

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

LEIGH JEFFREY, *Applicant*

vs.

**JACOBS CONSTRUCTORS, INC.;
LIBERTY MUTUAL INSURANCE COMPANY, et al., *Defendants***

**Adjudication Numbers: ADJ9507100, ADJ11097936
Long Beach District Office**

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

Applicant seeks reconsideration of the “Findings of Fact and Order” (F&O) issued on April 14, 2026, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that the doctrine of res judicata applies to bar applicant’s claim of injury to the lungs in the form of chronic obstructive pulmonary disorder (COPD) and deferred all other issues as moot.

Applicant contends that the Compromise and Release (C&R) approved in his asbestos claim did not cover injury in the form of COPD and thus, it is not barred.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration 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 and as our Decision After Reconsideration we will rescind the April 14, 2026 F&O and return this matter to the trial level for further proceedings.

FACTS

Per the WCJ's Report:

The facts in this case are undisputed. On or about April 17, 2014, the Petitioner filed an Application for Adjudication in which the Petitioner alleged a continuous trauma injury (hereinafter referred to as "CT") from January 1, 1959 to December 31, 2000 to the abdomen, chest, digestive and respiratory system as a result of exposure to asbestos. This resulted in case number ADJ9507100 being generated.

On or about May 4, 2017, the Petitioner filed an Amended Application for Adjudication in ADJ9507100 in which the Petitioner amended the Application. The Petitioner amended the CT date of injury to January 1, 1959 to December 31, 2002 and amended the cause of the alleged injury to "exposure to asbestos dust and *fumes exposure COPD*" (emphasis added).

On or about June 2, 2017, the court issued an Order of Joinder in ADJ9507100 in which the employer, Jacobs Constructors, Inc., and its carrier, Liberty Mutual Insurance Company (hereinafter referred to as "Liberty Mutual"), were joined as party defendants as a result of the application being amended to extend the CT date to December 31, 2002.

On or about October 17, 2017, the Petitioner filed a new Application for Adjudication in which the Petitioner alleged a CT injury from January 1, 2002 to December 31, 2002 to the respiratory system as a result of "exposure to dust / COPD" against the employer, Jacobs Constructors, Inc. and its insurance carrier, Liberty Mutual Orange. This generated case number ADJ11097936.

On or about July 18, 2020, the Parties in the asbestos case, ADJ9507100, filed a Compromise & release (hereinafter referred to as "C&R") which resulted in an Order Approving Compromise & Release (hereinafter referred to as "OACR") being issued on August 13, 2020.

On or about December 3, 2025, the defendant, Liberty Mutual, filed a Petition seeking to dismiss ADJ11097936 as a duplicative claim.

As a result of said Petition requesting dismissal, the Parties proceeded to trial on March 5, 2026 in ADJ11097936 only on the issue of res judicata, whether the claim was duplicative of the claim in ADJ9507100 and whether the defendants should be sanctioned.⁹

(WCJ's Report, pp. 1-2.)

Liberty Mutual was a party to the 2020 C&R and contributed \$2,989.00 toward the settlement. (Joint Exhibit A4, Compromise and Release, July 18, 2020, p. 10.)

The C&R only listed case number ADJ9507100 on the document.

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.

(§ 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 May 19, 2026, and 60 days from the date of transmission is Saturday, July 18, 2026, which by operation of law means this decision is due by Monday, July 20, 2026. (Cal. Code Regs., tit. 8, § 10600.). This decision is issued by or on July 20, 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 May 19, 2026, and the case was transmitted to the Appeals Board on May 19, 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 May 19, 2026.

II.

When applicant claims a physical injury, applicant has the initial burden of proving industrial causation by showing the employment was a contributing cause. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302; § 5705.) Applicant must prove by a preponderance of the evidence that an injury occurred AOE/COE. (Lab. Code¹, §§ 3202.5; 3600(a).)

The requirement of Labor Code section 3600 is twofold. On the one hand, the injury must occur in the course of the employment. This concept ordinarily refers to the time, place, and circumstances under which the injury occurs. On the other hand, the statute requires that an injury arise out of the employment. It has long been settled that for an injury to arise out of the employment it must occur by reason of a condition or incident of the employment. That is, the employment and the injury must be linked in some causal fashion. (*Clark*, 61 Cal.4th at 297 (internal citations and quotations omitted).)

