

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

RONNIE BARNES, *Applicant*

vs.

**STATE OF CALIFORNIA – EMPLOYMENT DEVELOPMENT DEPARTMENT,
legally uninsured, administered by STATE COMPENSATION
INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ4399741
Long Beach District Office**

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

Defendant seeks reconsideration of the Findings and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on May 4, 2026, wherein the WCJ found that “[a]pplicant met his burden to prove that SB 228, SB 899 and SB 863 amends or alters Judge Gray’s January 26, 1984 Award.”

Defendant contends that the Labor Code provisions that implemented the utilization review (UR) process apply to any requests for medical treatment by applicant made after the effective date of the statutes.

We received an Answer from applicant, who is in pro per.

We received a Report and Recommendation (Report) from the WCJ that recommends that we deny the Petition for Reconsideration.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report.¹ Based on our review of the record, and as discussed below, we will

¹ Commissioner Zalewski, who was on the panel that issued a prior decision in this matter is unavailable to participate further in this decision. Another panel member was assigned in her place.

grant the Petition for Reconsideration, and as our Decision After Reconsideration, we will rescind the F&O and return the matter for further proceedings consistent with this decision.

FACTS

In his Report, the WCJ provided the following factual summary.

This matter involves a case in which Judge Joel Gray issued a Findings & Award on or about June 1, 1982. In said Findings and Award, the Applicant was awarded Permanent Disability in the amount of \$1,312.50 and further medical treatment.

On or about January 26, 1984, a Supplemental Findings and Award for Litigation Expense issued wherein Judge Gray found in pertinent part that the Applicant did not sustain a psychiatric injury arising out of and in the course of his employment and Defendants were assessed a 10% penalty on the award of self-procured medical treatment and all further medical treatment.

Following the Applicant's Award, the California Workers' Compensation System underwent a transformation wherein the Legislature implemented reforms, such as Utilization Review and Independent Medical Review, through Senate Bill (hereinafter referred to as "SB") 228, SB 899 and SB 863.

On March 26, 2024, the Parties presented for trial. The Parties represented that they had narrowed the issues to one issue for the court to address.

On April 29, 2024, the Parties went to trial on the issue which they framed. The issue was whether AB 227, SB 228, SB 899, and SB 863 amend or alter the 1/26/1984 Award. At the initial trial, the Parties declined to offer any exhibits because they believed it to be a legal issue. The Parties requested an opportunity to file post-trial briefs. The Parties were given the deadline of June 12, 2024 to file their trial briefs. On that date, the matter was submitted.

On July 9, 2024, after review of the record submitted, the undersigned issued an Order Vacating Submission and Setting Further Proceedings on August 26, 2024 at 8:31 a.m.

After multiple hearings, on or about March 12, 2026 the Parties declared that they were ready to proceed to trial on the issue previously raised.

On or about May 4, 2026, the undersigned issued a Findings of Fact and Orders wherein the undersigned found that the Applicant met his burden to prove that SB 228, SB 899 and SB 863 amend or alter Judge Gray's January 26, 1984 Award.

It is from this Findings of Fact and Orders that the Petitioner has filed the instant Petition for Reconsideration.

(Report, pp. 2-3, Footnotes omitted.)

DISCUSSION

I.

Former Labor Code section 5909² 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.

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 June 3, 2026, and 60 days from the date of transmission is August 3, 2026. This decision is issued by or on August 3, 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.

² Unless otherwise stated, all further statutory references are to the Labor Code.

Here, according to the proof of service for the Report, the Report was served on June 3, 2026, and the case was transmitted to the Appeals Board on June 3, 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 3, 2026.

II.

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; *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. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [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.

Here, the WCJ decided that the parties are not bound to follow the statutory procedures for obtaining medical treatment enacted by legislation that was subsequent to applicant’s award. As discussed below, this decision concerns jurisdiction, which is a threshold issue. Accordingly, it is a “final” decision, and defendant properly sought reconsideration.

