

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

KEVIN PERRY, *Applicant*

vs.

ASSET PROTECTION AND SECURITY SERVICES L.P.;
INSURANCE COMPANY OF THE STATE OF PA,
administered by GALLAGHER BASSETT SERVICES for AIG CLAIMS, *Defendants*

Adjudication Numbers: ADJ18890787; ADJ10622598; ADJ10936287; ADJ11180688
San Diego District Office

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant in pro per seeks reconsideration¹ of the Finding of Fact and Order (F&O) issued on March 9, 2026 by a presiding workers' compensation administrative law judge (PWCJ) in which it was found that the Application for Adjudication of claim filed by applicant in case ADJ18890787 is an attempt to relitigate the issues previously decided against him with finality in ADJ10622598, and is precluded by the doctrine of res judicata. The PWCJ thereafter ordered that ADJ18890787 be dismissed with prejudice.

Applicant argues in relevant part that he was denied due process by the PWCJ when case number ADJ18890787 was reopened without explaining why, and refused to address whether the order declaring him a vexatious litigant should be set aside, or his entitlement to new formal medical evaluations, as well as whether his prior case against defendant (ADJ10622589) should be reopened for new and further disability.

The PWCJ filed a Report and Recommendation (Report) recommending denial of applicant's petition.

We did not receive an answer.

¹ On August 2, 2024, applicant was declared a vexatious litigant subject to a pre-filing order pursuant to WCAB Rule 10430 (Cal. Code Regs., tit. 8, § 10430).

We have considered the allegations of the petition for reconsideration and the record in this matter, including the certified Transcript of Proceedings of December 11, 2025 (Transcript). For the reasons discussed below, we deny reconsideration.

I.

Preliminarily, we note that former Labor Code² 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, Labor Code 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 April 14, 2026, and 60 days from the date of transmission is Saturday, June 13, 2026. The next business day that is 60 days from the date of transmission is Monday, June 15, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on June 15, 2026, so that we have timely acted on the petition as required by section 5909(a).

² All further statutory references are to the Labor Code, unless otherwise noted.

³ 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)(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 presiding workers' compensation administrative law judge, the Report was served on April 14, 2026, and the case was transmitted to the Appeals Board on April 14, 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 June 15, 2026.

II.

Here, applicant claims that while employed by Asset Protection and Security Services, LP (Asset Protection) during the period from March 8, 2010 to September 30, 2014, he sustained injury to hyperpigmentation involving the face, kidneys, stress, injury to the psyche, hypertension, cardiovascular disease, sleep apnea, injury to the excretory system, musculoskeletal syndrome, chronic pain syndrome, and injury to the heart. (ADJ18890787).

On November 16, 2022, Findings and Orders (F&O) issued in ADJ10622598 that applicant did not sustain injury AOE/COE to his face (scarring), kidney disease, depression, uncontrolled hypertension, hypertensive heart disease, abnormal uric acid, and gout and ordered applicant to take nothing on his claims. Applicant did not challenge the F&O.

On August 2, 2024, the PWCJ issued a Findings and Order declaring applicant a vexatious litigant in case ADJ18890787 per WCAB Rule 10430. (Cal. Code Regs., tit. 8 § 10430.) Applicant did not challenge the order.

On September 3, 2024, defendant filed a petition for dismissal of applicant's case. On September 24, 2024, the PWCJ issued the Order Dismissing Case with Prejudice dismissing applicant's claim against Asset Protection based upon res judicata.

Applicant sought reconsideration of the September 24, 2024 Order Dismissing Case with Prejudice. In an Opinion and Order Dismissing Petition for Reconsideration issued on April 2, 2025, the Appeals Board dismissed applicant's petition as premature and the case was returned to the PWCJ for consideration of the petition as one to set aside the Order dismissing applicant's case in the first instance.

According to the Minutes of Hearing and Summary of Evidence of December 11, 2025 (MOH/SOE), the parties stipulated that applicant was employed by defendant during the period of March 8, 2010 to September 30, 2014 as a detention officer. (MOH/SOE, p. 2: lines 9-14.) Applicant claimed to have sustained injury arising out of and in the course of employment to multiple parts of his body, including the including hyperpigmentation involving the face, kidneys, stress, injury to the psyche, hypertension, cardiovascular disease, sleep apnea, injury to the excretory system, musculoskeletal syndrome, chronic pain syndrome, and injury to the heart. (*Ibid.*) The sole issue was whether ADJ18890787, the case against Asset Protection, filed on February 15, 2024, should be dismissed. (*Id.* p. 2:24-25.)

