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

**SHARON PELLETIER,** ***Applicant***

**vs.**

**QLOGIC CORPORATION;**
**PREFERRED EMPLOYERS SAN DIEGO,** ***Defendants***

**Adjudication Number: ADJ10684126**
**Santa Ana District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the First Amended Findings and Award[1] issued by the workers' compensation administrative law judge (WCJ) on June 3, 2026. Therein, the WCJ found that applicant sustained admitted injury arising out of and in the course of employment (AOE/COE) to her back, while employed April 21, 2015. The WCJ further found that the injury herein caused 34% permanent disability, after 50% apportionment.

Applicant contends that the WCJ should have relied on vocational expert evidence to find her 100% permanently disabled, with no apportionment.

We did not receive an answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the Petition for Reconsideration, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant the 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

[1] The full captioned title of the WCJ's June 3, 2026 decision is "ORDER PURSUANT TO TITLE 8, CALIFORNIA CODE OF REGULATIONS SECTION 10961(c) RESCINDING FINDINGS, AWARD AND OPINION DATED 5/4/2026; FIRST AMENDED FINDINGS AND AWARD; OPINION ON DECISION."

reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code[2] section 5950 et seq.

**I.**

Up through July 1, 2024, petitions for reconsideration were subject to former section 5909, which 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.)

During the period from July 2, 2024 through June 30, 2026, petitions for reconsideration were subject to former section 5909, which stated 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.
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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.

Under section 5909(a) (in effect from July 2, 2024 through June 30, 2026), 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 July 9, 2026 and 60 days from the date of transmission is Monday, September 7, 2026, a holiday. The next business day that is 60 days from the date of transmission is Tuesday, September 8, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[3]

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[2] All further statutory references are to the Labor Code, unless otherwise noted.

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

> 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.

Section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026) 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) (in effect from July 2, 2024 through June 30, 2026) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on July 9, 2026, and the case was transmitted to the Appeals Board on July 9, 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) (in effect from July 2, 2024 through June 30, 2026), because service of the Report in compliance with section 5909(b)(2) (in effect from July 2, 2024 through June 30, 2026) provided them with actual notice as to the commencement of the 60-day period on July 9, 2026.

**II.**

The WCJ provided the following discussion in the Report:

> **INTRODUCTION**
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> The parties proceeded to trial on April 11, 2026, and were afforded a concurrent period until April 15, 2026, in which to submit post-trial briefs. On April 15, 2026, the matter was submitted for decision.
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> This Court issued its Findings and Award and Opinion on Decision dated May 4, 2026. On May 29, 2026, Applicant filed a Petition for Reconsideration. On June 3, 2026, the Court acted pursuant to Title 8, California Code of Regulations Section 10961(c), rescinded its Findings, Award and Opinion, and thereafter issued its First Amended Findings and Award and Opinion on Decision.
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> Petitioner seeks Reconsideration of the June 3, 2026, First Amended Findings and Award and Opinion on Decision.
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> Petitioner challenges two of the Court's Findings: 1) Petitioner challenges Paragraph 10 of the Findings of Fact in which the Court determines that based upon the findings of QME Dr. Perry Secor, 50% non-industrial apportionment applies; 2) Petitioner also challenges the Court's finding that Applicant has suffered 34% permanent disability after apportionment. (Petition For Reconsideration, page 2:1-9)

Petitioner contends the treating physician (Dr. Merritt) found applicant's disability to be 100% apportioned to the industrial injury. Petitioner contends vocational expert Ray Largo pronounced Applicant unable to return to the labor market or benefit from vocational rehabilitation. (Petition for Reconsideration, page 4:6-18) Petitioner notes "…Mr. Largo supports his opinion with the reports and opinion of Dr. Merritt…" (Petition for Reconsideration, page 4:14-15)

Otherwise stated, Petitioner contends the court should have embraced the conclusions of primary treating physician Merritt on apportionment and the conclusions of vocational expert Ray Largo as they impact permanent disability.

The court determined the medical reporting of QME Secor to constitute substantial medical evidence; the court determined the medical reporting of PTP Merritt did not constitute substantial medical evidence.

The parties since 2018 were aware that necessary component ingredients of substantial medical evidence were lacking in Dr. Merritt's medical reporting, and at trial in 2026 so-stipulated.

