

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

JORGE RAMOS, *Applicant*

vs.

**CITY OF SANTA ANA POLICE DEPARTMENT, permissibly self-insured,
administered by ADMINSURE, INC., *Defendants***

**Adjudication Number: ADJ13084476
Santa Ana District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact (Findings), issued by the workers' compensation administrative law judge (WCJ) on May 29, 2026, wherein the WCJ found, in pertinent part, that applicant, while employed by defendant during the period June 1, 1996 through November 26, 2019 as a corrections officer, sustained injury arising out of and in the course of employment (AOE/COE) in the form of diabetes, hypertension, and to his respiratory and pulmonary system, as well as his heart, and the applicant's disability resulting from his heart and respiratory disorder are 100% industrial.

Defendant contends that the WCJ failed to account for the parties' off the record stipulation(s) that the reporting and rating of James Lineback, M.D., panel Qualified Medical Evaluator (QME) is limited to diabetes and hypertension, and the reporting and rating of Jonathan Green, M.D., Agreed Medical Examiner (AME) is limited to any issues of pulmonary/respiratory injury, therefore the Findings should be stricken to allow the parties to correct the Minutes of Hearing and Summary of Evidence (MOH/SOE) dated March 9, 2026; and/or that the parties are bound by the reporting of AME, Dr. Green, concerning applicant's pulmonary/respiratory injury.

We have received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the Petition for Reconsideration and the Answer and the contents of the Report, and we have reviewed the record in this matter. Based on our preliminary review of the record, we will grant defendant’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 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 section¹ 5950 et seq.

I.

Up through July 1, 2024, petitions for reconsideration were subject to former 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 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 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.”

¹ All statutory references are to the Labor Code unless otherwise stated.

Here, according to Events, the case was transmitted to the Appeals Board on June 30, 2026, and 60 days from the date of transmission is Saturday, August 29, 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).)² This decision is issued by or on Monday, 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).

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

II.

The WCJ's Report states as follows:

The applicant was also seen by Dr. Jonathan Green, who diagnosed the applicant with pneumonia and adult-onset diabetes mellitus. [7. JOINT E: Medical report of Dr. Jonathan Green, 1-26-2022, Page 12.]

Dr. Jonathan Green stated that the reported training dates when the applicant allegedly was exposed to the respiratory infection were November 12 and

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.

November 18. Dr. Green stated that if a person were exposed on November 12 or 18, one would expect symptoms to most likely develop in that person two or three days thereafter. [8. JOINT E: Medical report of Dr. Jonathan Green, 1-26-2022, Page 13.]

Dr. Green reported that the applicant went to the hospital on the 29th of November, as this was more than three days after the alleged exposure, the training could not have been the source of the infection that afflicted Mr. Ramos. [9. JOINT E: Medical report of Dr. Jonathan Green, 1-26-2022, Page 13.]

According to Dr. Green, the applicant's symptoms should have manifested on either the 20th or 21st of November.

The applicant last worked on November 21, 2019. However, the applicant was scheduled to work on November 24, 2019. However, he called in sick on this day. [10. Minutes of Hearing and Summary of Evidence, March 22, 2017, Page 4, Lines 19-20.]

Evidence was submitted that Nicholas Endara was sick during training and recalled being with the applicant. Mr. Endara recalled having a fever, chills, cough, and congestion on the date in question, and that he had been sick for a couple of days. [11. JOINT J: Deposition transcript of Nicholas Endara, 11-4-2021. Page 20 Line 3-10.] This was during the tourniquet training.

The tourniquet training was conducted on November 18th, which was confirmed by Josue Alveraze. [12. JOINT I: Deposition transcript of Josue Alvarez, 11-4-2021. Page 19, Lines 14-23.]

Josue Alveraze recalls that Nicholas Endara was ill on November 18th during the training. [13. JOINT I: Deposition transcript of Josue Alvarez, 11-4-2021. Page 23, Lines 12-16.] Mr. Alveraze recalls being sick as of December 1, 2019. However, he believes he had been fighting for about a week. [14. JOINT I: Deposition transcript of Josue Alvarez, 11-4-2021. Page 26, Lines 9-25.]

Based on the evidence submitted, the applicant was exposed to an ill Nicholas Endara on the 18th of November, and the applicant started to experience symptoms 6 days after this exposure. Subsequently, the applicant developed breathing issues and went to the hospital.

