WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

PENNY SOJACK KUNERT, *Applicant*

vs.

LANCASTER SCHOOL DISTRICT, permissibly self-insured, administered by KEENAN and ASSOCIATES, *Defendants*

Adjudication Numbers: ADJ15636538; ADJ13545865
Van Nuys District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks removal of both Findings of Fact and Orders (F&O) issued on January 20, 2026, by the workers' compensation administrative law judge (WCJ) in connection with applicant's injuries that occurred on October 4, 2019 (ADJ13545865) and December 8, 2021 (ADJ15636538), which were initially resolved by stipulated awards dated October 1, 2021 and December 6, 2023, respectively. The F&Os, issued by the WCJ, both found, as is relevant here, that applicant's September 23, 2024 "Petition to Reopen for New and Further Disability/Good Cause per Labor Code 5410 and 5803" on both claims (Petition to Reopen) was not dismissed; and the WCJ ordered defendant's February 5, 2025 "Petition to Dismiss; Answer to Petition to Reopen" (Petition to Dismiss) be denied without prejudice.

Defendant contends that the WCJ erred by not dismissing applicant's Petition to Reopen and by denying defendant's Petition to Dismiss.

We have not received an answer from applicant. The WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending that the Petition be denied.

In response to the Report, defendant requested permission for, and filed, a supplemental petition entitled "Petition for Removal Supplemental Pleading to Correct and to Address Factual Error." The Supplemental Petition disputes some of the WCJ's statements in the Report. Pursuant to WCAB Rule 10964, we have accepted and considered defendant's Supplemental Petition. (Cal. Code Regs., tit. 8, § 10964.)

We have considered the allegations of the Petition and the Supplemental Petition and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, we will treat the Petition as one seeking reconsideration and deny the Petition as one seeking reconsideration.

DISCUSSION

I.

Former Labor Code 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 Labor Code 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 February 4, 2026 and 60 days from the date of transmission is Sunday, April 5, 2026. The next business day that is 60 days from the date of transmission is Monday, April 6, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on Monday, April 6, 2026, so that we have timely acted on the petition as required by Labor Code section 5909(a).

[1] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Labor Code 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. Labor Code 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 workers' compensation administrative law judge, the Report was served on February 4, 2026, and the case was transmitted to the Appeals Board on February 4, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on February 4, 2026.

II.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd*. (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding

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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.

interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ's decisions include findings regarding threshold issues as to the existence of an employment relationship between applicant and defendant, and that applicant, while employed as a Special Education Aide/Classified, occupational group number 214, at Lancaster, California, by the defendant, sustained injury arising out of and in the course of employment to her right ankle and lumbar spine on October 4, 2019, and to her neck and left knee on December 8, 2021. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains finding that are final, petitioner is only challenging the interlocutory finding that applicant's Petition to Reopen was not dismissed and defendant's Petition to Dismiss was denied without prejudice. Therefore, we will apply the removal standard to our review. (See *Gaona, supra*.)

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 significant 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).)

In this case, based upon our review of the record, the WCJ's analysis of the merits of defendant's arguments in the Report, and for the reasons discussed below, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

The workers' compensation system "was intended to afford a simple and nontechnical path to relief." (*Elkins v. Derby* (1974) 12 Cal. 3d 410, 419 [39 Cal. Comp. Cases 624]; Cf. Cal. Const., art. XX, § 21; § 3201.) Generally, workers' compensation proceedings have informal pleading requirements. (*Zurich Ins. Co. v. Workmen's Comp. Appeals Bd.* (1973) 9 Cal. 3d 848, 852 [38 Cal. Comp. Cases 500, 512]; *Bland v. Workmen's Comp. App. Bd.* (1970) 3 Cal. 3d 324, 328–334

[35 Cal. Comp. Cases 513].) "[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee's entitlement to rehabilitation benefits." (*Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal. App. 4th 485, 490 [67 Cal. Comp. Cases 1273].) In short, unless otherwise compelled by the law, the Appeals Board will not elevate form over substance.

We also acknowledge that generally, both the Labor Code and our rules "[disfavor] application of formalistic rules of procedure that would defeat an employee's entitlement to [] benefits." (*Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485, 490 [67 Cal.Comp.Cases 1273].) Indeed, WCAB Rule 10517 (Cal. Code Regs., tit. 8, §10517) specifies that pleadings are deemed amended to conform to the stipulations agreed to by the parties on the record or may be amended by the Appeals Board to conform to proof. This rule represents the application of California's public policy in favor of adjudication of claims on their merits, rather than on the technical sufficiency of the pleadings. Moreover, WCAB Rule 10515 provides that "[d]emurrers, petitions for judgment on the pleadings and petitions for summary judgment are not permitted." (Cal. Code Regs., tit. 8, § 10515.)

