

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

JOE GUILLEN, *Applicant*

vs.

**ADVANTAGE, INC.; ARCH INSURANCE COMPANY, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ15105366
Riverside District Office**

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

Applicant seeks reconsideration of the November 7, 2025 Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed during the period June 1, 1994, to June 18, 2020, sustained industrial injury to his cervical spine, lumbar spine, and left foot. The WCJ found, in relevant part, that applicant is not entitled to obtain medical treatment outside defendant's Medical Provider Network (MPN), and that the evidentiary record does not support the award of penalties, sanctions, and attorney's fees.

Applicant contends that defendant failed to timely authorize medical treatment for applicant's stipulated body parts as either ordered by a WCJ or pursuant to the parties' stipulation memorialized in the Minutes of Hearing dated November 27, 2024. Applicant contends the failure of compliance amounts to refusal or neglect of medical treatment such that applicant can self-procure medical treatment from a provider of his choice at employer expense, and that such conduct amounts to unreasonable delay in the provision of benefits.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant applicant's Petition, rescind the F&O, and return this matter to the WCJ for further proceedings and decision.

FACTS

Applicant sustained injury to his cervical spine, lumbar spine, and left foot while employed as a printer mechanic by defendant Advantage, Inc., from June 1, 1994, to June 18, 2020. The case in chief resolved by way of an indemnity-only Compromise and Release, approved October 11, 2023, with the parties stipulating to the provision of open future medical treatment.

On October 22, 2024, applicant filed a Declaration of Readiness to Proceed to Expedited Trial (DOR), alleging defendant failed to timely authorize medical treatment with MPN physician Dr. Hannani. (Declaration of Readiness to Proceed, dated October 22, 2024.)

On November 21, 2024, defendant filed its objection to the DOR, asserting in relevant part that “[o]n November 21, 2024 defendants provided the applicant with Notice that the Primary Treating Physician, Dr. Kambiz Hannani, was approved by the defendants.” (Objection, dated November 21, 2024, at p. 2:9.) Defendant requested the WCJ issue an order taking the scheduled November 27, 2024 Expedited Hearing off calendar.

On November 27, 2024, the parties proceeded to Expedited Hearing. The WCJ ordered the matter taken off calendar per the agreement of parties. The Minutes reflect the following handwritten text: “Defendant to provide written authorization [within] 30 days to treating doctor to provide medical treatment to admitted neck, back and [left] foot with treatment subject to [Utilization Review].” The Minutes of Hearing were signed by the WCJ and duly filed in the Electronic Adjudication Management System (EAMS).

On June 24, 2025, applicant filed a Petition seeking penalties for unreasonable delay in the provision of medical treatment, pursuant to Labor Code¹ section 5814, associated attorney's fees under section 5814.5, and sanctions under section 5813. (Applicant's Petition for Sanctions, Penalties and Attorney's Fees, dated June 24, 2025.) Applicant contended, in relevant part, that defendant was ordered to authorize medical treatment for admitted body parts within 30 days of the November 27, 2024 Minute order. Because defendant did not provide authorization until

¹ All further references are to the Labor Code unless otherwise noted.

January 28, 2025, applicant was entitled to self-procure his medical treatment with a physician of his choosing at employer expense. Applicant further claimed penalties for unreasonable delay in the provision of medical treatment, associated attorney's fees under section 5814.5, and requested the imposition of monetary and other sanctions under section 5813.

On September 10, 2025, the parties proceeded to trial on the issues of applicant's entitlement to seek medical treatment outside defendant's MPN, and entitlement to penalties, costs, sanctions or fees as set forth in applicant's June 24, 2025 penalty petition. The WCJ took judicial notice of various case-related documents within the Record of Proceedings at the request of the parties, and ordered the matter submitted for decision on the documentary record. (Minutes of Hearing, dated September 10, 2025, at p. 1:24.)

On November 7, 2025, the WCJ issued his F&O, determining in relevant part that applicant was "not entitled to obtain medical treatment outside of the Defendant's Medical Provider Network at the carriers' expense as Applicant has failed to sustain his burden to prove that care was denied." (Finding of Fact No. 3.) The WCJ also determined there were no grounds upon which to award penalties pursuant to section 5814, attorney's fees pursuant to section 5814.5, or costs and sanctions pursuant to section 5813. (Finding of Fact No. 4.) The WCJ's Opinion on Decision reviewed the procedural history as described in the submitted documentary record. The WCJ observed that applicant had not carried the evidentiary burden of establishing a refusal or neglect of medical treatment such that he was entitled to self-procure medical treatment. (Opinion on Decision, at p. 3.) The WCJ noted applicant's assertion that the dispute involved defendant's failure to provide a written preauthorization to treat specified body parts to be provided to MPN physician Dr. Hannani. (*Id.* at p. 4.) However, the WCJ concluded that the ultimate reason for applicant's inability to treat with Dr. Hannani involved the location of the physician's offices rather than issues of pre-authorization. With respect to the question of whether defendant complied with the order set forth in the November 27, 2024 Minutes, the WCJ observed:

Applicant argues that Defendant failed to comply with a court order regarding PTP authorization issued on 11/27/2024. The court does not find that any order issued on said date. The minutes of hearing reflect an agreement amongst the parties, not a court order. Although the agreement does not specifically state the name of the PTP, the hearing was held over the issue of authorization for Dr. Hannani.