As early as a hearing in 2018, the parties engaged in discussion with WCJ Leviton, who noted in the Minutes of Hearing regarding the discussion that Dr. Merritt's reports "…do not comply w/ work comp Regs…" (Minutes of Hearing 11/15/2018, EAMS DOC ID#68673161) Eleven days later, at the Cross-examination of QME Secor, defense counsel commented "I think we have a Minute Order indicating that Dr. Merritt's report is not substantial evidence…" (Joint Exhibit 4, Deposition of Dr. Secor 11/26/2018, page 39:7-17) In 2026, the parties stipulated that PTP Merritt's reporting was unratable pursuant to guidelines utilized within the workers' compensation system.

The trial record reveals the apportionment findings of PTP Dr. Merritt consist in their entirety only of the following language: **"Apportionment: 100% related to WC injury."** (Exhibit 7, medical report of Dr. Andrew Merritt appointment 9/25/2018, page 3) Dr. Merritt's apportionment is unadorned by supporting reasoning. At trial, the parties stipulated that PTP Merritt's reporting, as it relates to impairment, was unratable. (MOH/SOE 4/1/2026, page 3:1-3)

The Court's apportionment findings were based on the apportionment opinion of QME Dr. Perry Secor. On apportionment, QME Secor opined: **"…Ms. Pelletier has an extensive history of non-industrial pre-existing spinal problems. She did have non-industrial degenerative disc disease in the lumbar spine which necessitated laminectomies at the L3, L4, L5 and S1 levels with a spinal fusion from L3 to the sacrum. In addition to this, she had SI joints which were symptomatic and required sacroiliac injections which were performed by Dr. Merritt. Additionally, she was found to have a parathyroid tumor which required resection and was a cause of extensive osteoporosis. Her osteoporosis contributed to subsequent hardware loosening that occurred after the April 21, 2015, work-related injury…After reviewing these records, I have no reason to amend or modify my opinions on apportionment of impairment. It continues to be my opinion, within**

**a reasonable medical probability, there is significant medical evidence to support 50% impairment to pre-existing non-industrial causation. 50% of her impairment is apportioned to her pre-existing, extensive lumbar spine degenerative disc disease which required multilevel laminectomy and instrumented fusion. The other significant factor that contributed to her non-industrial apportionment were the effects of herparathyroid tumor which caused severe osteoporosis…"** (Joint Exhibit 1, Medical Report Dr Perry Secor, signed 1/14/2026, pages 6-7)

Dr. Secor performed detailed record reviews. Dr. Secor's June 22, 2018, report details his review of 86-pages of records. (Joint exhibit 3, pages 5-8) Dr. Secor's report signed January 14, 2026, details his review of 148-pages of additional records. (Joint Exhibit 1, medical report of Dr. Perry Secor signed 1/14/2026, page 1)

PTP Merritt did not perform a record review.

The Petition for Reconsideration contends Applicant to have been pain free the day before her industrial injury (Petition for Reconsideration, page 3:7-8) and to have had no restrictions performing her full work duties during the six-month period preceding her industrial injury (Petition for Reconsideration, page 3:4-6).

The trial record reveals that Applicant has a significant pre-existing history of back pathology which included a 5–10-year pre-existing history of back pain, back surgery predating the industrial injury, active care with a Pain Management Specialist both before and after the industrial injury, and a diagnosis of post-laminectomy syndrome imposed both before and after the industrial injury.

The trial record reveals Applicant had non-industrial spinal fusion before her industrial injury. The trial record reveals that the "full work duties" to which she returned after her non-industrial surgery (and continued to perform during the six-month period before her industrial injury), involved only sedentary work. (MOH/SOE page 2:4-7)

The trial record reveals that the Applicant suffered from pre-existing back pain for a period of five to ten years. This pre-existing back pain led in September 2013 to a lumbar fusion with insertion of rods into her back. (MOH/SOE 4/1/2026, page 5:7-11; Exhibit 4, page 2.) The pre-injury surgery consisted of multilevel fusion L3 to sacrum with laminectomy and posterior instrumentation. (Joint Exhibit 3, PQME report Dr. Perry Secor 6/22/2018, page 4)

The Applicant also had pre-existing 40-degree thoracic scoliosis prior to her industrial injury. (Joint Exhibit 3, Medical report Dr. Perry Secor 6/22/2018, page 4.) The Applicant had scoliosis since birth. (MOH/SOE 4/1/2026, page 5:7-11.)

