

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

**EARNEST KEFFER (deceased); KATHRYN KEFFER, JALIA LOREDO<sup>1</sup>, and ISAIAH  
KEFFER, *Applicants***

**vs.**

**KAISER STEEL CORPORATION, permissibly self-insured, in liquidation, et al.;  
SELF INSURERS' SECURITY FUND, et al. *Defendants***

**Adjudication Number: ADJ13909512  
San Francisco District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Applicants seek removal of the Findings of Fact and Order (F&O) issued on December 16, 2025. The workers' compensation administrative law judge (WCJ) found, in relevant part, that all nonprivileged responsive documents within applicants' control have been produced to defendants and that applicants have not met "their burden of proof as the proponents of the prima facie claims for attorney-client and work-product privileges."

Applicants allege that the WCJ did not utilize the appropriate balancing test for protection of privacy rights, particularly as it pertains to the privacy rights of persons and entities who are not parties to the claim at bar. They allege that they will suffer irreparable harm if they are forced to disclose private information.

Defendant Self Insurers' Security Fund (SISF) filed an answer. The WCJ issued a Report and Recommendation on Petition for Removal recommending that applicants' Petition be denied.

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<sup>1</sup> Per the Order Joining Party Applicants, this applicant's name is Jaila Loreda. The amended application filed later indicates Jaila Keffer. The pleadings all indicate the surname as being Keffer. The parties are encouraged to clarify the name forthwith.

We have considered the allegations of the Petition for Removal and the Answer, and the contents of the Report with respect thereto. Based on our review of the record, we will treat the Petition as one seeking reconsideration and we will grant the Petition for Reconsideration, rescind the WCJ's decision and substitute a new order that denies SISF's motion to compel.

## **FACTS**

Applicant Kathryn Keffer, decedent's spouse, filed an Application for Adjudication of Claim-Death alleging death as the result of exposure to asbestos and other toxic substances while her spouse was employed at Kaiser Steel Corporation on September 15, 2020. The death certificate lists a date of death of September 21, 2019.

On February 11, 2021, applicant filed a Petition for Joinder to include two additional alleged employers and insurance carriers, and on March 22, 2021, the additional employers and carriers were joined.

On September 7, 2022, Applicant petitioned to join two additional applicants, decedent's adult grandchildren. The additional applicants were joined by Order Joining Party Applicants on September 7, 2022.

Defendant issued a Subpoena Duces Tecum to the law firm of Brayton Purcell LLP (Brayton) as Custodian of Records on October 23, 2024. (Defendant's Exhibit B.) The subpoena stated:

PLEASE FURNISH ALL NON-PRIVILEGED AND NON-CONFIDENTIAL RECORDS FOR EARNEST KEFFER [DOB and SSN omitted]. TO INCLUDE ALL MEDICAL RECORDS, MEDICAL REPORTS, RELEASES, POLICE REPORTS, ER RECORDS, SETTLEMENT DOCUMENTS AND/OR AGREEMENTS, SETTLEMENT PAYMENTS, BANKRUPTCY TRUST CLAIM FORMS, COMPLAINTS/CLAIM FORMS, COURT FILINGS, DEPOSITION TRANSCRIPTS, DISCOVERY REQUESTS/RESPONSES; TO INCLUDE THOSE REGARDING ANY PERSONAL INJURY CLAIM(S) FILED BY OR FOR EARNEST KEFFER; TO INCLUDE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO CASE NUMBERS CGC-82-800933 AND NO. 305901.