III.

“A fundamental rule of statutory construction is that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (*DuBois v. Workers’ Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387 [58 Cal.Comp.Cases 286]; *Nickelsberg v. Workers’ Comp. Appeals Bd.* (1991) 54 Cal.3d 288, 294 [56 Cal.Comp.Cases 476].) “In construing a statute, our first task

is to look to the language of the statute itself. (Citation.) When the language is clear and there is no uncertainty as to the legislative intent, we look no further and simply enforce the statute according to its terms.” (*DuBois, supra*, 5 Cal.4th at p. 387; accord, *Atlantic Richfield Co. v. Workers' Comp. Appeals Bd. (Arvizu)* (1982) 31 Cal.3d 715, 726 [47 Cal.Comp.Cases 500].)

Uncodified section 84 of SB 863 provides that: “This act shall apply to all pending matters, regardless of date of injury, unless otherwise specified in this act, but shall not be a basis to rescind, alter, amend, or reopen any final award of workers' compensation benefits.” Sections 4610, 4610.5, and 4610.6 do not specify that they only apply to dates of injury on or after January 1, 2013. The language of section 84 of SB 863 is nearly identical to the language of uncodified section 47 of SB 899, which became effective in 2004. The appellate cases that interpreted section 47 found that the newly enacted and amended sections which were part of SB 899 were applicable to any pending case, except cases that were “final” subject only to the Appeals Board’s continuing jurisdiction under sections 5803 and 5804. (E.g., *Sierra Pacific Industries v. Workers’ Comp. Appeals Bd. (Chatham)* (2006) 140 Cal.App.4th 1498, 1506–1509 [71 Cal.Comp.Cases 714] [SB 899’s amendment of section 4600(b) requiring application of the ACOEM guidelines to determine whether medical treatment was reasonably required was applicable to all pending cases regardless of date of injury]; *E & J Gallo Winery v. Workers’ Comp. Appeals Bd. (Dykes)* (2005) 134 Cal.App.4th 1536, 1543 [70 Cal.Comp.Cases 1644] [apportionment provisions in SB 899’s new sections 4663 and 4664 were applicable to all non-final cases regardless of date of injury].)

This conclusion is also mandated by the well-established principle that the right to receive workers' compensation benefits is “wholly statutory.” (*DuBois, supra*, 5 Cal.4th at p. 388; *Beverly Hilton Hotel v. Workers' Comp. Appeals Bd. (Boganim)* (2009) 176 Cal.App.4th 1597, 1604 [74 Cal.Comp.Cases 927].) Furthermore, where a right is created solely by a statute, and the right has not been perfected by a final decision, the right is not vested but merely inchoate and may be modified or even entirely abolished by the Legislature at any time. (*Boganim*, 176 Cal.App.4th at pp. 1605–1607; *Graczyk v. Workers' Comp. Appeals Bd.* (1986) 184 Cal.App.3d 997, 1006–1007 [51 Cal.Comp.Cases 408]; see e.g., Gov. Code, § 9606.)

We note that in *Stevens v. Workers' Comp. Appeals Bd.* (2015) 241 Cal.App.4th 1074, 1090-1092 [80 Cal. Comp. Cases 1262], the Court of Appeal provided an extensive history of the legislative changes and how these changes have altered the process for obtaining medical treatment in workers’ compensation cases. (See also *Valdez v. Workers’ Comp. Appeals Bd.* (2013) 57

Cal.4th 1231, 1237, 1238 [78 Cal.Comp.Cases 1209] [discussing newly amended sections 4605, 4061 and 4062 and newly enacted section 4603.2(a) in the context of section 84 of SB 863].)