As we held in our recent en banc decision in *Perez v. Chicago Dogs* (2025) 90 Cal.Comp.Cases 830, 836 (Appeals Board en banc): "Parties have a due process right to a fair hearing and a determination based on the merits." Further, "[i]n workers' compensation proceedings, pleadings are liberally construed and may be amended to conform to proof." (*Id*. at p. 838.)

Preliminarily, we note that by filing a Petition to Dismiss applicant's Petition to Reopen while discovery is pending, defendant in essence seeks a "summary judgement" dismissal of applicant's Petition to Reopen in violation of WCAB Rule 10515. Defendant's request to dismiss applicant's Petition to Reopen is premature and would deprive applicant of a determination based on the merits, in violation of her right to due process.

Next, defendant argues that applicant's Petition to Reopen should have been dismissed because it was skeletal. (Petition, p. 4, January 30, 2026, lines 1-15.) In *Blanchard v. Workers' Comp. Appeals Bd.*, (1975) 53 Cal.App.3d 590, 594-595, 40 Cal. Comp. Cases 784, cited by the WCJ in the Report, the Court of Appeals found that a petition to reopen that failed to specify the facts relied on, and was therefore technically insufficient, was not fatally flawed. We reach a similar conclusion here. Applicant titled her petition to reopen, "Petition to Reopen for New and

Further Disability/Good Cause per Labor Code 5410 and 5803," and the reason provided for the Petition to Reopen was, "[a]pplicant's medical condition has worsened, resulting in additional permanent disability and ongoing need for medical treatment." Although applicant's Petition to Reopen lacked specificity, the title of and reason provided for applicant's Petition to Reopen were sufficient to put defendant on notice that the grounds for applicant's Petition to Reopen were Labor Code sections 5410 and 5803 due to worsening medical condition.

Further, in *Blanchard*, the Court of Appeals made clear that "if a party is surprised or otherwise disadvantaged by the insufficiency of a pleading, the remedy is to grant that party a reasonable continuance to permit him adequately to prepare to present his case or defense." (*Id.* at p. 595.) Accordingly, defendant's remedy would not have been for the WCJ to deny applicant's pleading at the outset, but rather to allow discovery to proceed, as the WCJ in fact did.

Defendant also asserts a statute of limitation defense claiming applicant was required to provide specific and detailed facts to support her Petition to Reopen within the five-year period from the date of injury. (Petition, p. 4, January 30, 2026, lines 16-26.) Also in *Blanchard*, the Court of Appeals stated that "a technically deficient petition to reopen *filed within five years of the date of injury* preserves the jurisdiction of the Board to receive evidence in support of the deficient petition and to reopen the case after the five-year period has elapsed." (*Id.* at p. 594, emphasis added.) The Court of Appeals went on to note that "[l]imitations provisions in the [workers'] compensation law must be liberally construed in favor of the employee unless otherwise compelled by the language of the statute, and such enactments should not be interpreted in a manner which will result in a loss of compensation." (*Id.* at p. 595.) In the instant case, applicant's Petition to Reopen was filed timely within the five-year statute of limitations, such that the WCAB retains jurisdiction to receive evidence on and adjudicate the Petition to Reopen, although it may now be beyond the five-year statute of limitations.

Lastly, defendant disputes the WCJ's statement in the Report that defendant intended to proceed with discovery. (Supplemental Petition, February 12, 2026, p. 4, line 12-p. 5, line 22.) Defendant did not raise the issue previously nor object to the admission of the PQME reports of Dr. Anand Shah, and, thus, we do not consider it further.

In this case, defendant fails to demonstrate the requisite significant prejudice or irreparable harm to justify removal because discovery is ongoing, which may or may not yield evidence to support applicant's Petition to Reopen.