In a correspondence dated December 17, 2024, Brayton objected to the release of settlement documents on the basis that SISF had not provided a legitimate basis for the documents and on the basis that they are protected by the right of privacy. (Applicant's Exhibit 1.) A second

correspondence dated February 7, 2025, reiterates Brayton's objection and contends that documents not subject to attorney client privilege had been served. (*Id.*)

SISF received records from the Superior Court of San Francisco pertaining to decedent's personal injury lawsuit filed in 1999. (Defendant's Exhibit C.) The records did not include medical records, settlement documents/agreements, or bankruptcy trust forms. The records include court documents and pleadings related to a Complaint for Personal Injury-Asbestos (Complaint) filed on behalf of the decedent. In Brayton's pleadings in this matter, they allege that Katrina Keffer, decedent's daughter, and Eric Keffer, decedent's son, were parties to this civil action, but the documents do not confirm their participation with particularity. The Complaint was filed against several manufacturers of alleged asbestos containing products as well as a few of decedent's prior employers. Defendant Kaiser Steel is a named defendant. Included in the documents is a "statement of damages" filing which outlines a demand for damages related to pain and suffering, emotional distress, medical expenses, future medical expenses, loss of household services. (*Id.* at p. 267.) The statement does not include a demand for loss of consortium or wrongful death. In the pleadings, the decedent alleges that exposure to asbestos caused breathing difficulties, asbestosis, and/or lung damage as well as the increased fear of developing mesothelioma, lung cancer and other cancers. (*Id.* at p. 370.) Decedent alleged that he was diagnosed with asbestosis and pleural disease in May of 1999. (*Id.*)

On March 18, 2025, SISF filed a Petition to Compel Brayton Purcell's Compliance to Subpoena Duces Tecum. Defendant contends that they are entitled to medical records from Brayton without cost and that they are entitled to settlement documents and bankruptcy trust records because they are relevant to SISF's ability to seek a possible credit pursuant to Labor Code section 3861.<sup>2</sup> To date, a petition for credit has not been filed. No evidence was provided that any of the defendants in this claim intervened or filed a lien in the civil case.

On September 30, 2025, an email was sent to all defendants producing "civil medical reports" and noting service of previously served items. (Defendant's Exhibit A.) The exhibit includes copies of the medical records served which include reports, diagnostic findings, and notes from medical experts utilized by one defendant in the civil matter.

The matter was set for a status conference on May 28, 2025 by the WCJ to adjudicate defendant's Petition to Compel. The matter was continued noting:

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<sup>2</sup> All further statutory references will be to the Labor Code unless otherwise indicated.

Hearing was set on SISF's petition to compel compliance with production demand re: alleged civil settlement documents in applicants' control. AA believes that decedent's civil lawsuit was dismissed years ago but is unsure whether any settlements were entered into and, if so, whether any related documents exist. AA will investigate further.

(Minutes, 05/28/25.)

On July 30, 2025, the matter set for trial. On the Pre-Trial Conference Statement, the WCJ noted that the matter was set for trial only on the Petition to Compel, and "per defense counsel's representations, production demand is part of discovery relating to liability- not solely credits as AA asserts." Applicants' counsel was ordered to produce a log of documents withheld and the basis for withholding.

The trial went forward on November 10, 2025. Applicants' counsel Brayton indicated on the record that they had served all non-privileged documents. (Minutes of Hearing (MOH), 11/10/2025, 4:6-11.) Brayton provided a log of documents produced and documents withheld as confidential. (Exhibit 1.) The documents withheld appear to be settlement documents with several different civil defendants ranging in dates from 2001 through 2021 (post death).

In post-trial briefing, SISF seems to allege that Brayton is withholding medical reports that should be turned over in compliance with the subpoena. They further allege that settlement documents from the civil claim should be turned over so that a potential third party credit claim may be investigated. While it is not in the record or memorialized in the MOH, defendant alleges that at the hearing applicants' counsel advised that one of the settlements, specifically a settlement entered into in 2021, was only with decedent's son Eric. In its briefing, Brayton alleges that they are only withholding settlement documents involving only Eric and Katrina, who are not applicants in the workers' compensation death claim. They allege that the settlement documents are privileged and/or protected under a right of privacy. They further allege that defendants' attempts to subpoena decedent's medical records from them is a way to obtain the medical reporting without cost.