As set forth in the Report:

In October of 2016, Mr. Perry filed an Application for Adjudication of Claim against Asset Protection and Security Services L.P. where he was employed as a "transportation officer" in El Centro, California. Mr. Perry alleged that he sustained a cumulative trauma injury occurring over the entire period of his employment by Asset Protection, ending on September 30, 2014. He alleged injury to his "excretory" system, to his respiratory system, to his face, psyche (stress), and to multiple other body parts (ADJ10622598). The case was consolidated with other cases that Mr. Perry filed against other employers. The cases proceeded to trial, culminating in Consolidated Findings and Award and Orders and Consolidated Opinions on Decision served and filed on November 16, 2022. In his case against Asset Protection (ADJ10622598), it was ordered that Mr. Perry "take nothing." It was determined that the case was barred by the statute of limitations. None of the QMEs who examined him found industrially related injuries. (Dr. Reiss, QME in psychiatry, Dr. Kramer, QME in Internal Medicine, Dr. Milling, QME in Orthopedics). The trial judge determined that Mr. Perry did not sustain injury AOE/COE to his face, psyche, kidneys, heart, hypertension, gout, or any other body part. The trial judge found that the employer did not violate Labor Code section 132(a), and that there was no serious and willful misconduct by the employer. Mr. Perry did not appeal from the November 16, 2022, decision, and the decision became final in December 2022.

(Report, April 10, 2026, p. 2.)

At trial, applicant testified in pertinent part as follows:

QUESTION BY THE COURT: Now, Mr. Perry, you previously filed a case against Asset Protection; is that correct?

ANSWER: 16 -- you mean the ADJ case 166 [*sic*]?

QUESTION: Yes.

ANSWER: Yes. That's the -- as it's on the front page of the -- it's ADJ -- it's considered a massive file case, 10622589.

QUESTION: All right. And was that a case against Asset Protection?

ANSWER: Yes. That's against Asset Protection.

QUESTION: And in that case, you alleged injury to hyperpigmentation of the face?

ANSWER: Right.

QUESTION: Injury to your kidneys?

ANSWER: Correct.

QUESTION: Depression?

ANSWER: Correct.

QUESTION: Hypertension?

ANSWER: Correct.

QUESTION: Heart disease?

ANSWER: Correct.

QUESTION: Abnormal uric acids?

ANSWER: Yes. I think those are a petition for new and further disabilities. That's listed. That's in the exhibits on page -- it's a petition for new and further disability for depression. It's Exhibit 75, and petition for new and further disability for psychopathology in the form of depression, anxiety, intense irritability, atherosclerosis, stage 3 kidney diseases, facial scarring, which is a hyperpigmentation, sleep apnea, and gout in the knees, ankle, and disorder of the kidneys.

(Transcript, December 11, 2025, pp. 15:4 – 16:9.)

On March 9, 2026, the PWCJ issued the Findings of Fact, Order and Opinion on Decision, finding that the second case against Asset Protection was an attempt to re-litigate the issues decided against applicant with finality in case number ADJ10622598 and the present case against Asset Protection is precluded by the doctrine of res judicata. Furthermore, there is no new evidence in the record to support the contention that applicant should be allowed to proceed in his second case against Asset Protection.

In the Report, the WCJ explained:

Mr. Perry believes that he has the right to re-litigate his case against Asset Protection, either by filing a new application against the employer, or by way of filing a Petition to Reopen the old case (an issue that was not the subject of the December 11, 2025 trial in ADJ18890787). Although, he claims to have new evidence not available at the 2022 trial, none of his exhibits constitute new evidence. He claims that the old case did not involve injury to his heart, or sleep apnea, or gout, but this is clearly not the case as these body parts were alleged in the first case against Asset Protection. He believes that the employer satisfied the lien claim of EDD, something he learned about in 2023, which he contends is an admission of liability. The employer denies having paid anything to EDD, and Mr. Perry has not offered any evidence in support of this contention. He received a form letter after the 2022 trial from the new claims administration service for the insurance carrier. The letter explained that all medical treatment must be provided by the carrier's Medical Provider Network (MPN). He believes that this constitutes an admission of liability on behalf of Asset Protection and that he is entitled to seek medical treatment for his alleged cumulative trauma injury, in total disregard of the outcome of the trial and the order that he "take nothing" (Consolidated Findings and Award and Orders, November 16, 2022).

