

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

HSIN CHUN TSAI, *Applicant*

vs.

**HRC FERTILITY MANAGEMENT LLC; OLD REPUBLIC INSURANCE COMPANY,
administered by GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ21943588
Pomona District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of June 15, 2026, wherein it was found that applicant was not entitled to the Labor Code section 5402(b) presumption of liability and that the orthopedic QME panel requested by defendant was valid, and that the parties were to proceed with that QME panel rather than a later chiropractic panel requested by the applicant. In this matter, applicant claims that while employed as a licensed vocational nurse during a cumulative period ending December 3, 2025, industrial injury was sustained to the neck, shoulder, back, wrists, waist, abdomen, and in the forms of stress, headaches, nausea, dizziness, sleep loss, anxiety, and depression.

Applicant contends that the WCJ erred in (1) finding that the Labor Code section 5402(b) presumption of liability did not apply and in (2) finding that the parties should proceed with evaluation by the orthopedic QME panel requested by defendant. We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

As explained below, we will deny the applicant's Petition.

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 1, 2026 and 60 days from the date of transmission is Sunday, August 30, 2026. The next business day that is 60 days from the date of transmission is Monday, August 31, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Monday, August 31, 2026, so that we have timely acted on the petition as required by Labor Code 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

¹ WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 1, 2026, and the case was transmitted to the Appeals Board on July 1, 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 1, 2026.

II.

Applicant claims in the Petition that "On or about December 16, 2025, Applicant filed a DWC-1 claim form... alleging a cumulative trauma injury from August 17, 2017 through December 3, 2025." (Petition for Reconsideration at p. 3.) According to the proof of service attached to the applicant's Application for Adjudication, it appears that applicant served the DWC-1 form as an attachment to the Application for Adjudication by mail on December 10, 2017. However, it is not clear exactly when defendant received the DWC-1 claim form.

Nevertheless, defendant issued a Notice Regarding Denial of Workers' Compensation Benefits dated January 9, 2026. The denial notice was addressed to the applicant and contained applicant's name and the name of the employer. However next to "Date of Injury," the date 12/30/2025 was listed. In other words, rather than list 12/03/2025 (the end date of the alleged cumulative injury), the zero and the three were transposed.

On January 26, 2026, defendant requested a QME panel in orthopedics. Defendant included the January 9, 2026 denial letter as supporting documentation for the panel QME request.

Subsequently, on February 3, 2026, applicant apparently sought and obtained a chiropractic QME panel.

III.

Applicant attempts to take advantage of the fact that the "0" and the "3" were transposed in the denial letter to argue that it is entitled to a presumption of injury pursuant to Labor Code

section 5402(b), which states, “If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable under this division. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 90-day period.”

Preliminarily, we note that applicant seeks relief from the Board by petitioning for reconsideration and in the alternative for removal. Pursuant to section 5900, the Board only has jurisdiction to grant reconsideration from a “final order, decision, or award.” In *Maranian v. Workers’ Compensation Appeals Bd.* (2000) 81 Cal.App.4th 1068 [65 Cal.Comp.Cases 650], it was held that a ruling regarding the applicability of the section 5402(b) presumption is “final” for purposes of section 5900, and thus properly raised by way of a petition for reconsideration. We therefore consider the merits of applicant’s contentions as a petition for reconsideration.

Turning to the merits, we do not find the fact that two numbers were transposed in an apparent typographical error to invalidate the denial. We note that Administrative Rule 9812 does not require the date of injury to be listed in a Notice of Denial. (Cal. Code Regs., tit. 8, § 9812, subd. (g).) There was no allegation or evidence that applicant claimed multiple industrial injuries with this employer or any other reason for applicant to believe that the denial was for another claim.

In any case, the relevant inquiry in determining the applicability of the Labor Code section 5402(b) presumption is whether defendant rejected the claim within the statutory period, not the timing or format of the notice to the applicant that the claim was rejected. (*Rodriguez v. Workers’ Comp. Appeals Bd.* (1994) 30 Cal.App.4th 1425, 1432-1433 [59 Cal.Comp.Cases 857].)

We note that in *Rodriguez*, an oral denial by defendant recorded by applicant’s counsel in a declaration of readiness to proceed was relied upon by the court as evidence that a claim had been timely denied for purposes of the presumption. (*Id.* at pp. 1433-1434.) Similarly, in this matter, on February 3, 2026, within 90 days of the filing of the DWC-1 claim form, applicant’s counsel used the January 9, 2026 denial letter as supporting documentation to obtain a chiropractic QME panel. Thus, by February 3, 2026, within the statutory time period, applicant clearly knew the claim had been denied.

We further note that applicant claims in the Petition that it objected to defendant’s panel request and that defendant was required to issue a corrected notice. However, since applicant did not place any objection into the evidentiary record, we are unable to evaluate this argument. In any

case, as noted above, the relevant inquiry is whether liability was rejected rather than the timing or manner of the notice of denial.

Accordingly, the WCJ correctly determined that applicant was not entitled to the Labor Code section 5402(b) presumption.

IV.

Applicant also contends that because the notice of denial was defective, the defective notice invalidates the QME panel. As noted above, a denial notice is not required to contain a date of injury (Cal. Code Regs., tit. 8, § 9812, subd. (g)) and the transposition of “0” and “3” was insufficient to render the notice invalid, especially given the other identifying information and the fact that no evidence was presented that there was any other outstanding claim between the parties.

Furthermore, 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. Here, as noted above, the determination that the section 5402(b) presumption did not apply is a final order. However, when interlocutory orders are being challenged, we evaluate these issues under the removal standard. (See *Capital Builders Hardware, Inc. v. Workers’ Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658 [81 Cal.Comp.Cases 1122].) We note that orders of the WCAB regarding development of the record are interlocutory in nature. Therefore, with respect to petitioner’s contentions regarding discovery, we evaluate these contentions under the removal standard. (*Solis v. Kansas City Royals* (2024) 2024 Cal. Wrk. Comp. P.D. LEXIS 69, *13 [Appeals Bd. panel].)

The removal standard requires “significant prejudice” or “irreparable harm.” (Cal. Code Regs, tit. 8, § 10955, subd. (a).) We find that this standard has not been met in this case. Additionally, while applicant argues in his Petition that a chiropractor rather than an orthopedist in the correct QME specialist, there is no evidence that this issue was raised either to the Medical Director (Cal. Code Regs., tit. 8, § 31.5, subd. (a)(10)) or at the trial level (Cal. Code Regs., tit. 8, § 31.1, subd. (b).) Applicant refers to a report from Dwayne Acoba, D.C., but that report was not introduced into the evidentiary record.

We therefore deny the applicant’s Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings and Order of June 15, 2026 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.

**HSIN CHUN TSAI
DEFENDERS LAW CORP
CHONG LEGAL GROUP**

DW/oo

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