(Opinion on Decision, at p. 5.)

Accordingly, the WCJ found no refusal or neglect of treatment that would otherwise allow applicant to seek treatment outside defendant's MPN. The WCJ further declined to award penalties, attorney's fees, or sanctions. (*Ibid.*)

Applicant's Petition contends the November 27, 2024 Minutes reflect an order of the WCJ and/or a stipulation of the parties that defendant would provide a written authorization for treatment within 30 days, and that defendant's failure to do so was a refusal or neglect of treatment entitling applicant to self-procure his medical treatment with a physician of his choosing at employer expense. (Petition, at p. 3:13.) Applicant further contends the failure to timely comply with the November 27, 2024 order and/or stipulation resulted in an unreasonable delay in the provision of benefits, entitling applicant to penalties, attorney's fees, and/or costs and fees.

The WCJ's Report reiterates that applicant's inability to treat with MPN physician Dr. Hannani stemmed not from a lack of authorization, but from the fact that the selected MPN physician was not available to see applicant at applicant's preferred office location. (Report, at pp. 3-4.)

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.
 - (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 December 18, 2025, and 60 days from the date of transmission is Monday, February 16, 2026. The next business day that is 60 days from the date of transmission is Tuesday, February 17, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Tuesday, February 17, 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.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on December 18, 2025, and the case was transmitted to the Appeals Board on December 18, 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 18, 2025.

II.

Applicant contends the November 27, 2024 Minutes of Hearing contain either an Order of the court or, in the alternative, a stipulation of the parties, providing that defendant would issue written authorization to applicant’s treating physician within 30 days. (Petition, at p. 3:13.) Applicant asserts that either as a stipulation or as an order, defendant failed to timely provide the agreed upon authorization and that the resulting delay was both unreasonable and tantamount to a refusal or neglect of medical treatment. (*Ibid.*)

² 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.

The WCJ's Opinion on Decision disagrees with applicant's characterization, noting that "the minutes of hearing reflect an agreement amongst the parties, not a court order." (Opinion on Decision, at p. 5.)

However, following our review of the record, we are persuaded that the November 27, 2024 Minutes contains a valid order resolving a threshold issue. Our Rules authorize a WCJ to issue both interim and final orders from hearings. WCAB Rule 10330 describes the general authority and responsibilities of WCJs, including the issuance of orders, as follows:

In any case that has been regularly assigned to a workers' compensation judge, the workers' compensation judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue any interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case, including the fixing of the amount of the bond required in Labor Code section 3715. Orders, findings, decisions and awards issued by a workers' compensation judge shall be the orders, findings, decisions and awards of the Workers' Compensation Appeals Board unless reconsideration is granted.

(Cal. Code Regs., tit. 8, § 10330.)

With respect to trial proceedings, WCAB Rule 10759(c) provides:

The workers' compensation judge may make orders and rulings regarding admission of evidence and discovery matters, including admission of offers of proof and stipulations of testimony where appropriate and necessary for resolution of the dispute(s) by the workers' compensation judge, and may submit and decide the dispute(s) on the record pursuant to the agreement of the parties.

(Cal. Code Regs., tit. 8, § 10759, subd. (c).)

Here, the parties attended an Expedited Hearing held on November 27, 2024, requested by applicant. (Declaration of Readiness to Proceed, dated October 22, 2024.) On the date of the hearing, the parties agreed to undertake specific actions necessary to resolve the issue giving rise to the request for Expedited Hearing, namely authorization of the designated treating physician to provide medical treatment to specified body parts. In light of this agreement, applicant agreed to forego adjudication of the dispute by the WCJ, and to join in a request to have the matter ordered off calendar. In further contemplation of the agreement, defendant requested language designed to ensure its right to review all treatment requests for medical necessity through the Utilization Review process. Thus, having reached an accord, the parties offered a joint motion to the WCJ to take the matter off calendar. (Minutes of Hearing, dated November 27, 2024.)

The WCJ concurred and reduced the agreement to a Minute Order, indicating, “Defendant to provide written authorization [within] 30 days to treating doctor to provide medical treatment to admitted neck, back and [left] foot with treatment subject to [Utilization Review].” (*Ibid.*) The order reflects the specific issues and terms agreed upon by the parties in resolving the dispute regarding applicant’s right to medical treatment and defendant’s right to submit treatment requests for utilization review to address questions of medical necessity. We are thus persuaded that the language set forth in the November 27, 2024 Minutes of Hearing represents a valid and enforceable order of the court.