The Applicant was under the care of PTP Dr. Merritt preceding her industrial injury. (Petition for Reconsideration, page 2:21-22) Dr. Merritt is a Spine and Sports Medicine Pain Management Specialist.

The trial record reveals that within the four-month period before her industrial injury, Dr. Merritt discussed "back limitations" with the Applicant. Applicant's diagnosis four months before her industrial injury included "post-laminectomy syndrome-lumbar fusion." (Exhibit 4, Medical Report of Dr. Andrew Mettitt, 11/18/2014, pages 1-2)

In addition to the QME and PTP medical reporting, the parties each produced reporting from vocational experts—defense offering the reporting of Nick Corso and applicant offering the reporting of Ray Largo. Mr. Largo found Applicant not to be placeable or employable; Mr. Corso commented: "…On page 47, Mr. Largo finds Ms.Pelletier to not be placeable or employable. Other than Dr. Merritt's report, and the articles referenced above, the evidence for these opinions is not clear. His analysis did identify 186 occupational matches, indicating a range of occupations and work settings which could be considered. I find these statements about placeability and employability to be conclusory, and they contradict the preceding skills analysis results…" (Defense Exhibit A, Vocational Rehabilitation Report, Nick Corso, 12/16/21, page 40)

Mr. Largo's determination of 186 occupation matches is inconsistent with his conclusions. Mr. Largo's conclusions are based on medical reporting of Dr. Merritt, which itself lacks substantiality. The court determined the reporting of Mr. Largo lacks substantiality and does not rebut the scheduled rating in this case.

Vocational specialist Nick Corso performed a Transferable Skills Analysis with due consideration to the Applicant's medical status and work restrictions. His research revealed 330 DOT matches. (Defense Exhibit A, Vocational Rehabilitation Report, Nick Corso, 12/16/21, page 23)

## DISCUSSION

The Applicant suffered an admitted injury to her back April 21, 2015. (MOH/SOE 4/1/2026, page 2:4-7) On the day of her industrial injury, Applicant was walking on a wet surface in the kitchen at work and fell. (Joint Exhibit 3, medical report of Dr. Perry Secor 6/22/2018, page 2)

Ms. Pelletier was able to work after her injury for nearly 2 years, until the company was sold, and she was laid off. (Defense Exhibit A, Vocational Rehabilitation Report, Nick Corso, 12/16/21, page 40)

In 2019, WCJ Leviton signed an Order granting defendant a third-party credit of $1,250,271.09. (MOH/SOE 4/1/2026 page 2:17-19)

This matter went to trial 4/1/2026. At time of trial, the applicant was 65-years old and had last worked 2/3/2017, when her company was sold and she was laid off. (Defense Exhibit A, Vocational Rehabilitation Report, Nick Corso, 12/16/21, page 36 and 40)

The medical reporting of Dr. Perry Secor (Joint Exhibits 1-3 & 5) and Dr. Andrew Merritt (Applicant Exhibits 2-9) were entered into the trial record without objection.

Dr. Perry Secor served as the duly selected Panel Qualified Medical Evaluator in Orthopedics. (Petition For Reconsideration page 2:26-28; MOH/SOE 4/1/2026, page 2:19-20.) QME Secor examined the applicant and performed multiple record reviews. His record reviews included a review of reports from vocational experts Ray Largo & Associates and from Corso Vocational Counseling. Dr. Secor also reviewed the medical reporting of Dr. Merritt.

Dr. Andrew Merritt served as Applicant's treating physician. (Petition For Reconsideration page 2:21-22; MOH/SOE 4/1/2026, page 2:13-14; Applicant Exhibits 2-4.)

The court in its Opinion found Dr. Secor's medical reporting to constitute substantial medical evidence and his findings to be well-reasoned and persuasive. Based upon the medical reporting of Dr. Secor, the court determined 50% of applicant's impairment is apportioned to pre-existing non-industrial causation and 50% to the effects of Applicant's industrial injury of April 21, 2015. Based upon the medical findings of Dr. Secor, the Court found applicant to have suffered 34% permanent disability, after apportionment.

PTP Dr. Merritt did not review records. Dr. Merritt's exam missed otherwise significant findings. By way of example, QME Dr. Secor notes in his report of June 22, 2018, that Applicant had "…pre-existing 40-degree thoracic scoliosis…" (Joint Exhibit 3, Medical report Dr. Perry Secor 6/22/2018, page 4.) This was consistent with Applicant's testimony that she was born with scoliosis. (MOH/SOE 4/1/2026, page 5:7-11.) In Exhibit 2, Dr. Merritt curiously reports: "Thoracic…There is no abnormal curvature of the spine…" (Applicant Exhibit 2, medical report Dr. Andrew Merritt 7/21/2014).