Section 4600 requires that an employer provide reasonable and necessary medical treatment to “cure or relieve” an employee from the effects of their industrial injury. This requirement to provide medical treatment for a workplace injury continues throughout the entire life of the employee unless the parties specifically resolve the issue of medical treatment. (*United States Fidelity & Guaranty Co. v. Dept. of Ind. Relations* (1929) 207 Cal. 144; *Ferguson v. Workers’ Comp. Appeals Bd.* (1995) 33 Cal.App.4th 1613, fn. 12 [60 Cal.Comp.Cases 275].)

The Appeals Board’s jurisdiction with respect to medical treatment disputes is set forth in sections 4604 and 5304. Section 5304 states in pertinent part that, “[t]he appeals board has jurisdiction over any controversy relating to or arising out of Sections 4600 to 4605....” (Lab. Code, § 5304; see §§ 5300, 5301.) Section 4604 states that: “Controversies between employer and employee arising under this chapter shall be determined by the appeals board, upon the request of either party, except as otherwise provided by Section 4610.5.” (Lab. Code, § 4604.) The Appeals Board retains jurisdiction over all other disputes between the employer and the employee “except as otherwise provided by section 4610.5.” (Lab. Code, § 4604; see also *Allied Signal Aerospace v. Workers’ Comp. Appeals Board (Wiggs)* (2019) 35 Cal.App.5th 1077 [84 Cal.Comp.Cases 367].)

Section 4610 requires that employers establish a utilization review process. (Lab. Code, § 4610; *State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230, 241 [73 Cal.Comp.Cases 981].) As discussed in *Sandhagen, supra*, 44 Cal.4th at pp. 241-245, with respect to the UR process before 2013, an employee could challenge a decision modifying or denying the treatment request by objecting and proceeding with the process for an evaluation under section 4062. The Supreme Court made clear that an employer has no other avenue to challenge the merits of a request for treatment other than through UR. (*Id.* at p. 244.) Moreover, the Supreme Court stated that: “Having broadly defined utilization review, and requiring every employer to establish such a process at considerable expense and with numerous statutory safeguards . . . it is unlikely that the Legislature intended to allow employers to circumvent the process whenever an employer felt it expedient”. (*Id.* at p. 236.)

In 2012, “the Legislature amended sections 4062 and 4610 so that an injured employee could no longer use the AME/QME process to dispute a UR decision. Instead, sections 4610.5 and 4610.6 were adopted, introducing a new procedure whereby an injured worker who disputes a UR

decision may request IMR. Under sections 4610.5 and 4610.6, an IMR physician evaluates the ‘medical necessity’ of the proposed treatment.” (*Dubon v. World Restoration* (2014) 79 Cal.Comp.Cases 1298, 1305 (Appeals Board en banc).) Additionally, under the analysis in *Wiggs*, while parties may agree to displace the UR/IMR process for specific types of medical treatment, otherwise they are bound by the UR and IMR procedures. (*Wiggs, supra*, at p. 1078.)

Applicant’s premise is that procedural changes in the Labor Code to determine if a requested treatment is reasonable and necessary means that applicant is somehow stripped of his right to lifetime medical treatment. Yet, a change in *how* decisions are made is different than whether treatment is provided as required by the Labor Code and the terms of the award. Following applicant’s logic, the award of medical treatment to applicant in 1984 means that defendant is required to follow the procedures as they existed in 1984 when applicant received his award.

Any analysis of the effect of legislative changes requires that we first look to the statutory language, and without more, the WCJ’s reliance on and consideration of SB 228, SB 899 and SB 863 is simply incorrect. The WCJ’s decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . .” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc) (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350])). This responsibility necessarily requires analysis of the correct statutory language and the relevant decisional law.

Accordingly, we grant the Petition for Reconsideration, rescind the decision and return the matter to the WCJ for a new decision.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Order of May 4, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of May 4, 2026 is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

CRAIG L. SNELLINGS, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 3, 2026

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

**RONNIE BARNES
STATE COMPENSATION INSURANCE FUND**

AS/kl

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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