The WCJ ultimately concluded that applicants are assigned the initial burden of proving that the documents are protected by attorney-client and work-product privileges. She opined that the broad scope of relevant evidence necessitates disclosure, and that based on the work product privilege, applicants should have offered a way for the documents to be reviewed for privilege.

In the Petition, applicants contend that the documents withheld are settlement documents of decedent's civil case for damages, brought while he was still alive and concluded in 2010, before his death. Decedent was the only party plaintiff in the civil matters. While decedent's son and daughter may have received settlement proceeds after applicant's death, they are not claimants in the workers' compensation death case, and no workers' compensation credit rights apply to monies that they may have received.

## I.

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 January 16, 2026, and 60 days from the date of transmission is March 17, 2026. This decision is issued by or on March 17, 2026, so that we have timely acted on the petition as required by section 5909(a).

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on January 16, 2026 and the case was transmitted to the Appeals Board on January 16, 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 January 16, 2026.

## II.

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 findings regarding threshold issues as to the claim of injury by applicants, existence of an employment relationship between decedent and defendant, and the insurance status of one defendant. Accordingly, the WCJ’s decision is a final order subject to reconsideration rather than removal.

Although the decision contains findings that are final, petitioner is only challenging the interlocutory finding that applicants did not meet their burden proof regarding attorney client and work product privilege and must comply with an order to turn over alleged privilege materials. Therefore, we will apply the removal standard to our review. (See *Gaona, supra.*)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v.*

*Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

As discussed below, based upon our review of the record we are persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner. We therefore grant the Petition as one seeking reconsideration.

### III.

We agree with the WCJ that the statement on the record that Brayton has now served all non-privileged materials is accepted. Therefore, we will only address the matter as it relates to the settlement documents outlined as being withheld in Joint Exhibit 1.

Section 5708 allows liberal, broad-reaching discovery. (*IBM Corp. v. Workers' Compensation Appeals Bd.*, (2001) 66 Cal.Comp.Cases 277, 278 (writ den.)) Generally, there is a policy of favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence in workers' compensation cases. (*Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654, 663 [64 Cal.Comp.Cases 624].) Section 5708 mandates that we are not "bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division." (Lab. Code, § 5708.)

Nonetheless, statutory privilege provisions are applicable in workers' compensation proceedings. (See e.g. *Allison v. Workers' Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654 [64 Cal.Comp.Cases 624]; *Martin v. Workers' Comp. Appeals Bd.* (1997) 59 Cal.App.4th 333 [62 Cal.Comp.Cases 1500]; *Hardesty v. McCord & Holdren, Inc.* (1976) 41 Cal.Comp.Cases 111 (Appeals Board Panel).) These statutory privilege provisions also extend to discovery, because discovery is permissible only if the requested information is "not privileged." (Code Civ. Proc., §

2017(a); *Ameri-Medical Corp. v. Workers' Comp. Appeals Bd. (Rhooms)* (1996) 42 Cal.App.4th 1260, 1287 [61 Cal.Comp.Cases 149].)

We first note that the subpoena sought records of decedent and was to Brayton as the custodian of records. The circumstances are complicated as the representative for decedent is also the representative for applicants in this claim. For the purposes of this discussion, we observe that Brayton is also acting on behalf of the third party plaintiffs in the civil action by asserting privacy rights and/or that the documents are subject to attorney-client privilege.

Applicants allege that the documents are subject to a number of statutory privileges including attorney client privilege or work product privilege pursuant to Evidence Code section 954, trade secret privilege pursuant to Evidence Code 1060, and mediation confidentiality pursuant to Evidence Code sections 1119 and 1126.

Evidence Code section 1123 explicitly allows settlement agreements prepared in the course of mediation to be exempt from the protections surrounding mediation and be both admissible and discoverable. Yet, there is no evidence that the settlement documents were effectuated through mediation or include other communications that might be protected. Pursuant to Evidence Code 1060, the holder of the privilege is the owner of a trade secret. Brayton has not presented evidence to suggest that the decedent was the owner of relevant trade secrets, therefore this privilege cannot apply either.