The parties stipulated at trial to flaws in Dr. Merritt's medical reporting. (MOH/SOE 4/1/26, page 3:1-3)

## PETITION FOR RECONSIDERATION CONTENDS THE OPINION OF QME SECOR TO BE SPECULATIVE

In challenging the Court's Opinion as it relates to apportionment, petitioner contends: "In his most recent report…[i]n formulating his opinion, Dr. Secor ignored the direct medical evidence contained in Dr. Merritt's July 21, 2014, September 4, 2014, and November 18, 2014, reports, which prove that Applicant was pain-free and performing high-level work without any restrictions prior to the April 21, 2015, injury (see Applicant's Exhibit 2; Applicant's Exhibit 3; and Applicant's Exhibit 4)." (Petition For Reconsideration page 7:14-20)

It is axiomatic that "Apportionment is the process employed by the Board to segregate the residuals of an industrial injury from those attributable to other industrial injures, or to nonindustrial factors, in order to fairly allocate the legal responsibility." (Brodie v. Workers' Comp. Appeals Bd. (2007) 40 Cal.4th 1313, 1321 [72 Cal.Comp.Cases 565], quoting Ashley v. Workers' Comp. Appeals Bd. (1995) 37 Cal. App. 4th 320, 326 [Cal.Comp.Cases 683].)

"Section 4663(c) not only prescribes what determinations a reporting physician must make with respect to apportionment, it also prescribes what standards the WCAB must use in deciding apportionment; that is, both a reporting physician and the WCAB must make determinations of what percentage of the permanent disability was directly caused by the industrial injury and what percentage was caused by other factors." (Escobedo v. Marshalls (2005) (en banc) 70 Cal.Comp.Cases 604, 607)

A physician's (and this Court's) apportionment finding is required to account for "…other factors both before and subsequent to the industrial injury…" (California Labor Code Section 4663(c)) Apportionment may include disability that formerly could not have been apportioned, including apportionment to pathology, asymptomatic prior conditions, and retroactive prophylactic work restrictions. (Escobedo v. Marshalls (2005) (en banc) 70 Cal.Comp.Cases 604, 607, 611-612.)

In the present case, Applicant testified on direct examination that before her injury in this case, she was "…performing her full job duties for the six-month period before her April 2015 injury…" (MOH/SOE 4/1/2026, page 5:14-18.)

When QME Secor examined the Applicant in June 2018, he noted Applicant had been employed as an Accounting Manager for 10-years. (Joint Exhibit 3, medical report of Dr. Perry Secor 6/22/2018, page 2) The trial record reflects the job duties she was performing during the six-month period before her April 2015 industrial injury were sedentary duties, as an Accounting Manager Occupational Group 110. (MOH/SOE 4/1/2026, page 2:4-7; Applicant Exhibit 10, page 37)

Applicant testified that before her industrial injury, she was "…back pain free…" (MOH/SOE 4/1/2026, page 5:14-18.) Petitioner argues that "On April 20,2015, the day before her injury in this case, she was pain-free." (Petition For Reconsideration, page 3:7-8)

Examining the trial record as a whole and based upon the medical reporting of QME Dr. Perry Secor which the Court found well-reasoned and persuasive, the court concluded that apportionment applied.

In the Petition for Reconsideration, petitioner contends: "We believe great weight should be given to the pre-injury medical records of Dr. Merritt. The July 21, 2014, September 4, 2014, and November 18, 2014, report serve as the clinical

reality of Applicant's pre-April 21, 2015, status." (Petition for Reconsideration, page 8:7-9)

Petitioner contends great weight should be given to these three reports. The three reports were entered into the trial record and their flaws were the subject of stipulation by the parties. The parties stipulated that "…Medical reporting of Dr. Andrew Merritt including but not limited to his report concerning an evaluation of 9-25-2018 is not ratable pursuant to rating guidelines utilized within the workers' compensation system…" (MOH/SOE 4/1/2026, page 3:1-3)

In the Petition for Reconsideration, petitioner contends: "…Dr. Secor ignored the direct medical evidence contained in Dr. Merritt's July 21, 2014, September 4, 2014, and November 18, 2014, reports, which prove that Applicant was pain-free and performing high-level work without any restrictions prior to the April 21, 2015, injury…" (Petition For Reconsideration, page 7:16-20)

