WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

EDWARD JONES, *Applicant*

vs.

MOTOR CITY GENERAL SALES & SERVICE; NATIONAL UNION FIRE INSURANCE COMPANY, administered by GALLAGHER BASSETT SERVICES, INC., *Defendants*

Adjudication Number: ADJ10111444
Bakersfield District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the "Findings and Award" (F&A) issued on September 2, 2025, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant was not entitled to an award of temporary disability because he was capable of working modified duty, but did not work.

Applicant contends that defendant failed to offer modified work within applicant's work restrictions.

We have received an answer from defendant.[1] The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration or grant reconsideration to amend the findings of fact to find that defendant offered appropriate work to applicant.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, we will grant applicant's 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

[1] To the extent that defendant's answer could be construed as seeking reconsideration of the September 2, 2025 F&A, we have not treated it as a petition for reconsideration as it would have been untimely filed. (Lab. Code, § 5903.) We have only considered defendant's Answer to the extent that it responds to applicant's Petition for Reconsideration.

deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

FACTS

Per the WCJ's Report:

> On October 8, 2014, Petitioner Edward Jones sustained a specific industrial injury to his neck, left shoulder and arm from a traffic collision. Petitioner was able to continue full-duty work, but reportedly was involved in a second motor vehicle accident on or about November 20, 2014. Petitioner reportedly acknowledged being able to continue working but demanded to be laid off. Defendant-Employer agreed to lay him off as requested. Defendant's Exhibit D: Statement of Jennifer Galagan 11/20/12014; Defendant's Exhibit E: Statement of Todd Sumrall 11/20/2014; Defendant's Exhibit C: Employee Separation Report 11/21/2024.
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> Petitioner was provided with industrial medical treatment including X-rays, medications, physical therapy, MRI scanning and EMG/NCS testing. He declined surgical options after consultation. He was discharged from care and identified as having reached maximum medical improvement (P&S) as of July 13, 2015. *Defendant's Exhibit A: PR-4 Primary Treating Physician's Permanent and Stationary Report of Virgina Alvidrez, M.D. 7/13/2015.*
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> Stephen Choi, M.D. is serving as a Qualified Medical Evaluator in the field of Orthopedic Surgery. He examined Petitioner on March 10, 2017. He reviewed the treatment records and diagnostic test results. He examined Petitioner and provided an initial report. Dr. Choi opined that Petitioner was not yet permanent and stationary pending consideration of "total shoulder arthroscopy of left shoulder." *Joint Exhibit 05: QME report of Stephen Choi, M.D. 3/10/2017 p. 10.*
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> Dr. Choi reevaluated Petitioner and reported on January 19, 2018. Dr. Choi reported that Petitioner was "getting along reasonably well with the left shoulder at the present time." Dr. Choi opined that Petitioner would eventually need left shoulder surgery but was permanent and stationary in the interim. Petitioner was considered permanent and stationary as of January 19, 2018, the date of the examination. *Joint Exhibit 04: QME Report of Stephen Choi, M.D. 1/19/2018 p. 7.*
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> QME Dr. Choi provided a supplemental report on July 2, 2018. He reported his review of MRI scanning. He reported that his review did not change his previously expressed opinions. *Joint Exhibit 03: QME Report of Stephen Choi, M.D. 7/2/2018.*
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> QME Dr. Choi provided a further supplemental report dated July 24, 2018. He opined that shoulder surgery was not recommended since the surgery would not

"provide repair of the cuff tendon at that time." Dr. Choi's opined on apportionment that:

> I believe it is medically reasonably probable to give one-third of the impairment attributed to pre-existing degenerative arthritis of the subacromial spur causing the impingement, which is non-industrial and two-thirds to the current injury of 10/08/14 and the rest of the statement following permanent and stationary is unchanged. *Joint Exhibit 02: QME Report of Stephen Choi, M.D. 7/24/2018 p. 2.*

