

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

MICHAEL MADRID, *Applicant*

vs.

**MARCO TRANSPORT, INC.; CALIFORNIA TRUCKERS SAFETY ASSOCIATION,
administered by LWP CLAIMS SOLUTIONS, *Defendants***

**Adjudication Numbers: ADJ16313376, ADJ17162246, ADJ16400413, ADJ16313419,
ADJ16313390
Santa Ana District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant seeks reconsideration of the “Joint Findings and Order” (F&O) issued on April 10, 2026, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant could not take the deposition of the qualified medical evaluator (QME) regarding his availability.

Applicant contends that defendant improperly requested a replacement QME based upon misrepresentations of the current QME’s availability, and thus, the deposition is warranted.

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 Report of the workers’ compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, we will dismiss the Petition for Reconsideration as the April 10, 2026 F&O did not constitute a final order.

FACTS

Per the WCJ's Report:

ADJ16313376 (MASTER FILE)

Michael Madrid, while employed on April 22, 2022, as a pilot driver, loader/unloader, at Santa Ana, California, by Marco Transport Inc., claims to have sustained injury arising out of and in the course of employment to head, headaches, neck, back, shoulders, blood clot, weight gain, jaw, mouth, vascular, sexual dysfunction, psyche, internal, and sleep disorder.

ADJ16313376

Michael Madrid, while employed on July 6, 2021, as a pilot driver, loader/unloader, at Santa Ana, California, by Marco Transport Inc., claims to have sustained injury arising out of and in the course of employment to right hand, right upper extremities, and sleep disorder.

ADJ16313419

Michael Madrid, while employed during the period June 15, 2021, through May 10, 2022, as a pilot driver, loader/unloader, at Santa Ana, California, by Marco Transport Inc., claims to have sustained injury arising out of and in the course of employment to head, back, shoulders, arms, wrists, bilateral upper extremities, hands, hips, headaches, bilateral lower extremities, knees, skin, psyche, internal, sleep disorder, blood clot, weight gain, jaw, mouth, vascular, and sexual dysfunction.

ADJ16313390

Michael Madrid, while employed on May 10, 2022, as a pilot driver, loader/unloader, at Santa Ana, California, by Marco Transport Inc., claims to have sustained injury arising out of and in the course of employment to head, headaches, neck, back, shoulders, blood clot, weight gain, jaw, mouth, vascular, sexual dysfunction, psyche, internal, and sleep disorder.

ADJ16400413

Michael Madrid, while employed on December 21, 2021, as a pilot driver, loader/unloader, at Santa Ana, California, by Marco Transport Inc., claims to have sustained injury arising out of and in the course of employment to head, headaches, mouth, teeth, neck, shoulders, back, psyche, internal, sleep disorder, blood clot, weight gain, jaw, mouth, vascular, and sexual dysfunction.

All five cases proceeded to Trial on July 7, 2025, and December 17, 2025.

* * *

The sole issue for Trial in all five cases is whether the Applicant has the right to cross-examine Dr. Divaker Krishnareddy on the issue for the trial of whether the replacement panel was proper. It was noted by the Court that defense objected to

the entirety of setting the deposition as being unnecessary for the trial for which the matter was originally set.

(WCJ's Report, pp. 1-4.)

It appears that the actual issue in these matters is whether defendant may replace Dr. Krishnareddy due to his alleged unavailability. Rather than try that issue on the merits, the WCJ bifurcated the sub-issue of whether applicant may take the QME's deposition on the issue of his availability.

DISCUSSION

I.

Former Labor Code¹ 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

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

means this decision was due by Monday, July 20, 2026. (Cal. Code Regs., tit. 8, § 10600.). This decision did not issue by or on July 20, 2026, so that we have not timely acted on the Petition as required by section 5909(a).

The Appeals Board may not ignore due process for the sake of expediency. (*Barri v. Workers' Comp. Appeals Bd.* (2018) 28 Cal.App.5th 428, 469 [83 Cal.Comp.Cases 1643] [claimants in workers' compensation proceedings are not denied due process when proceedings are delayed in order to ensure compliance with the mandate to accomplish substantial justice]; *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].) "Even though workers' compensation matters are to be handled expeditiously by the Board and its trial judges, administrative efficiency at the expense of due process is not permissible." (*Fremont Indem. Co. v. Workers' Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965, 971 [49 Cal.Comp.Cases 288]; see *Ogden Entertainment Services v. Workers' Comp. Appeals Bd. (Von Ritzhoff)* (2014) 233 Cal.App.4th 970, 985 [80 Cal.Comp.Cases 1].)