The trial record reveals that Applicant was under the active care of Dr. Andrew Merritt prior to her industrial injury. Dr. Merritt is a Sports and Spine Orthopedic Pain Management Specialist. Applicant was under Dr. Merritt's treatment for a significant back condition. The trial record reveals this active care with Dr. Merritt to have commenced as early as 2013 with a Comprehensive Pain Management Consultation. (Exhibit 10, page 4). Dr. Merritt was treating the Applicant for "post-laminectomy syndrome" prior to her industrial injury. (Applicant Exhibits 2-4.)

The trial record reveals that ***Prior to her industrial injury***, the Applicant underwent lumbar fusion surgery September 4, 2013. (Exhibit 4, Medical Report of Dr. Andrew Merritt 11/18/2014, page 2.)

The trial record reveals that ***Prior to her industrial injury*** the Applicant had been experiencing back pain for a period of five to ten years. Applicant's non-industrial back surgery in September 2013 involved arthrodesis in which rods were inserted into her back to create stability. (MOH/SOE 4/1/2026, page 5:7-11.)

The Guides to The Evaluation of Permanent Impairment, Fifth Edition. Table 15-3 speaks to conditions which include "…successful or unsuccessful attempt at surgical arthrodesis…" (Guides to the Evaluation of Permanent Impairment, Fifth Edition. Table 15-3, page 384.) Such conditions place the individual within a DRE Lumbar Category IV.

The trial record reveals that on **November 18, 2014, four months before her industrial injury**, Applicant continued under the active care of Dr. Andrew Merritt. Dr. Merritt examined the Applicant and noted Applicant was reporting pain in the low back, albeit of a decreased level. Four months before her industrial injury, Dr. Merritt discussed "back limitations" with the Applicant and diagnosed the

Applicant as suffering from a "post-laminectomy syndrome-lumbar fusion. (Exhibit 4, Medical Report of Dr. Andrew Mettitt, 11/18/2014, pages 1-2)

Following her industrial injury, the Applicant selected Dr. Merritt as her LC4600 Primary Treating Physician. (MOH/SOE 4/1/2026, page 2:13-14) Dr. Merritt continued to diagnose Applicant as suffering from a post-laminectomy syndrome.

The trial record reveals that nine days **after** her industrial injury, when evaluating the Applicant for her industrial injury, Dr. Merritt continued the pre-injury diagnosis of "post laminectomy syndrome," noting it to have been "aggravated" by her industrial slip-and-fall of 4/21/2015. (Exhibit 5, Medical report Dr. Andrew Merritt 6/1/2015, page 4.)

In his Permanent and Stationary report of September 25, 2018, (Applicant Exhibit 7), Dr. Merritt imposes the selfsame pre-injury diagnosis ("post laminectomy syndrome"). (Exhibit 7, Medical reporting of Dr. Andrew Merritt 9/25/2018, page 5.)

The Petition for Reconsideration urges the Board to reject the apportionment findings of QME Dr. Secor in favor of the apportionment findings of PTP Merritt.

Dr. Merritt offers a brief, unsubstantiated apportionment determination that Applicant's condition is "100% related to WC injury." (Exhibit 7, Medical reporting of Dr. Andrew Merritt 9/25/2018, page 5.) Dr. Merritt offers no commentary or supporting reasoning for his apportionment findings. (Exhibit 7, Medical reporting of Dr. Andrew Merritt 9/25/2018, page 5.). The parties themselves acknowledged Dr. Merritt's reporting to be inconsistent with impairment rating protocols utilized within the workers' compensation system. (MOH/SOE 4/1/2026, page 2:1-3)

Dr. Perry Secor served the parties as the duly selected Panel Qualified Medical Evaluator in Orthopedics. (MOH/SOE 4/1/2026, page 2:19-20) The Court determined Dr. Secor's opinions to be well-reasoned, based on reasonable medical probability, and persuasive.

The Court based its apportionment findings upon the apportionment opinion of QME Dr. Secor, set forth *supra*.