* * *

The statutory proximate cause language [of section 3600] has been held to be less restrictive than that used in tort law, because of the statutory policy set forth in the Labor Code favoring awards of employee benefits. In general, for the purposes of the causation requirement in workers' compensation, it is sufficient if the connection between work and the injury be a contributing cause of the injury.

(*Clark*, *supra* at 298 (internal citations and quotations omitted).)

The WCAB is bound by the basic rules of law and procedure. (Citation.) These basic rules of procedure require the board to give res judicata effect to its final decisions. (Citations.) The fact that the WCAB “is not bound by common law or statutory rules of evidence and procedure, may receive hearsay evidence, may

¹ All future references are to the Labor Code unless noted.

proceed informally, and may adopt less stringent rules and regulations than those applicable in court does not alter the applicability of the doctrine of res judicata to its findings.” (Citation.)

(*Dow Chemical Co. v. Workers’ Comp. Appeals Bd.* (1967) 67 Cal.2d. 483, 491 (citations omitted).)

As generally understood, “[t]he doctrine of res judicata gives certain *conclusive effect* to a *former judgment* in subsequent litigation involving the same controversy.” [Citation.] The doctrine ‘has a double aspect.’ [Citation.] ‘In its primary aspect,’ commonly known as claim preclusion, it ‘operates as a bar to the maintenance of a second suit between the same parties on the same cause of action. [Citation.]’ [Citation.] ‘In its secondary aspect,’ commonly known as collateral estoppel, “[t]he prior judgment ... “operates” ’ in ‘a second suit ... based on a different cause of action ... “as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action.” [Citation.]’ [Citation.] ‘The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. [Citations.]’ ” [Citation.]

(*Boeken v. Philip Morris USA, Inc.*, (2010) 48 Cal. 4th 788, 797.)

Per Labor Code² section 3208.1:

An injury may be either: (a) “specific,” occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) “cumulative,” occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment.

(§ 3208.1.)

Section 3208.2 contains the anti-merger provision of workers' compensation, which states:

When disability, need for medical treatment, or death results from the combined effects of two or more injuries, either specific, cumulative, or both, all questions of fact and law shall be separately determined with respect to each such injury, including, but not limited to, the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit.

² All future references are to the Labor Code unless noted.

(§ 3208.2.)

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (§§ 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].) An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (§ 5313; see also Cal. Code Regs., tit. 8, § 10761.)

As noted in paragraph 3 in the Compromise and Release: “This agreement is limited to settlement of the body parts, conditions, or systems and for the dates of injury set forth in Paragraph No. 1 and further explained in Paragraph No. 9 despite any language to the contrary elsewhere in this document or any addendum.” (Joint Exhibit A4, *supra* at p. 5.)

Medical evidence is required to determine whether applicant’s claim of COPD falls within the prior C&R or whether the COPD constitutes its own separate injury. If the medical evidence establishes that the sole industrial cause of the COPD is asbestos exposure, then the injury would appear to be a compensable consequence of applicant’s settled claim, and thus, likely precluded. If the medical evidence establishes that applicant’s COPD is a separate injury caused, even in part, through other industrial exposures, then it does not fall within the prior C&R as that C&R was limited solely to the case number listed on the document. As no such medical evidence was produced at trial, there is not sufficient information to determine whether the prior C&R covers applicant’s claimed injury herein.

Accordingly, we grant applicant’s Petition for Reconsideration and as our Decision After Reconsideration we rescind the April 14, 2026 F&O and return this matter to the trial level for further proceedings

For the foregoing reasons,

IT IS ORDERED that applicant’s Petition for Reconsideration of the Findings of Fact and Order issued on April 14, 2026, by the workers’ compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Order issued on April 14, 2026, by the workers' compensation administrative law judge is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 20, 2026

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

**LEIGH JEFFREY
ROSE KLEIN & MARIAS
LAW OFFICE OF CHRISTY DUNCAN**

EDL/oo

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