We first note that even though decedent can no longer assert the attorney client privilege on his own behalf, the privilege survives his death, and Brayton is still bound by it. Moreover, upon his death, we presume that applicant's children became his heirs, and the privileges that belonged to decedent regarding those documents that concerned him likely still apply. The record here is incomplete, and we cannot reach the issue of the application of the attorney-client privilege without more.

However, under the privacy provisions of the California Constitution (Cal. Const., art. I, § 1), "the right of privacy extends to one's confidential financial affairs" and, unless there is a compelling public interest, third parties have a right "to maintain reasonable privacy regarding their financial affairs." (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 656-657; see also *Ameri-Medical Corp. v. Workers' Comp. Appeals Bd. (Rhooms)* (1996) 42 Cal.App.4th at p. 1287 [61 Cal.Comp.Cases at p. 169] ("The right to privacy in disclosure of financial information affects the scope of discovery."))

The courts have held that constitutional considerations for a right of privacy may protect confidential financial information from being discoverable even where an enumerated statutory privilege may not apply. (*Valley Bank of Nev. V. Superior Court* (1975) 15 Cal. 3d 652, 656.) Particularly, where the courts must balance the rights of administrative litigants with the rights of third parties to maintain reasonable privacy regarding personal affairs. (*Id.* at p. 656; *Sehlemyer v. Dept. of General Services* (1993) 17 Cal. App.4th 1072, 1080; *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 712.) The courts have provided considerations which may affect the balancing of the privacy right versus favoring liberal discovery rights. Considerations may include:

the purpose of the information sought, the effect that disclosure will have on the parties and on the trial, the nature of the objections urged by the party resisting disclosure, and ability of the court to make an alternative order which may grant partial disclosure, disclosure in another form, or disclosure only in the event that the party seeking the information undertakes certain specified burdens which appear just under the circumstances

(*Valley Bank, supra*, 15 Cal.3 652, at 658.)

In this matter, we agree that a confidential settlement agreement entered into by individuals who are not parties to the case at bar, that is, decedent and his heirs, would be protected by an expectation of privacy. The proponent of discovery of protected material has the burden of making a threshold showing that the evidence sought is directly relevant to the claim or defense. (*Harris v. Superior Court* (1992) 3 Cal.App.4th 661, 665; *Britt v. Superior Court* (1978) 20 Cal.3d 844, 859-862.) While defendants do not discuss whether there is a compelling public interest, they also do not provide an adequate showing per *Allison, supra*, 72 Cal.App.4th 654 that the information is relevant or will lead to relevant and admissible evidence.

SISF provides at least two bases at separate times for seeking the settlement documents. The consistent goals in all its pleadings appear to be to determine the value of the claim for settlement and to determine whether there will be a credit right pursuant to section 3861. However, the WCJ noted that defendants asserted in the pre-trial conference statement that the goal was to determine liability.

In looking at valuation and the possibility of a third party credit, the basis is premature and without support as SISF has not articulated a basis for credit or how decedent's settlements in the civil case will affect valuation of this claim for death benefits by applicants. Section 3861 states:

The appeals board is empowered to and shall allow, as a credit to the employer to be applied against his liability for compensation, such amount of any recovery by

the employee for his injury, either by settlement or after judgment, as has not theretofore been applied to the payment of expenses or attorneys' fees....

(Lab. Code, § 3861.)

First, a petition for third party credit has not been filed in this matter and is therefore not at issue in this matter. As a result, the documents are not relevant to any *current* issue or conflict in this matter.