**PETITION FOR RECONSIDERATION CONTENDS THE APPORTIONMENT FINDINGS OF DR. SECOR ARE BASED ON RETROSPECTIVE PROPHYLACTIC WORK RESTRICTIONS AND VIOLATE THE STANDARDS SET FORTH IN TIMMONS V. WCAB**

Petitioner cites to Timmons v. WCAB (2012) 77 CCC 193, contending in the Petition for Reconsideration: "In his most recent report, Dr. Secor provides the Applicant with retroactive prophylactic work restrictions that he believes would have been in place prior to the April 21, 2015, injury (see joint Exhibit 1, pg. 6-7)." (Petition For Reconsideration, page 7:14-16)

The report to which petitioner refers is Joint Exhibit 1, the medical report of Dr. Secor dated December 22, 2025, signed January 14, 2026.

In the Petition for Reconsideration, petitioner argues: "Like the AME in Timmons, Dr. Secor is attempting to apply retroactive prophylactic work restrictions to justify his apportionment analysis…" (Petition For Reconsideration, page 8:1-2)

The trial record reveals that Dr. Secor's discussion of retroactive prophylactic work restrictions was entirely generated by Petitioner. Dr. Secor engaged in the discussion only when directed to do so by Petitioner. The trial record reveals that Dr. Secor did not base or justify his apportionment findings, either in whole or in part, on pre-existing prophylactic work restrictions.

Joint Exhibit 1 is signed by Dr. Secor January 14, 2026, and is his most recent report. In that report, Dr. Secor reviews records. Dr. Secor in the transmittal letter is requested to respond to specific questions posed by Petitioner. For example, he was asked by Petitioner to re-address his opinions on apportionment following review of the two dueling vocational rehabilitation reports. Separately, and at the specific request of Applicant counsel, Dr. Secor was directed in the letter to "…address whether Ms. Pelletier had any work restrictions just prior to the April 21, 2015, injury…" (Joint Exhibit 6, Medical report of Dr. Perry Secor signed 1/14/2026, page 6.)

Dr. Secor responded to the question, as Applicant counsel specifically had directed him. Dr. Secor responded that "…To answer the question of whether Ms. Pelletier required work restrictions prior to the April 21, 2015, injury, I would have desired to have the opportunity to examine her before the April 21, 2015, injury. For obvious reasons, I did not have this opportunity. Because she had extensive lumbar spine surgery, work restrictions on a prophylactic basis are usually given…" He then goes on to recite what those restrictions might normally be. (Joint Exhibit 6, Medical report of Dr. Perry Secor 1/14/2026, page 6.)

Dr. Secor is simply responding to the question posed to him by Applicant counsel. He is responding by providing what might be "usually given" work

restrictions, given Applicant's pre-injury post-surgical status and pre-existing scoliosis pathology. There is no linkage between his response to the interrogatory concerning work restrictions, and the doctor's entirely separate findings on apportionment. Otherwise stated, neither is foundational for the other nor is there any relationship between the two.

This discussion of retroactive work restrictions transpired in 2026. The 50% apportionment findings of Dr. Secor were expressed by Dr. Secor in his 2018 report (Joint exhibit 3). In that report, Dr. Secor opined: "Apportionment is indicated. The patient had a 40-degree thoracolumbar scoliosis that predated the injury in question. She also had a previous lower lumbar fusion. Both should be considered non-industrial in etiology. Apportionment is indicated to pre-existing back condition/impairment. Based on this, it is my opinion that 50% of her disability/impairment should be apportioned to her pre-existing scoliosis and lumbar spine disease which required lumbar fusion. The remaining 50% should be apportioned to the effects of the specific injury which occurred on April 21, 2015…" (Joint Exhibit 3, medical report of Dr. Perry Secor 6/22/2018, page 14)

In Dr. Secor's medical report signed January 14, 2026, (Joint Exhibit 1), the doctor reaffirmed his earlier 50% apportionment findings: "…Ms. Pelletier has an extensive history of non-industrial pre-existing spinal problems. She did have non-industrial degenerative disc disease in the lumbar spine which necessitated laminectomies at the L3, L4, L5 and S1 levels with a spinal fusion from L3 to the sacrum. In addition to this, she had SI joints which were symptomatic and required sacroiliac injections which were performed by Dr. Merritt. Additionally, she was found to have a parathyroid tumor which required resection and was a cause of extensive osteoporosis. Her osteoporosis contributed to subsequent hardware loosening that occurred after the April 21, 2015, work-related injury…I was asked to re-address my opinions on apportionment following review of the above medical records. After reviewing these records, I have no reason to amend or modify my opinions on apportionment of impairment. It continues to be my opinion, within a reasonable medical probability, there is significant medical evidence to support 50% impairment to pre-existing non-industrial causation. 50% of her impairment is apportioned to her pre-existing, extensive lumbar spine degenerative disc disease which required multilevel laminectomy and instrumented fusion. The other significant factor that contributed to her non-industrial apportionment were the effects of her parathyroid tumor which caused severe osteoporosis…" (Medical Report Dr Perry Secor, signed 1/14/2026, dated 12/22/2025, pages 6-7, Joint Exhibit 1)

Petitioner invited Dr. Secor to provide pre-existing prophylactic work restrictions, and now on reconsideration claims Dr. Secor's response has somehow tainted the doctor's apportionment findings.