The Appeals Board's constitutional requirement to accomplish substantial justice means that the Appeals Board must protect the due process rights of every person seeking reconsideration. (See *San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986] ["essence of due process is . . . notice and the opportunity to be heard"]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) In fact, "a denial of due process renders the appeals board's decision unreasonable..." and therefore vulnerable to a writ of review. (*Von Ritzhoff, supra*, 233 Cal.App.4th at p. 985 citing Lab. Code, § 5952(a), (c).) Thus, due process requires a meaningful consideration of the merits of every case de novo with a well-reasoned decision based on the evidentiary record and the relevant law.

In *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493], the Appeals Board denied applicant's petition for reconsideration because it had not acted on the petition within the statutory time limits of section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board's decision holding that the time to act on applicant's petition was equitable tolled during the period that the file was misplaced. (*Id.* at p. 1108.) Like the Court in *Shipley*, "we are not convinced that the burden of the system's inadequacies should fall on [a

party].” (*Ibid.*) Pursuant to the holding in *Shipley* allowing equitable tolling of the 60-day time period in section 5909, the Appeals Board acts to grant, dismiss, or deny such petitions for reconsideration within 60 days of receipt of the petition, and thereafter issues a decision on the merits.

Here, applicant timely filed the Petition for Reconsideration at the district office on May 5, 2026, however the entire file was not fully transmitted to the Appeals Board until June 1, 2026.. Thus, we conclude that our time to act on the Petition was equitably tolled. The holding in *Zurich American Ins. Co. v. Workers’ Comp. Appeals Bd.* (2023) 97 Cal.App.5th 1213 is not inconsistent with *Shipley* and other California Appellate Court precedent concurring and/or affirming the finding in *Shipley* that equitable considerations may exist to toll the 60-day time limit of section 5909. Under *Zurich*, as in *Shipley*, “equitable considerations” may provide grounds to excuse an action by the Appeals Board outside the 60 days provided for in section 5909. (*Zurich, supra*, 97 Cal.App.5th at p. 1238.)

We note that the *Zurich* Court failed to consider that section 5803 provides for continuing jurisdiction by the Appeals Board over all of its “orders, decisions, and awards,” and that section 5301 provides for “full power, authority and jurisdiction” by the Appeals Board for all proceedings under section 5300. Additionally, jurisdiction is conferred on the Appeals Board when a petition is timely filed under section 5900(a), and the Appeals Board may review the entire record, even with respect to issues not raised in the petition for reconsideration before it. 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. I.A.C. (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. I.A.C. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].)

It appears that our error was caused by the failure of the trial level court to transmit all files simultaneously. While the master file was transmitted on May 19, 2026, the associated consolidated cases were not transmitted until June 1, 2026, which caused error. Accordingly, we conclude that pursuant to *Shipley*, we maintain jurisdiction to rule on applicant’s Petition.

II.

In reviewing applicant’s Petition on the merits, we will dismiss the Petition as it seeks reconsideration of a non-final order. As stated in our en banc decision:

A petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) 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, 260 Cal. Rptr. 76; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal. App. 3d 528, 534–535 [163 Cal. Rptr. 750, 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. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal. App. 4th 1068, 1070, 1075 [97 Cal. Rptr. 2d 418, 65 Cal. Comp. Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered “final” orders. (*Id.* at p. 1075 [“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”].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

(*Ledezma v. Kareem Cart Commissary and Mfg* (2024) 89 Cal.Comp.Cases 462, 475 (Appeals Board en banc).)

Here, the order issued by the WCJ rejected applicant’s request to depose the QME. This is a non-final order, which is subject only to removal.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

Here, the actual issue to be adjudicated is whether defendant may replace the current QME.

Pursuant to our en banc holding in *Vasquez*:

In a represented case, where a QME does not timely establish availability to set an appointment pursuant to AD Rule 31.3, a WCJ or the Appeals Board has discretion

to order a replacement QME for good cause. The WCJ or the Appeals Board may consider the following:

- a. The length of delay caused by the QME's unavailability.
- b. The amount of prejudice caused by the delay in availability versus the amount of prejudice caused by restarting the QME process.
- c. What efforts, if any, have been made to remedy the QME's availability.
- d. Case specific factual reasons that justify replacing or keeping the current QME, including whether a party may have waived its objection.
- e. The Appeals Board's constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.)

(*Vazquez v. Inocensio Renteria* (2025) 90 Cal.Comp.Cases 514, 516-517 (Appeals Board en banc).)

It appears that applicant would like to conduct discovery on the *Vazquez* factors prior to proceeding to trial on the issue. Defendant wishes to proceed to trial without such discovery. It is defendant's burden to prove that the QME should be replaced. (Lab. Code, § 5705.) We cannot find on this record that substantial prejudice or irreparable harm has occurred to applicant, and thus removal is not warranted.

Accordingly, as applicant's Petition for Reconsideration is in response to a non-final order, we dismiss the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Joint Findings and Order issued on April 10, 2026, by the WCJ is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 30, 2026

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

**MICHAEL MADRID
LAW OFFICES OF J. FELIX MCNULTY
DIETZ, GILMOR & CHAZEN**

EDL/mt

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