WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MIGUEL ALVAREZ MERCADO, *Applicant*

vs.

GR HUTTNER LITHOGRAPHY;
EMPLOYERS PREFERRED INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ16626738
San Bernardino District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Lien claimant, FMR Interventional Quality Pain Management, APC, seeks reconsideration of the "Findings and Order" (F&O) issued on December 24, 2025, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that lien claimant failed its burden to prove industrial injury and to prove reasonableness and necessity of its treatment and ordered lien claimant to take nothing on its lien.

Lien claimant contends that the reporting of the primary treater constitutes substantial evidence to establish industrial injury

We have 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, the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, we will grant lien claimant'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 section 5950 et seq.

FACTS

Per the WCJ's Report:

> The Applicant, through his attorney of record filed an Application for Adjudication on August 30, 2022 claiming injury to the head, back, chest, shoulders, knee, and headaches due to a slip and fall as a result of a specific injury on January 7, 2022. (EAMS Doc ID No. 42884568).
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> Applicant and Defendant settled the case-in-chief by Compromise and Release filed on June 19, 2023 ((("the C&R"(EAMS Doc ID No. 46886536)), which included *Beltran* language, "a serious & good faith dispute exists as to the injury AOE/COE and/or liability for injury to one or more body parts, which could if resolved against the applicant defeat the applicant's right to any worker's comp benefits. Specifically, although he now claims injury, Defendant contends that no injury was reported prior to his last day of work and that there are no contemporaneous records documenting industrial involvement in his various complaints." (*Id.* pg. 6).
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> Following a Lien Conference on August 27, 2025, the matter was set for Lien Trial on September 30, 2025 before the undersigned. (See August 27, 2025 MOH (EAMS Doc ID No. 79524108)). On September 30, 2025, the matter was continued to November 5, 2025 due to the non-appearance of Lien Claimant's representative. (See September 30, 2025 MOH (EAMS Doc ID No. 79618749)). The matter was heard and submitted on November 5, 2025. (See November 5, 2025 MOH (EAMS Doc ID No. 79742153)). Prior to proceeding on the record, the parties completed an Amended Pre-Trial Conference Statement (EAMS Doc ID No. 79746400).
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> On the issue of AOE/COE, Lien Claimant relied on the reporting of Dr. Marina Russman (Exhibits "1-6"), Dr. Ahmad Hajj (Exhibit "20"), X-ray reports of Dr. Serrano (Exhibits "14-19"), reporting of acupuncturist Ted Priebe (Exhibit "25") reports of Maggie Pezeshkian, D.C. (Exhibit "27"), reports of Stephen Florez, D.C. (Exhibit "2"), reporting of Dr. Richard Heimann (Exhibit "29"), and reporting of Dr. Edward Spellman (Exhibit "30"). Defendant relied upon their denial letter (Exhibit "F") and Chiropractic and Acupuncture Board License Search Results (Exhibits "AE").
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> No testimony was offered by either party. (See MOH/SOE (EAMS Doc ID No. 79762522)).

(WCJ's Report, pp. 2-3.)

Dr. Russman took a history of injury as follows:

> Mr. Miguel Alvarez Mercado is a 62-year-old, right-hand dominant male who sustained work related injuries on 01/07/2022, during the course of his employment for G.R. Huttner Lithography as a Driver.
>
> The patient states while performing his usual and customary work duties on the above noted date. Mr. Alvarez suffered a Specific Injury to his right shoulder, chest, back, knees and headaches while working for a large printing shop in the capacity of Delivery Driver. The patient states that he was pushing a heavy plastic container full of recycling paper with both hands. The injury occurred when he slipped and fell down with his legs in a split position. The container's leg impacted his right knee. He remained on the floor for a few minutes until he was able to stand on his own. Mr. Alvarez reported the injury to his supervisor but he was not informed by the employer about filling out paperwork for workers' compensation when the injury was reported and he was not referred for medical treatment. On 3/2/2022 patient had a heart condition and ended up having quadruple bypass surgery. Mr. stated that he self-procured medical treatment and [went] to his PTP, Kaiser Permanente in Baldwin Park. He underwent an x-ray of the right knee, back, and right shoulder and was then referred to an Orthopedic Surgeon. He received one therapy session for his right shoulder. The patient was also referred to a Psychiatrist. He engaged the services of an attorney because the patient required adequate medical treatment due to the industrial injuries caused by repetitive customary work duties. Mr. Alvarez is currently working not working since his heart surgery.

(Lien Claimant's Exhibit 6, Report of Marina Russman, M.D., September 20, 2022, p. 1.)

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.
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> (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.
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> (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 January 27, 2026, and 60 days from the date of transmission is Saturday, March 28, 2026, which by operation of law means this decision is due by Monday, March 30, 2026. (Cal. Code Regs., tit. 8, § 10600.). This decision issued by or on March 30, 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 January 27, 2026, and the case was transmitted to the Appeals Board on January 27, 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 January 27, 2026.

II.

We highlight several legal principles that may be relevant to our review of this matter.

> When a lien claimant is litigating the issue of entitlement to payment for industrially-related medical treatment, the lien claimant must prove by a preponderance of the evidence all of the elements necessary to the establishment of its lien, including establishing that applicant sustained an industrial injury in a denied case. (*Kunz v. Patterson Floor Company, Inc*. (*Kunz*) (2002) 67 Cal.Comp.Cases 1588 (Appeals Bd. en banc); see also, *Tapia v. Skill Master Staffing* (2008) 73 Cal.Comp.Cases 1338 (Appeals Bd. en banc).)