Second, even if a credit petition were filed, there is unlikely to be any overlap in compensation as an inter vivos claim at the WCAB was never filed on behalf of the decedent. The evidence is not clear as to who was a party to the settlements at issue here. However, Brayton alleges that it was only Eric, decedent's son, and Katrina, decedent's daughter, who were recipients of proceeds of the settlement.<sup>3</sup>

When an injury causes death to an employee, an employer is liable for an additional "death benefit, to be allowed to the dependents. . ." (Lab. Code, § 4701(b).) That is, by statute, death benefits do not compensate the deceased employee for their injury. Instead, death benefits compensate the deceased employee's *dependents* for the loss of support that was provided by the employee during their lifetime. (Lab. Code, §§ 4701, 4702.) The courts have frequently explained that the "dependent's right...to death benefits...is '*independent and severable* from the employee's claim for disability compensation.'" (*Berkebile v. Workers' Comp. Appeals Bd.* (1983) 144 Cal.App.3d 940, 944 [48 Cal.Comp.Cases 438], quoting *Zenith Insurance Co. v. Workers' Comp. Appeals Bd.* (1981) 124 Cal.App.3d 176, 187 [46 Cal.Comp.Cases 1126], italics added; Lab. Code, §§ 4701(b), 4702, 4703.) In other words, death benefits are a separate species of benefit that belong *strictly* to the dependent and are *independent* of any workers' compensation benefits owed to the deceased employee.

Ultimately, with respect to species of damages or the parties involved, there is simply no evidence here of a nexus between the civil case and the dependency benefits that may be owed in this claim. Likewise, section 3861 only allows a credit against compensation owed to decedent for benefits that decedent received in a civil case involving the same incident. Under the same logic, defendants would have to show that applicants received damages in the civil case on a similar basis as the basis for the compensation owed to applicants for benefits in the workers' compensation

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<sup>3</sup> Even if the decedent were also a recipient of the settlement proceeds, the same analysis will apply.

death claim for benefits. Thus, it is unclear how payment of a civil settlement to individuals who are not parties to the case here, nor even alleged to be dependents, would be relevant to a potential claim of credit or even a reduction of defendants' liability.

Defendants do not provide any basis as to how the settlement documents will be relevant to adjudicating liability. Using the considerations outlined in *Valley Bank, supra*, defendants have alternative discovery options for disputing liability. For compensability defenses, defendants need only rely on the medical legal process pursuant to section 4060 and medical records. Not only have the medical records been provided to the defendants, but the records admitted at trial have ample leads to additional records should SISF believe they are not receiving all records. The Superior Court records, alone, include depositions and interrogatories from the decedent which discuss exposure and list all or most of the medical facilities where he received treatment. Moreover, the very nature of expert reporting in civil litigation tends to be much less reliable than the treatment records in determining liability in workers' compensation matters.

In terms of establishing or disputing dependency, the relevant information will be in financial information of the decedent as well as the alleged dependents. The death benefits are set by statute outlined in section 4702, and will only be affected by the amount applicants can prove they were receiving at the time of injury or death, subject to provisions for special statuses or presumptions applicable to the alleged dependents. (Lab. Code, §§ 3501-3503.) The amounts of settlements previously reached by unaffiliated individuals will not have any bearing on this analysis.

Ultimately, when weighing the privacy rights here, SISF did not provide an adequate basis for proving that the contested documents are relevant or will lead to relevant evidence. As such, we will grant the Petition as one for Reconsideration, rescind the F&O and substitute an order denying the Petition to Compel.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration of the decision of December 16, 2025 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Board that the decision of December 16, 2025 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

**IS ORDERED** that defendant SISF's Petition to Compel Brayton Purcell's Compliance to Subpoena Duces Tecum filed on March 18, 2025 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ PAUL F. KELLY, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**March 17, 2026**

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

**KATHRYN KEFFER  
JALIA LOREDO  
ISAIAH KEFFER  
BRAYTON PURCELL  
SAMUELSEN GONZALEZ  
STATE COMPENSATION INSURANCE FUND  
LAW OFFICES OF RICHARD GREEN**

**TF/pm**

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