Accordingly, we deny the Petition as one seeking reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 6, 2026

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

PENNY SOJACK KUNERT
YAZDCHI LAW, P.C.
LAW OFFICES OF WEITZMAN & ESTES

DC/*cs*

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

REPORT AND RECOMMENDATION

ON PETITION FOR REMOVAL

I

INTRODUCTION

1.	Applicant's Occupation:	(1) Aide – Special Education Classified;
		(2) Special Education Aide
	Applicant's Age on Date of Injury:	(1) 63
		(2) 66
	Date of Injury:	(1) October 4, 2019
		(2) December 8, 2021
	Parts of Body Injured:	(1) Right ankle and lumbar spine
		(2) Neck and left knee
	Manner in Which Injury Occurred:	(1) Trip over a backpack
		(2) Fall, resulting from a student tripping her
2.	Identity of Petitioner:	Defendant filed the petition
	Timeliness:	The petition is timely filed
	Verification:	The petition is properly verified
3.	Date of Issuance of Findings	
	of Fact & Order:	January 17, 2026, served on January 20, 2026
4.	Date of Transmission to the Appeals	
	Board Pursuant to Labor Code § 5909	February 4, 2026

5. Petitioner's Contention: That the trial court erred in denying the defendant's "Petition to Dismiss; Answer to Petition to Reopen" as to both matters which result in the applicant's ability to move forward with her "Petition to Reopen for New and Further Disability/Good Cause per Labro Code 5410 and 5803" dated September 23, 2024.

II

FACTS

The applicant, Penny Sojack Kunert, was employed by the Lancaster School District, permissibly self-insured and administered by Keenan & Associates during which time she sustained two injuries arising out of and during the course of her employment ("AOE/COE").

The first injury occurred on October 4, 2019 to her right ankle and lumbar spine, resulting in a 22% permanent disability Award dated October 1, 2021. The Award, as explained therein, was based upon the "...permanent and stationary report of the primary treating physician, Dr. Ganjianpour dated 11/16/2020" and that the applicant understood and waived "…her right to a panel qualified medical evaluator."

The second injury occurred on December 8, 2021 to her neck and left knee, resulting in a 19% Award dated December 6, 2023. The Award, as explained therein, was "…based on the split of the medical record between PQME Anand Shah, M.D. and PTP Mark Ganjianpour, M.D."

On September 23, 2024 the applicant filed a "Petition to Reopen for New and Further Disability/Good Cause per Labor Code 5410 and 5803" ("PTRO") on both claims alleging that her "…medical condition has worsened, resulting in additional permanent disability and ongoing need for medical treatment". There was no evidence at that time whatsoever, medical or otherwise, to support either petition, and thus, on February 5, 2025 the defendant filed a "Petition to Dismiss; Answer to Petition to Reopen" ("Petition") on both claims arguing that the applicant's petitions were skeletal and wholly without merit, and as such, should be dismissed.

The defendant's Declaration of Readiness to Proceed ("DOR") dated March 24, 2025 resulted in the matter being set for a Mandatory Settlement Conference ("MSC") on June 26, 2025. At the MSC, and over the applicant's objection, the matter was set for trial before this court on October 6, 2025.

Between the MSC and the trial, on September 5, 2025, the applicant was re-evaluated by Dr. Anand Shah as the panel qualified medical evaluator ("PQME"), presumably as to her second injury on December 8, 2021. The report, however, was not available at the time of the trial, and although the trial was set on the issue of the defendant's petition to dismiss both PTROs due to their skeletal nature, the court declined to move forward at that time, and instead chose to continue the matter.

By the next trial on January 14, 2026 Dr. Shah's report was on file with the court. He took a history, conducted an examination, and reviewed his prior medical reports, concluding that "…at this time, there are no changes to my prior reports." Also issued by the doctor was a supplement report dated September 25, 2025 generated by applicant's counsel's correspondence, concluding that a re-evaluation is recommended "…if there is stipulation (sic) for new and further disability…".

Aside from the pleadings that were subject to the court's judicial notice, the parties jointly submitted both PQME reports into evidence. Again, the court was presented with a narrow and

limited issue for trial, i.e., whether the applicant's PTROs should be dismissed based upon the defendant's Petitions dated February 5, 2025. The defendant submitted a trial brief dated October 3, 2025, and a supplemental trial brief dated January 12, 2026. The applicant submitted a trial brief dated January 16, 2026.

The court issued its Findings of Fact and Opinion on Decision the next day, resulting in its service on the parties on January 20, 2026, concluding that the defendant's petitions to dismiss were denied without prejudice, and that the applicant's PTROs were not dismissed. It is from these two Orders that the defendant seeks Removal.

III

DISCUSSION

The Standard for 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*.). The petitioner must also 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).