> Section 3600 imposes liability on an employer for workers' compensation benefits only if its employee sustains an injury "arising out of and in the course of employment." It is sufficient if the connection between work and the injury is a contributing cause of the injury. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd*. (*Clark*) (2015) 61 Cal.4th 291, 298 [188 Cal. Rptr. 3d 46, 349 P.3d 141, 80 Cal.Comp.Cases 489].) An employee necessarily acts within the "course of employment" when "performing a duty imposed upon him by his employer and one necessary to perform before the terms of the contract [are] mutually satisfied." (*Maher v. Workers' Comp. Appeals Bd*. (1983) 33 Cal.3d 729 [190 Cal. Rptr. 904, 661 P.2d 1058, 48 Cal.Comp.Cases 326, 328].)
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> Lien claimant has the burden of proving reasonable probability of industrial causation based on substantial medical evidence. To be substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and set forth reasoning to support the expert conclusions reached. (*E.L. Yeager v. Workers' Comp. Appeals Bd*. (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) "A medical report predicated upon an incorrect legal theory and devoid of relevant factual basis, as well as a medical opinion extended beyond the range of the physician's expertise, cannot rise to a higher level than its own inadequate premises." (*Zemke v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal. 2d 794 [69 Cal. Rptr. 88, 441 P.2d 928, 33 Cal.Comp.Cases 358, 363].) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture, or guess." (*Hegglin v. Workmen's Comp. Appeals Bd*., *supra*, 36 Cal.Comp.Cases at p. 97.) Whether a physician's opinion constitutes substantial evidence "must be determined by the material facts upon which his opinion was based and by the reasons given for his opinion." (*Ibid*.)
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> Substantial evidence of industrial causation must be based on reasonable medical probability -- it is not required to prove causation to a "scientific certainty." (See *McAllister v. Workmen's Comp. App. Bd*. (1968) 69 Cal. 2d 408, [71 Cal. Rptr. 697, 445 P.2d 313, 33 Cal.Comp.Cases 660]; *Rosas v. Workers' Compensation Appeals Board* (1993) 16 Cal.App.4th 1692 [58 Cal.Comp.Cases 313, 319].)

(*Gibbons v. Cal. Dep't of Forestry*, 2020 Cal. Wrk. Comp. P.D. LEXIS 310, *11-14.)

The WCJ's report first notes that applicant was not called to testify at trial. The WCJ found that applicant's statements to the PTP were not reliable where the Compromise and Release states that a good-faith dispute exists. However, the stipulation as to a good-faith dispute in the Compromise and Release is not binding upon lien claimant. If we were inclined to reexamine the Compromise and Release, it appears that the parties may not have followed WCAB Rule 10789 in

seeking settlement approval. (Cal. Code Regs., tit. 8, § 10789(b)(1), ["[A]ll supporting medical reports and other supporting documents not previously filed, **shall be filed** directly with the workers' compensation judge at the date and time of the walk-through[.]"]; Cal. Code Regs., tit. 8, § 10700(a), ["When filing a Compromise and Release or a Stipulations with Request for Award, the filing party **shall file** all agreed medical evaluator reports, qualified medical evaluator reports, **treating physician reports**, and any other that are relevant to a determination of the adequacy of the Compromise and Release or Stipulations with Request for Award that have not been filed previously."].) None of the medical records, which existed at the time of the Compromise and Release appear to have been filed for review when the settlement was submitted. This includes medical records indicating that applicant uses a walker. It is unclear why the parties failed to file *any* medical records for the WCJ to review when determining whether the proposed settlement in this matter was adequate. In any event, the stipulation between applicant and defendant as to a good-faith dispute is not binding upon lien claimant as they were not a party to the Compromise and Release.

Contrary to the WCJ's conclusion, the documentary evidence does not appear to create a dispute as to applicant's reported mechanism of injury. No testimony was submitted by either party contradicting the paper record. We could find no statement or testimony in the record contradicting applicant's version of events. To the extent that defendant argues that applicant's description of injury is not reliable, arguments are not evidence. (See *Hamilton v. Lockheed Corporation* (2001) 66 Cal. Comp. Cases 473 (Appeals Board en banc).)

Next, Dr. Russman's September 20, 2022 report, could be construed as not substantial evidence. It appears that Dr. Russman's opinions regarding industrial injury could be construed as conclusory and without adequate explanation. However, even if it were found that applicant's injury was non-industrial, defendant would still be liable to provide treatment of up to $10,000.00 prior to its denial. (Lab. Code, § 5402(c).) Defendant denied this claim on November 22, 2022. (Defendant's Exhibit F.) It appears that a portion of the treatment rendered in this matter was rendered prior to the denial issuing.

Here, the WCJ denied an award for pre-denial treatment by finding that lien claimant failed to prove the reasonableness of treatment. However, the WCJ is not generally the decider of medical necessity. It appears based upon the evidence submitted that lien claimant submitted requests for authorization to the employer during the period that the claim was on delay. It is unclear whether

the employer submitted such requests to utilization review. It appears that this area may require further development of the record.

III.

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 14 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; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593.) 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.

Accordingly, we grant lien claimant'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. While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to WCABmediation@dir.ca.gov.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the Findings and Order issued on December 24, 2025, by the workers' compensation administrative law judge 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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 30, 2026

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

ANTONY GLUCK
THE RAWLINGS COMPANY
MEDICAL LIEN MANAGEMENT, INC
LIENING EDGE, INC.
FMR INTERVENTIONAL QUALITY PAIN MGT, APC
JOYCE ALTMAN INTERPRETERS
MULLEN & FILIPPI, LLP

EDL/mt

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