This Court is confident that petitioner's interrogatory to Dr. Secor, directing the doctor to speculate upon pre-injury work restrictions, was a matter of curiosity not strategy. Simply stated, however, the apportionment findings upon which the

court relied in formulating its Findings and Opinion, were not based, in whole or part, on speculative work restrictions extracted by Petitioner from Dr. Secor via interrogatory.

The apportionment findings upon which this Court relied are those clearly enunciated by Dr. Secor originally in his report of 2018 (Joint Exhibit 3, page 14) and reaffirmed in his supplemental report signed in January 2026 (Joint Exhibit 1, pages 6-7). Dr. Secor's apportionment findings are entirely separate, distinct and untainted by the pre-existing prophylactic work restriction discussion injected into the record by counsel.

Based on the medical reporting of Dr. Secor as expressed in his reports of June 22, 2018 (Joint Exhibit 3) and December 22, 2025 (Joint Exhibit 1), the Court found apportionment to apply, with 50% of Applicant's impairment apportioned to pre-existing non-industrial causation and 50% to the effects of Applicant's injury in this case.

**PETITION FOR RECONSIDERATION CONTENDS THE APRIL 21, 2015, INJURY WAS THE SOLE CAUSATIVE FACTOR OF APPLICANT'S PTD**

Petitioner cites to Nunes v. State of California, Dept. of Motor Vehicles (2023) (en banc) 88 CCC 894) contending: "The Appeals Board in Nunes held that 'a finding of permanent and total disability notwithstanding the presence of valid nonindustrial apportionment is permissible, so long as the medical and vocational evidence establishes that the permanent and total disability arises solely out of industrial conditions or factors, that is, exclusive of nonindustrial or prior industrial conditions or factors…" (Petition For Reconsideration, page 8:15-21)

Petitioner contends: "Prior to the April 21, 2015, injury, Applicant had completely recovered from her September of 2013 back surgery; she had zero pain, was not taking pain medications, was working out, and had no restrictions…" (Petition For Reconsideration, page 8:22-25)

As noted, *supra*, the trial record reveals that the applicant was actively under the care of Dr. Andrew Merritt before her industrial injury and continued so after her industrial injury. Dr. Merritt is a Pain Management Specialist. (Applicant Exhibit 8)

Applicant's original pre-injury consultation with Dr. Merritt was titled a pain management consultation. Applicant's consultation with Dr. Merritt after her industrial injury was titled a Pain Management Consultation. Four months before her industrial injury, Dr. Merritt was discussing limitations with the Applicant and Applicant was complaining of levels of pain, albeit decreasing. Both before and after her industrial injury the Applicant was diagnosed by Dr. Merritt with the selfsame post-laminectomy syndrome, which Dr. Merritt opined to have been aggravated by the industrial injury.

The Applicant returned to the gym—for workouts consisting of walking three times a week. She was performing light work as an Accounting Manager, which the parties stipulated to be Occupational Group 110.

Dr. Secord for sound and persuasive reasons, imposed 50% medical apportionment. Prior to her industrial injury, the applicant had suffered from back pain for a period of five to ten years. Prior to her industrial injury, applicant's back surgery in September 2013 involved arthrodesis in which rods were inserted into her back to create stability. The Guides to the Evaluation of Permanent Impairment, Fifth Edition. Table 15-3 speaks to "…successful or unsuccessful attempt at surgical arthrodesis…" (Guides to The Evaluation of Permanent Impairment, Fifth Edition. Table 15-3, page 384.) Such conditions place the individual within a DRE Lumbar Category IV.

The notion that the industrial injury was the sole causative factor of Applicant's impairment is a contention contraindicated by substantial trial evidence, which the Court found preponderating, including the medical findings of QME Secor.

