary delay." (Lab. Code, § 5813(a).) Bad-faith actions or tactics are defined as "actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit." (Cal. Code Regs., tit. 8, § 10421(b).)

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).)

Here, it appears from our preliminary review that the record may not be complete regarding the issues of the request for a replacement panel or of sanctions. 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.

VI.

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.

VII.

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 A. ZALEWSKI, CHAIR

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, 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.

DANA JOHNSON
LAW OFFICES OF JIM T. RADEMACHER
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN, LLP

PAG/*ara*

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