Between 2016 and 2022, Mr. Perry was given ample opportunity to adjudicate his industrial injury claim against Asset Protection. He was unsuccessful. He did not establish any industrially related injury in connection with his employment at Asset Protection, where he was employed from March 8, 2010, to September 30, 2014. He did not appeal from the Consolidated Findings and Award and Orders of November 16, 2022. He admitted that the current case against Asset Protection is duplicate of his old case. He feels that there is no problem if the new case (ADJ18890787) is dismissed, because he believes that his better option is to reopen his old case for new and further disability (Trial Transcript, p. 10). The right to reopen his old case against Asset Protection was not an issue at the December 11, 2025, trial nor was his request to set aside the August 1, 2024, determination that he is a vexatious litigant.

(Report, April 14, 2026, pp. 3-4.)

III.

Res judicata refers to both claim preclusion and issue preclusion. “Claim preclusion, the ‘primary aspect’ of res judicata, acts to bar claims that were, or should have been, advanced in a previous suit involving the same parties. Issue preclusion, the ‘secondary aspect’ historically called collateral estoppel, describes the bar on relitigating issues that were argued and decided in the first suit.” (*Hudson v. Foster* (2021) 68 Cal.App.5th 640, fn. 10.) Issue preclusion, applies to bar a party from relitigating an issue if the following requirements are met: (1) “the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding”; (2) “this issue must have been actually litigated in the former proceeding”; (3) “it must have been necessarily decided in the former proceeding”; (4) “the decision in the former proceeding must be final and on the merits”; and (5) “the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.” *Branson v. Sun Diamond Growers of California*, 24 Cal.App.4th 327, (1994) (quoting *Lucido v. Superior Court*, 51 Cal.3d 335, 341, (1990), cert. denied, 500 U.S. 920 (1991).) Claim preclusion (res judicata) and issue preclusion (collateral estoppel) are affirmative defenses to applicant’s current claim, and it is therefore defendant’s burden to establish their elements. (Lab. Code, § 5705 [“The burden of proof rests upon the party or lien claimant holding the affirmative of the issue.”]; *Johnson v. Workers’ Comp. Appeals Bd.* (1970) 2 Cal.3d 964 [35 Cal.Comp.Cases 362]; see *Morales v. Universal Furniture, American Home Assur. Co.*, 2017 Cal. Wrk. Comp. P.D. LEXIS 591.)

We agree with the WCJ that the second case against Asset Protection is an attempt by applicant to relitigate the issues decided against him with finality in case number ADJ10622598 and as such, the case is precluded by the doctrine of res judicata. Furthermore, we agree that this case should be dismissed with prejudice as there is no new evidence in the record to support the contention that applicant should be allowed to proceed against defendants.

Applicant’s contention that the order declaring him a vexatious litigant should be vacated is also denied. After a hearing on May 8, 2024 on the sole issue of whether applicant should be declared a vexatious litigant, on August 2, 2024, the PW CJ issued a Findings and Order declaring applicant a vexatious litigant in case ADJ18890787 per WCAB Rule 10430. (Cal. Code Regs., tit. 8 § 10430.) There was no appeal of this Findings and Order.

There are 20 days allowed within which to file a petition for reconsideration from a “final” decision that has been served by mail. Such time frame is extended for five calendar days from the

date of service if the decision is served upon an address in California, and ten days if service is outside of California but within the United States. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a).) This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

Here, the failure of applicant to timely appeal the order finding him to be a vexatious litigant within the stated time limits precludes the Appeals Board from considering the issue of the PWCJ's findings declaring him a vexatious litigant.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 15, 2026

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

**KEVIN PERRY
LAW OFFICES OF BRADFORD & BARTHEL, LLP**

TD/cs

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