The defendant argues that a Petition for Removal is the proper remedy (presumably as opposed to a Petition for Reconsideration) because the defendant's petitions to dismiss the applicant's PTROs were denied without prejudice and could therefore "…be filed again", i.e. the findings of facts and orders were not final. See *Petition for Removal*, page 5, line 6. This much is true.

The defendant goes on to argue that reconsideration is not an adequate remedy because the defendant's due process rights are denied with the PTRO as they currently stand because they do not provide sufficient "…notice through specific and detailed facts in support of its allegations [and] [a]bsent such notice, Defendant will suffer substantial prejudice and irreparable harm as Defendant would be forced to guess and speculate as to its defense preparation for trial. *Id.* at page 5, lines 24-26. The argument is murky and misplaced.

With respect to the defendant's first contention, it is indeed true that they can re-file a petition to dismiss any petition to reopen at a later date. Here, the parties are in the middle of discovery with

PQME Ananda Shah, M.D. The doctor has not concluded whether the applicant has sustained any new and further disability. If the doctor concluded there is none, then the defendant would have the right to file a subsequent petition to dismiss. And it would be error for the court to deny the defendant's ability to do so with prejudice. At this juncture, the court declined to grant the defendant's petitions on their current contents, i.e., the skeletal nature of the applicant's PTROs.

With respect to the defendant's second contention, the court disagrees that reconsideration is not an adequate remedy. As stated already, the current findings and orders merely allow the applicant to move forward with her PTROs. If no such new and further disability is justified, the defendant can file its petitions to dismiss again – albeit on different grounds – but nonetheless filed again. The defendant is neither irreparably harmed nor substantially prejudiced nor compromised on its rights on reconsideration. The only decision the court afforded is to deny the defendant's ability to deprive the applicant's right to move forward with discovery on the issue of whether she suffered new and further disability from one injury or both injuries.

The Defendant's Petitions to Dismiss the Applicant's Petitions to Reopen

Turning to the merits of the Petition for Removal, the defendant argues that the court should have granted its petitions and ordered the applicant's PTROs dismissed on the basis that they were skeletal in nature and did not provide the requisite detailed facts. In support, the defendant cites authority as follows:

> **8 CCR §10534 Petitions to Reopen.**
>
> Petitions invoking the continuing jurisdiction of the Workers' Compensation Appeals Board under Labor Code section 5803 shall set forth specifically and in detail the facts relied upon to establish good cause for reopening. (Emphasis added.)
>
> **8 CCR §10536. Petition for New and Further Disability.**
>
> The jurisdiction of the Workers' Compensation Appeals Board under Labor Code section 5410 shall be invoked by a petition setting forth specifically and in detail the facts relied upon to establish new and further disability. (Emphasis added.)
>
> **Labor Code § 5803. Appeals Board continuing jurisdiction.**
>
> The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of this division, and the decisions and orders of the rehabilitation unit established under Section 139.5. 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.

This power includes the right to review, grant or regrant, diminish, increase, or terminate, within the limits prescribed by this division, any compensation awarded, upon the grounds that the disability of the person in whose favor the award was made has either recurred, increased, diminished, or terminated. (Emphasis added.)

Labor Code§ 5410 Time limits; proceedings for aggravated disabilities.

Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period. This section does not extend the limitation provided in Section 5407.

(Emphasis added.)

The defendant cites no cases in support of its position. And what the court cannot ignore is the fact that the defendant has now omitted in this Petition for Removal all eight cases it cited in its two trial briefs that the court reviewed. Those eight cases, as argued, were in support of its position that the applicant's PTROs should be dismissed. Between its trial brief and its supplemental trial brief, the defendant argued as follows:

California Highway Patrol v. WCAB (Griffin), 75 Cal. Comp. Cases 1241

In *Griffin*, the Court held that a petition to reopen must include specific factual allegations supporting the claim of new and further disability or good cause. A petition containing only conclusory statements is legally insufficient to invoke the jurisdiction of the WCAB. The Court emphasized that reopening is not automatic and requires more than a bare assertion that the applicant's condition has worsened.

State Compensation Insurance Fund v. WCAB (Hancock), 75 Cal. Comp. Cases 1336

In *Hancock*, the WCAB dismissed a petition to reopen that failed to provide supporting facts or medical evidence. The Court reiterated that skeletal petitions violate 8 CCR §§10534 and 10536.

Rodriguez v. Southland Care Center (2022) 50 CWCR 142

In *Rodriguez*, the Court clarified the meaning of "new and further disability." The Court explained that the term refers to a demonstrable change in the employee's condition, such as a recurrence of temporary disability, an increased level of permanent disability, or the need for additional medical treatment. The Court held that speculative or anticipated worsening of condition does not meet the statutory standard.