A petition for reconsideration is properly taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order has been defined as one “which determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410, 413]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661, 665]) or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal. App. 4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered to be “final” orders because they do not determine any substantive question. (*Maranian, supra*, 81 Cal.App.4th 1068, 1075; *Rymer, supra*, 211 Cal.App.3d 1180; *Kramer, supra*, 82 Cal.App.3d 45.) Pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues are non-final interlocutory orders that do not determine any substantive right of the parties.

Here, the WCJ’s Order does not pertain to interim procedural issues such as discovery, trial setting, or similar interlocutory orders. Rather, the order creates an affirmative obligation by defendant to provide authorization for the delivery of medical treatment. Accordingly, the November 27, 2024 order addressed and resolved an issue fundamental to the claim for benefits, and as such, constituted a final order. (*Maranian, supra*, 81 Cal.App.4th 1068.) Because the F&O determined that the November 27, 2024 Minutes did not contain an order with respect to medical treatment, the WCJ did not reach the issue of whether the alleged failure to comply with that order resulted in an unreasonable delay in the provision of medical treatment or the refusal or neglect of medical treatment allowing applicant to seek treatment outside defendant’s MPN. (Lab. Code, §§ 5814, 5814.5; see also *Knight v. United Parcel Service* (2006) 71 Cal.Comp.Cases 1423, 1434

(Appeals Board en banc.) Consequently, we will rescind the F&O and return this matter to the to the trial level.

Upon return of this matter to the trial level, we encourage the parties to meet and confer in an effort to reach amicable resolution regarding the applicant's need for medical treatment, and to further seek consensus with regard to applicant's petition for penalties, fees and costs. However, should the parties be unable to reach an agreed upon resolution of these issues, we will return this matter to the trial level for further proceedings and decision by the WCJ as may be required, consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of November 7, 2025, is **GRANTED**.

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued on November 7, 2025, is **RESCINDED** and that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I DISSENT (See Dissenting Opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 17, 2026

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

**JOE GUILLEN
GLAUBER, BERENSON & VEGO
BRADFORD & BARTHEL**

SAR/abs

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

DISSENTING OPINION OF COMMISSIONER RAZO

I respectfully dissent. In my view, the Minutes of the November 27, 2024 Expedited Hearing do not reflect an enforceable order resolving a threshold issue or creating a new right or obligation of the parties. Rather, the minutes reflect, at most, a general agreement between the parties as to the steps they will take to notify an unspecified treating physician of applicant's rights to ongoing medical care.

Pursuant to the terms of the parties' Compromise and Release agreement resolving the case in chief with specific provision for applicant's continued future medical care, there is no dispute that applicant is entitled to receive medical treatment necessary to cure or relieve from the effects of his industrial injuries. (Order Approving Compromise and Release, dated October 11, 2023.) The Minutes from the November 27, 2024 hearing do not establish any fundamental right to benefits or resolve a disputed issue of entitlement to medical treatment. Rather, the minutes reflect a procedural solution agreed to by the parties to effectuate applicant's *existing rights* to medical treatment.

In addition, I am not persuaded that the hearing minutes contain an enforceable order because the purported order fails to specify the physician to whom defendant will direct the authorization letter. (Minutes of Hearing, dated November 27, 2024.) And while applicant requested a hearing as a result of alleged difficulties in selecting Dr. Hannani from within defendant's MPN, applicant thereafter designated a *different* MPN physician, Dr. Fritz, on November 27, 2024. (Ex. 2, Physician Designation Letter, dated November 27, 2024.) Thus, the failure to specify the physician designated to receive the authorization letter undermines any assertion that the purported order is even enforceable.

It is also worth noting that in workers' compensation proceedings, the WCJ is required to carefully document both the substantive and procedural aspects of each case in order to create a complete record. (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc)). As a result, the minutes of any given hearing may reflect the underlying procedural and substantive issues giving rise to a particular dispute, the WCJ's written distillation of the arguments presented by the parties, and various interlocutory and final orders of the court issued in response thereto. Given the potential breadth of issues addressed in any given minutes of hearing, principles of due process require that the parties be specifically apprised of the existence and nature of any order of the court so that they may conduct themselves accordingly. (*Rucker v.*

Workers' Comp. Appeals Bd. (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805] [all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions].)

Given the inherent uncertainty as to whether the minutes reflected merely a contemporaneous account of the reasons why the parties agreed to request an order taking the matter off calendar, or whether the WCJ was issuing a binding directive to the parties requiring specific performance with the penalties that attach for a failure to comply, I am unable to discern error in the WCJ's conclusion that the November 27, 2024 Minutes contained no order.

I dissent, accordingly.



WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 17, 2026

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

**JOE GUILLEN
GLAUBER, BERENSON & VEGO
BRADFORD & BARTHEL**

SAR/abs

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