QME Dr. Choi provided a third supplemental report on August 17, 2018. He reported his review of a "miniature picture" of an MRI scan dated March 30, 2015. He indicated that the small copy was "difficult to assess" with respect to appointment and re-affirmed his prior opinions pending an opportunity to review "the entire MRI scan pictures directly …" *Joint Exhibit 01: Report of Stephen Choi, M.D. 8/17/2018 p. 2.*

Meanwhile, Petitioner prosecuted a civil action in Kern County Superior Court case BCV-16-102296 against Kippy Rivens, alleging negligence in causing the rear end auto collision (the instant work injury) on October 8, 2014. The civil action was resolved via settlement with a net recovery to Petition of $9,532.50. *Petition for Credit 8/21/2020.* Defendant sought and obtained a third-party credit against its compensation liability in that amount. *Order Allowing Third Party Credit 9/15/2020.*

The primary parties were unable to settle this case. Trial was held on January 26, 2021. Petitioner alleged a period of temporary disability from November 1, 2014 to January 18, 2018 with Defendant denying liability for TTDI and alleging permanent and stationary status as of July 13, 2015 based on the PR-4 of Dr. Alvidrez. *Joint Exhibit 08: Minutes of Hearing 1/26/2021 p. 2 lines 32-43.*

Petitioner testified that he went off work in November because he felt unable to do the job. He was asked to work but could not lift ten pounds. He was not able to work at all for the employer. On cross-examination, Petitioner testified that he quit his job because he could not do the job. He "just left and was given no static." He was expected to drive and to lift objects of 10-15 pounds. [This] resulted in a order vacating submission for decision for further development of the record. *Joint Exhibit 08: Summary of Evidence 1/26/2021 p. 4 line 21 to p. 5 line 42.*

Jennifer Galagan testified that she was the HR Director for the employer prior November 20, 2014. He was working subject to restrictions including a ten pound lifting limit and prohibition on more than occasional neck motions. Petitioner had been able to work with these restrictions and they would have been provided had he continued working. After the second auto accident, however, Petitioner said that he was "just done." *Joint Exhibit 08: Summary of Evidence 1/26/2021 p. 5 line 45 to p. 6 line 42.*

Todd Sumrall testified that he was the Parts Manager. Petitioner worked in the Parts Department. Petitioner worked subject to restrictions including a ten pound lifting limit. The restrictions were honored and would have continued had Petitioner continued working. *Joint Exhibit 08: Summary of Evidence 1/26/2021 p. 8 lines 1-26.*

Submission of the present case for decision was rescinded. The parties were ordered to develop the medical record by obtaining a supplemental report from QME Dr. Choi "whether any period of temporary disability resulted from the October 8, 2014 injury to the left shoulder and neck." *Order Vacating Submission and Order to Develop the Record 4/06/2021.*

QME Dr. Choi reported as requested. He opined that "In regard to temporary and total disability from the injury of 10/8/14, Mr. Jones has never been totally disabled. He has been temporarily partially disabled up to the present." *Joint Exhibit 06: QME Report of Stephen Choi, M.D. 5/06/2021.*

QME Dr. Choi reportedly thereafter retired from medical-legal evaluation. Peter Newton, M.D. began serving as the replacement QME in the field of Orthopedic Surgery. Dr. Newton initially examined Petitioner and provided a report dated April 24, 2023. Dr. Newton indicated that he had not been provided with medical records in support of the examination and to confirm the history provided by Petitioner. He also indicated that an updated MRI scan was needed to determine Petitioner's current condition. He deferred further analysis to re-examination. *Applicant's Exhibit 02: Report of Peter Newton, M.D. 4/24/2023.*