Applied Materials v. WCAB (D.C.) (2021) 64 Cal.App.5th 1042, 86 Cal. Comp. Cases 331

In *Applied Materials*, the Court of Appeal reaffirmed that the five-year limitation period under Labor Code §5410 is jurisdictional. A petition to reopen filed after expiration of the five-year period is barred unless new and further disability manifested within that period. The Court stressed that the burden rests on the applicant to establish that such disability occurred within the statutory timeframe.

Ricardo Soto v. Sysco Corp. (2022) ADJ10652804

• "The Petition to Reopen does not set forth specifically and/or in detail any of the facts relied upon as the basis for his petition."

• "More importantly, the record contains no medical evidence to support applicant's assertion that his condition had worsened or that his disability had increased."

Hall v. WCAB (1984) 49 CCC 253

• "The petition contained only two paragraphs of conclusions without any grounds for them or supporting evidence."

• "Such a skeletal petition fails to meet the requirements of the Labor Code and is subject to dismissal."

Granados v. WCAB (2014) 79 CCC 1364

• "The petition was denied for containing mere conclusions without supporting evidence."

• "Petitioners cannot satisfy their evidentiary burden through vague assertions or legal conclusions. They must provide specific factual allegations that demonstrate a change in condition."

Duran v. WCAB (2007) 72 CCC 488 (writ denied)

• "Allowing compensation for new and further ... disability commencing more than five years from the date of injury would render the limitations of LC 5410 meaningless, since, if such a rule were adopted, any applicant could avoid the prescriptions of LC 5410 and indefinitely extend the limitations period."

• "A petition to reopen must contain substantive evidence of new and further disability, not merely conclusory statements, to properly invoke the jurisdiction of the Appeals Board."

Again, these were the cases cited by the defendant to justify dismissing the applicant's PTROs. The court went through each one and provided its analysis in its decision, distinguishing each and every one, both factually and legally, from the issue at hand as follows:

California Hwy. Patrol v. WCAB (Griffin) (2010) 75 Cal. Comp. Cases 1241, 2010 Cal. Wrk. Comp LEXIS 225: The court of appeal dealt with a factual situation, newly discovered evidence, new parts of body, and a causal connection to the original injury. The court allowed the PTRO to move forward.

State Compensation Insurance Fund v. WCAB (Hancock) (2010) 75 Cal. Comp. Cases 1336, 2010 Cal. Wrk. Comp. LEXIS 254: In this matter the court of appeal reversed the Board and denied the PTRO because the injuries were not to the parts of body in the original Award and were compensable consequences.

Maria Rodriguez v. Southland Care Center (2022) 50 CWCR 142: The panel held that an injured worker cannot confer jurisdiction on the WCAB by filing a petition to reopen before the five-year period has expired for anticipated new and further disability that may occur after the five-year limitation period has run. See also Sarabi v. Workers' Comp. Appeals Bd. (2007) 151 Cal.App.4th 920, 925 [72 CCC 778]. Moreover, the Board can decide and issue of new andfurther disability beyond the five-year period, but the "…applicant still must prove they have suffered new and further disability within that five-year period." In our case, the applicant does not have any such medical evidence. But she is in the process of securing it. She is allowed to have her day in court in an attempt to prove her case. She might very well fail, but that remains to be seen.

Applied Materials v. WCAB (2021) 64 Cal. App. 5th 1042, 279 Cal. Rptr. 3d 728, 86 Cal. Comp. Cases 331, 2021 Cal. App. LEXIS 461, 2021 WL 2212901: If a

petition to reopen under either section is filed within the five-year period, the WCAB has jurisdiction to decide the matter beyond the five-year period. To recover additional benefits, the injured worker must not only file a timely petition to reopen but must also have suffered a new and further disability *within that* five-year period, unless there is otherwise good cause to reopen the prior award. An injured worker cannot confer jurisdiction on the Board by filing a petition to reopen before the five-year period has expired for anticipated new and further disability that may occur after the limitation period has run. The Court of Appeal, however, annulled the Board's decision of a 100% Award on the grounds that the medical evidence did not justify such a rating. Our facts are different.

Ricardo Soto v. Sysco Corporation/Sysco San Francisco and Zurich American (2022) ADJ10652804: The panel dealt with a situation where the PQME re-evaluation concluded there was no new and further disability and thus ruled in favor of the defendant. This case is not consistent with the defendant's arguments in this matter.