Dr. Green appears to draw a hard line for the date upon which the applicant would have manifested symptoms. Dr. Green does not provide further explanation or support for why symptoms cannot manifest 6 days after a known exposure.

Dr. Lineback initially evaluated the applicant. As to the applicant's respiratory issue, Dr. Lineback stated that the applicant was working as a correctional officer for the Santa Ana Police Department when his pneumonia was diagnosed. The

applicant had regular contact with arrestees and inmates during his employment. The applicant also had exposure to colleagues in November 2019 who were hospitalized for pneumonia.

Dr. Lineback stated that it was medically probable that the applicant developed his pneumonia as a result of his regular exposure to both inmates/arrestees and colleagues while working for the Santa Ana Police Department. Since his pneumonia should be considered job-related, it should be treated on an industrial basis. [15. JOINT C: Medical report of Dr. James Lineback, 2-6-2021. Page 10.]

Therefore, Dr. Lineback stated that the applicant's pneumonia should be considered job-related. Dr. Lineback further stated that it was medically probable that this patient's abnormal pulmonary function tests were a result of his episode of pneumonia that required hospitalization in December of 2019.

In his deposition, Dr. Lineback acknowledged that the applicant did not specifically claim that he was stressed while at work. Instead, Dr. Lineback based his opinion on his experience examining and evaluating officers throughout his career.

Regarding an incubation period, Dr. Lineback stated that it exists. However, it's very difficult to study because you can't expose an individual to the illness and then record how long it takes for symptoms to manifest. This means the information comes from a retrospective analysis, which is subject to data inconsistencies. As such, incubation period numbers are based on speculation. [16. JOINT H: Deposition transcript of Dr. James Lineback, 3-25-2021. Page 10 (75) Lines 18-25, page 11 (76) Lines 1-12.]

Where the reports of one or more physicians constitute substantial evidence, the WCAB may rely on those reports even if other physicians disagree with their conclusions. [17. *Brower v. David Jones Constr.*, 79 Cal. Comp. Cases 550, 556, citing *Jones v. Workers' Comp. Appeals Bd.* (1986) 68 Cal. 2d 476, 479.]

An agreed medical examiner whom the parties have chosen because of his expertise and neutrality should ordinarily be followed unless there is a good reason to find that opinion unpersuasive. [18. *Power v. Workers' Comp. Appeals Bd.*, 179 Cal. App. 3d 775, 782.] An Agreed Medical Examiner's opinions are to be given great deference, but their opinions are not resolute.

Furthermore, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely the physician's conclusions. [19. *E.L. Yeager Construction v. Workers' Comp. Appeals Bd.*, 145 Cal. App. 4th 922, 928.]

In reviewing the reporting and opinions of both Dr. Lineback and Dr. Green, the Undersigned Judge found that Dr. Green failed to provide adequate justification for

why he believed that the applicant's respiratory symptoms would not have developed more than 3 days after his confirmed exposure to the ill Nicholas Endara.

Based on the evidence submitted, the incubation period upon which Dr. Green relied to opine that the applicant's exposure to the ill Nicholas Endara was not the cause of his respiratory injury is based on speculative data. As such, it is not absolute.

Absent this justification, the Undersigned Judge was not in error in finding Dr. Linebeck's medical opinion more persuasive.

In addition, all decisions by the WCAB must be supported by substantial evidence. Medical opinions do not constitute substantial evidence if they are based upon surmise, speculation, conjecture, or guess, based upon facts no longer germane, based upon incorrect legal theory, or based upon an inadequate medical history and/or examination. [20. *Brower v. David Jones Constr.*, 79 Cal. Comp. Cases 550, 556.]

Based on the speculative nature of the identified incubation period, Dr. Green's report was not substantial evidence, and the Undersigned Judge was not in error in determining he could not rely on Dr. Green's opinions on the causation of the applicant's respiratory injury.

(Report, at pp. 4-6, FN incorporated.)

III.

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Based on our review, we are not persuaded that there is substantial evidence to support the WCJ's decision without additional development of the record.

Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient

opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

IV.

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 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 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) 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 defendant’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.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration 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/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 28, 2026

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

**JORGE RAMOS
LISA T. HERVATIN, A LAW CORPORATION
JACOB & ASSOCIATES**

SL/abs

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