

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

SEAN VICE, *Applicant*

vs.

SHASTA COUNTY OFFICE OF EDUCATION, *Permissibly Self-Insured, Defendant*

**Adjudication Number: ADJ21105749
Redding District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of January 5, 2026, wherein it was found that applicant "did not sustain any injury arising out of and occurring in the course of employment." Applicant claimed that while employed on June 4, 2025 as an IT Analyst, he sustained industrial injury to his right shoulder.

Applicant contends that the WCJ erred in not finding industrial injury. We have received an Answer from defendant and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will deny the applicant's Petition.

Preliminarily, we note that 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 13, 2026 and 60 days from the date of transmission is April 14, 2026. This decision is issued by or on April 14, 2026, so we have timely acted on the petition as required by Labor Code section 5909(a).

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 13, 2026, and the case was transmitted to the Appeals Board on February 13, 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 13, 2026.

Turning to the merits, applicant claimed that he sustained injury to his shoulder when a speaker that was stacked on another speaker started to fall and he reached behind his back to grab the falling speaker. Applicant claims that while attempting this maneuver he felt a pop in his shoulder followed by a lot of pain. (Ex. E Accident Incident Report; Transcript of October 22, 2025 trial at p. 5.) Applicant testified that he told co-workers Ashley Talladino and Cole Rumford about this incident. (Transcript of October 22, 2025 trial at pp. 17-18.) Applicant then drove to seek medical treatment and called supervisor James Alspaugh to report his alleged industrial injury on the way to seeking medical treatment. (Transcript of October 22, 2025 trial at pp. 25-26.)

However, Ms. Talladino testified that on the morning of the alleged injury applicant told her that he had injured himself while playing hockey the night before. Ms. Talladino testified, “He told me that he did not have any more sick time and that he really needed to go to the doctor. He was in a lot of pain that that he was considering filing a workers’ comp claim, that he would say the incident happened at the graduation set-up that him and I would be at later th[at] afternoon.... He said he – his plain if he did it was that he was going to say he lifted a speaker up and fell possibly backwards and that his shoulder had popped.” (Transcript of October 22, 2025 trial at pp. 51-52.)

A screen shot of a text message conversation between applicant and Ms. Talladino was introduced into the evidentiary record in which applicant states, “Hey keep my shoulder between you and I [sic]. I’m saying I pulled it on a speaker.” (Ex. E.)

As the WCJ explains in the Report, she found Ms. Talladino’s testimony credible, and this testimony was supported by applicant’s text message. (Report at p. 4.) As for applicant’s testimony, the WCJ found that it was “not completely forthcoming.” (Report at p. 3.)

As the Court of Appeal has held:

Venerable precedent holds that, in a bench trial, the trial court is the “sole judge” of witness credibility. (*Davis v. Kahn* (1970) 7 Cal.App.3d 868, 874.) The trial judge may believe or disbelieve uncontradicted witnesses if there is any rational ground for doing so. (*Ibid.*) The fact finder’s determination of the veracity of a witness is final. (*People v. Bobeda* (1956) 143 Cal.App.2d 496, 500.) Credibility determinations thus are subject to extremely deferential review. (*La Jolla Casa deManana v. Hopkins* (1950) 98 Cal.App.2d 339, 345–346 [“[A] trial judge has an inherent right to disregard the testimony of any witness The trial judge is the arbiter of the credibility of the witnesses”].)

(*Schmidt v. Superior Court* (2020) 44 Cal.App.5th 570, 582.)

Similarly, in workers’ compensation proceedings, a WCJ’s credibility determinations are “entitled to great weight because of the [WCJ’s] ‘opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand ...’ [Citation.]” (*Garza v. Workmen’s Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].)

During his testimony, applicant attempted to explain this apparently compromising language by saying that “What I meant by that text is I didn’t want a whole bunch of people knowing I got hurt” (Transcript of October 22, 2025 trial at p. 9) and “And so the whole reason why I said, keep my shoulder between me and you, is because I didn’t want to jeopardize missing

out on doing the graduation.” (Transcript of October 22, 2025 trial at p. 10.) Applicant explained his wording of “I’m saying I pulled in on a speaker” to “fat thumb” or “autocorrect.” (Transcript of October 22, 2025 trial at p. 13.)

The WCJ was well within her discretion in finding these explanations not credible, especially in light of Ms. Talladino’s contrary testimony, and the fact that applicant had already reported his injury to his supervisor and to Mr. Rumford.

Since we see no reason on the record presented to us to disturb the WCJ’s weighing of the competing testimonies of applicant and Ms. Talladino, we will deny the applicant’s Petition.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings and Order of January 5, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

KATHERINE WILLIAMS DODD, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 14, 2026

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

**SEAN VICE
GOLDEN STATE WORKERS COMP
MICHAEL SULLIVAN & ASSOCIATES**

DW/oo

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