Hall v. WCAB; Merck Chemical Co.; and Liberty Mutual Ins. Co. (1984) 49 Cal. Comp. Cases 253, 1984 Cal. Wrk. Comp. LEXIS 3315: This case saw the Board denying a Petition for Reconsideration because it contained no details. Although the PTRO at hand also contains no details, it is not an appellate petition. If and once the medical reporting is obtained, the PTRO will either be supported, or it will not be supported (in terms of any new and further disability at all or in terms of any new and further disability arising prior to the five years having run). It is handled differently than a Petition for Reconsideration

Granados v. WCAB (2014) 79 Cal. Comp. Cases 1364, 2014 Cal. Wrk. Comp. LEXIS 123: This case is similar to *Hall* (see above) and is thus inapplicable to our issue. Additionally, the panel felt that the applicant was not aggrieved since the trial judge's finding was in her favor.

Duran v. WCAB (2007) 72 Cal. Comp. Cases 488, 2007 Cal. Wrk. Comp. LEXIS 76): In this case, the PTRO was. timely filed, but it was found that the new period of temporary disability began after the five-year period, and thus there was no new

and further disability. Defendant prevailed on the merits, not on whether the PTRO was skeletal. Our case and issue is different.

Although the statutory and regulatory authority appears to support the defendant's arguments, the case law that developed therefrom does not. There is no doubt that a PTRO filed within the five years does not automatically confer jurisdiction endlessly. But it is the medical evidence that decides whether a PTRO will succeed or fail. Anything short of that denies the applicant's due process and the mandate that workers' compensation laws shall be carried out "…to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." *California Constitution, article XIV, section 4.*

In her trial brief the applicant cited case law that is more compelling. As the Supreme Court stated in *Bland v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 324, workers' compensation laws shall be liberally construed for the protection of injured workers, limitation provisions must be liberally construed in favor of injured workers as well, and limitation provisions should not be interpreted in such a fashion that they will result in a loss of compensation to injured workers.

In the case of *Blanchard v. Workers' Comp. Appeals Bd.* (1975) 53 Cal.App.3d 590, the fourth district court of appeal dealt with a similar scenario as we have here. The applicant filed a timely PTRO but had no medical evidence in their possession at the time of the filing. The Board dismissed the petition on the grounds that it lacked facts establishing good cause to reopen, but the court of appeal reversed and held that although the applicant's petition was technically deficient, such deficiency was not fatal because the defendant was on sufficient notice of the claim. They then went on to emphasize that there is informality in the pleadings associated with workers' compensation proceedings prior to issuing the decision allowing the applicant to proceed.

<u>The Peculiarity with Regards to ADJ15636538 (Date of Injury December 8, 2021)</u>

As the Board can easily gather, the defendant's petitions to dismiss were filed in both cases.

In the case of ADJ13545865 with the date of injury as October 4, 2019, notwithstanding the defendant's skeletal petition assertion, they are essentially arguing that the applicant's PTRO should be dismissed because no medical evidence existed at the time of the PTRO. If successful, that would cause the PTRO to fail, and the applicant would arguably be time-barred due to the five years to reopen having then lapsed under *Labor Code* § 5410.

In the case of ADJ15636538 with the date of injury as December 8, 2021, the five years for the applicant to file a PTRO has not run. Furthermoe, the parties went forward with a PQME re-evaluation by Dr. Anand Shah who issued his reports dated September 5, 2025 and September 25, 2025, both of which were admitted into evidence. From this much, it is clear that the parties are moving forward with discovery, which appears to fly I the face of the defendant's position that the PTRO should be dismissed. Assuming arguendo that the defendant prevailed, it makes little sense to later gather the medical evidence from Dr. Shah who may support new and further disability and then have the applicant re-file prior to December 8, 2026. The defendant's position defies logic and serves only to promote delays, time and cost inefficiency, and increased judicial resources – all of which fly in the face of our state's constitutional directives.

The applicant is entitled to due process. She timely alleged new and further disability, and she is entitled to secure the medical evidence which will either prove or disprove her allegations. The defendant's petition should remain denied without prejudice. If the applicant fails to prove any new and further disability, the defendant would be free to file its petitions to dismiss once again and set forth its arguments in support thereof.

IV

RECOMMENDATION

It is respectfully recommended that the defendant's Petition for Removal dated January 30, 2026 be denied.

DATE: February 2, 2026

TODD T. KELLY

WORKERS' COMPENSATION JUDGE