

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

DEVIN TAYLOR, *Applicant*

vs.

THE MADISON CLUB, INC.;
TECHNOLOGY INSURANCE, administered by AMTRUST, *Defendants*

**Adjudication Number: ADJ14574913
Riverside District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Applicant seeks reconsideration of the “Findings and Orders” (F&O) issued on June 3, 2026, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that the defendant was entitled to a credit of \$2,946,971.28 for applicant’s civil recovery and that applicant failed to prove the employer was negligent with regard to applicant’s injury.

Applicant contends that the record establishes employer negligence. Applicant further contends that the WCJ erred in issuing a credit because the issue for trial was limited to the issue of res judicata as to the civil judgement.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ’s Report. Based on our review of the record we will deny applicant’s petition for reconsideration.

FACTS

Applicant claims to have sustained an industrial injury while working as a valet on March 18, 2021. (Transcript of Proceedings, February 12, 2026, p. 3, lines 21-23.)

Applicant worked at a golf country club. (*Id.* at p. 7, lines 16-21.) Every Thursday, the club would host an event called “Thirsty Thursday” at the clubhouse where members would socialize and drink. (*Id.* at p. 13, lines 21-25.)

It was expected that valets would take people home in either the valet’s personal car or the member’s car whenever the member became too inebriated. (*Id.* at p. 11, lines 10-12.) The total size of the golf club was 600 acres. (*Id.* at p. 15, lines 2-4.) Occasionally, applicant would drive people off site a few miles away. (*Id.* at p. 15, lines 10-16.)

On March 18, 2021, a male club member was escorting a female club member home in her Ferrari. (*Id.* at p. 21, lines 7-19.) The male club member asked applicant to follow them in the member’s Maserati. (*Ibid.*) They both drove to the female club member’s house and dropped her off. (*Ibid.*)

The male club member gets in the driver’s seat of the Maserati to return applicant to the clubhouse. (*Id.* at p. 25, line 23.) The male club member “punched it” and drove the Maserati at 110 miles per hour. (*Id.* at p. 26, lines 1 – 20.) Soon thereafter, the car crashed into a tree.

The parties stipulated that applicant’s net recovery from the resulting civil lawsuit was \$2,946,971.28. (*Id.* at p. 4, lines 2-4.)

DISCUSSION

I.

Up through July 1, 2024, petitions for reconsideration were subject to former Labor Code section 5909, which 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.)

During the period from July 2, 2024, through June 30, 2026, petitions for reconsideration were subject to former Labor Code 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.

Under Labor Code 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 July 2, 2026, and 60 days from the date of transmission is Monday, August 31, 2026. This decision is issued by or on August 31, 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).

Labor Code 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 July 2, 2026, and the case was transmitted to the Appeals Board on July 2, 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 Labor Code section 5909(b)(1) (in effect from July 2, 2024, through June 30, 2026), because service of the Report in compliance with Labor Code 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 July 2, 2026.

II.

We will first address the issue raised by applicant that the WCJ exceeded the scope of the issues raised at trial. Applicant alleges that the sole issue raised was an issue of res judicata. The

Transcript of Proceedings does not support this argument. According to the Transcript of Proceedings, the issues were read into the record as follows:

THE COURT: . . . Number 1. Defendant's right to credit from applicant's third-party recovery.

Issue 2. Whether injury verdict is Res Judicata as to issue of employer negligence? Do those correctly state the issues in this case?

MS. CARDENAS ORLANDO: Yes, your Honor.

MR. JENSEN: Yes, your Honor.

THE COURT: Let the minutes reflect that both parties have confirmed the issues as reads are accurate.

(Transcript of Proceedings, February 12, 2026, p. 4, lines 13-21.)

Next, we address the question of whether defendant is entitled to a credit in this matter. One of the central objectives in a credit proceeding is “to allocate responsibility equitably between a negligent employer and a third-party tortfeasor, and thereby prevent the employer from taking ‘advantage of his own wrong’ (Civ. Code, § 3517).” (*Associated Construction and Engineering Co., v. Workers’ Comp. Appeals Bd. (Cole)* (1978) 22 Cal.3d 829, 833, 834 [43 Cal.Comp.Cases 1333] quoting *Witt v. Jackson* (1961) 57 Cal.2d 57 [26 Cal.Comp.Cases 252] [allowing a negligent employer reimbursement would permit it to profit from its own wrong and should be denied].)

In *Martinez v. Associated Engineering & Construction Company* (1979) 44 Cal.Comp.Cases 1012, 1021-1022 (Appeals Board en banc), we held that a defendant has the burden of proof to establish its right to credit by showing that there was a settlement of a third-party civil case and that it paid benefits. The amount of the net recovery, i.e., the amount actually received by an applicant exclusive of costs and attorney’s fees, is the amount that the defendant may assert as a credit. Then, the burden shifts to the applicant to establish that the employer was negligent. If the employer was not negligent, it is entitled to a credit. If the applicant shows that the employer was negligent, the burden shifts back to the employer to show comparative negligence by a third party and/or the applicant. If the employer is 100% at fault, the credit is barred.

There is no question that the alleged industrial injury in this matter is the motor vehicle accident, which was the subject of applicant’s civil lawsuit. Thus, the sole question is whether

defendant should be precluded from seeking a credit either partially, or in full, due to applicant's allegation of employer negligence.

Applicant argues on reconsideration that employer negligence was proven because the employer was aware of "Thirsty Thursdays" and failed to provide applicant a safe method of transport. (Petition for Reconsideration, p. 6, lines 25-28.) We agree with the WCJ that applicant has not established employer negligence solely based upon these allegations and thus, the employer is entitled to full credit.

There is nothing in the record establishing that the male club member who was driving the car at the time of the accident was intoxicated. No police report is in evidence. Applicant did not testify that the driver had been drinking. According to applicant's testimony the driver's speed was the cause of the accident. It is unclear what connection "Thirsty Thursdays" has in this case as there is no evidence that intoxication was involved.

Next, and even if we assume that the driver was intoxicated, applicant seeks to impart negligence upon the employer based upon the employer's furnishing of alcohol to the driver. However, such civil liability is generally precluded under California law, and applicant argues no exception to the general exclusion. (Bus. & Prof., § 25602(b).)

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Order issued on June 3, 2026, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 31, 2026

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

**DEVIN TAYLOR
WALTER CLARK LEGAL GROUP
DIETZ, GILMOR & CHAZEN, APC**

EDL/mt

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