QME Dr. Newton re-evaluated Petitioner and provided a report dated May 22, 2023. Dr. Newton reported his receipt and review of medical reports and an updated MRI scan. He indicated that Petitioner's condition remained unchanged. Petitioner was felt to be a candidate for left shoulder surgery, but continued to decline surgical intervention. Dr. Newton opined that Petitioner was permanent and stationary had had been so since re-evaluation with Dr. Choi on January 19, 2018. Dr. Newton opined that Petitioner had sustained 28% Whole Person Impairment with 85% industrial causation and 15% causation to pre-existing degenerative conditions and non-industrial activities of daily living. Dr. Newton also opined that further medical treatment on an industrial basis, was appropriate, including eventual surgery. *Applicant's Exhibit 01: QME report of Peter Newton, M.D. 5/22/2023.*

QME Doctor Newton was deposed. Most of his testimony concerned his opinion regarding the extent of permanent impairment. Regarding temporary disability, Dr. Newton testified:

> Q: Doctor, in your opinion was there any period of temporary total disability in this case?

> A: What I said on page 21 was that after 10/8/2014, he should have been able to work with restrictions, but if restrictions were not available, then he would have been TTD through 1/19/18.
>
> Q: An in your opinion, was there any period of temporary partial disability?
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> A: Well, if he was able to work with restrictions, that would be temporary partial disability. *Joint Exhibit 07: Transcript of the Deposition of Peter Newton, M.D. 10/4/2023 p. 16 line 19 to p.17 line 4.*

(WCJ's Report, pp. 4-9.)

DISCUSSION

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.
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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.

(§ 5909.)

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on December 2, 2025, and 60 days from the date of transmission is Saturday, January 31, 2026, which by operation

of law means this decision is due by Monday, February 2, 2026. (Cal. Code Regs., tit. 8, § 10600.). This decision is issued by or on February 2, 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on December 2, 2025, and the case was transmitted to the Appeals Board on December 2, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on December 2, 2025.

II.

We highlight several legal principles that may be relevant to our review of this matter.

Temporary partial disability provides an injured employee two-thirds of the weekly loss in wages during the period that worker is temporarily disabled from an injury. (See Lab. Code, §§ 4650 et. seq.) When an injured worker is offered modified duty, which reasonably accommodates a partial disability, the injured worker must accept such accommodations or else the employer's liability for temporary disability ceases. (See *Vittone v. Workers' Comp. Appeals Bd*. (2001) 66 Cal. Comp. Cases 435 (writ den.) and *Seale v. Workers' Comp. Appeals Bd*. (1974) 39 Cal. Comp. Cases 676, 677 (writ den.) [applicant's refusal to cross a picket line to accept modified duty constituted grounds to deny temporary disability benefits],

> There can be no doubt that section 4657 makes it quite clear that in cases of temporary partial disability the employee is expected to be willing to earn such wages as he is able considering his injury, and that if some other ascertainable cause other than the injury substantially contributes to his inability to earn wages, such separate cause must be separately evaluated, and only the proportion chargeable to the industrial injury allowed as compensation.

(*Pacific Employers Insurance Company v. Industrial Accident Commission*, (1959), 52 Cal.2d 417, 420-421 [24 Cal.Comp.Cases 144].)

Where the cause of an injured workers' wage loss flows from the industrial injury, temporary partial disability is due. Where the cause of the wage loss is from some other ascertainable cause, only that portion of wage loss attributable to the injury is payable. Here, defendant argues that applicant requested to be laid off, and thus, no temporary disability is due during the periods that modified duty was available. Applicant contends that defendant never actually offered modified duty within any ascribed work restrictions and thus, defendant failed to prove that modified duty was ever available. The WCJ concludes that the employer provided modified work within the restrictions and would have continued to provide it if applicant had not quit. However, based on our limited review of the record, the evidence, including applicant's supervisor's testimony, may not be sufficient to support the conclusion that modified work was actually offered.

III.

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 14 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; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593.) 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 sections 5950 et seq.

V.

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 of the Findings and Award issued on September 2, 2025, by the workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 2, 2026

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

EDWARD JONES
JOSEPH PLUTA
HAWORTH BRADSHAW

EDL/mt

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