**THE VOCATIONAL EVIDENCE OFFERED BY APPLICANT TO REBUT THE SCHEDULED RATING WAS NOT SUBSTANTIAL EVIDENCE**

Vocational reports of Ray Largo & Associates (Applicant Exhibit 10) and Corso Vocational Counseling (Defense Exhibit A) were entered into evidence. Also received into evidence was the Deposition of Nick Corso (Applicant Exhibit 1).

In the Petition For reconsideration, petitioner contends: "…vocational expert Ray Largo, M.A. concluded that Applicant is not amenable to rehabilitation and is unable to return to the open labor market (see Applicant's Exhibit 10, page 44). Mr. Largo determined that April 21, 2015, industrial injury 'resulted in Ms. Pelletier's labor-disabling condition.' Mr. Largo also specifically finds that 'it is this consultant's opinion that Ms. Pelletier's inability to benefit from vocational rehabilitation and inability to return to the open labor market is 100% industrial in nature as it relates to the specific industrial injury occurring on April 21, 2015'…" (Petition for Reconsideration, page 9:4-10)

In the Petition for Reconsideration, petitioner contends: "…Ray Largo, a vocational rehabilitation counselor, issued a report that stated that based upon Dr. Merritt's opinions and the significant work restrictions provided, Applicant is not amenable to rehabilitation and is unable to return to the open labor market (see Applicant's Exhibit 10, page 44)." (Petition For Reconsideration, page 6:6-9)

At the time Mr. Largo rendered this conclusion in 2021, the work restrictions of Dr. Merritt were already three years old.

In the Petition For Reconsideration, petitioner acknowledges that: "Mr. Largo supports his opinion with the reports and opinion of Dr. Merritt; pointing out that '[t]he records reflect that Ms. Pelletier fully recovered from the surgery performed in September 2013 and she was able to perform her usual and customary job duties without restrictions through April 21, 2015' (see Applicant's Exhibit 10, pg. 49." (Petition For Reconsideration, page 4:11-18)

The trial record does not support Ms. Pelletier having fully recovered from her back condition and surgery performed in September 2013. Petitioner emphasizes Ms. Pelletier returning to her usual work after her 2013 back surgery. It is noteworthy that Ms. Pelletier was also able to work after her 4/2/2015 injury, for nearly 2 years, until the company was sold, and she was laid off. (Defense Exhibit A, Vocational Rehabilitation Report, Nick Corso, 12/16/21, page 40)

The court found the vocational reporting of Mr. Largo to be neither substantial nor persuasive.

California Labor Code Section 4660 provides that permanent disability is determined by consideration of whole person impairment by reference to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, as applied by the Permanent Disability Rating Schedule. The scheduled rating carries a rebuttable presumption and may be challenged *inter alia* by demonstrating that due to industrial injury the employee is not amenable to rehabilitation and therefore has suffered a greater loss of future earning capacity than reflected in the scheduled ratings. Thus, vocational evidence is relevant to determination of permanent disability.

The burden of rebutting a scheduled rating rests with the party challenging the presumption, in this case the Applicant.

To constitute substantial evidence, a vocational expert must detail the evidence supporting their opinions and conclusions. (Escobedo v. Marshalls (2005) (en banc) 70 Cal.Comp.Cases 604, 611) Mr. Largo's reports are not substantial vocational evidence. Mr. Largo based his opinions on flawed assumptions and the unsupported conclusions of Dr. Merritt.

In the June 21, 2021, Ray Largo & Associates vocational report (Applicant Exhibit 10) Mr. Largo opines "…It is significant to note that Dr. Secor indicated following surgery performed in September 2013, Ms. Pelletier was able to return to work without restrictions, was tapered off analgesics, and was able to attend gym workouts without the aggravation of pain…" (Exhibit 10 page 48.)

The trial record reveals the Applicant did return to a gym exercise routine. The routine was "walking" 2-3 times per week." (Applicant Exhibit 2, Medical report of Dr. Andrew Merritt, page 1 (gym comment), page 2, (exercise detail).

The *pre-industrial injury* type of work to which Applicant returned after her non-industrial back surgery, was sedentary in nature, Occupational Group 110. (MOH/SOE 4/1/2026, page 2:4-7; Applicant Exhibit 10, page 36)

Sedentary work involves *inter alia* only exerting up to 10 pounds of force occasionally and/or a negligible amount of force frequently. Sedentary work involves sitting most of the time but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally, and all other sedentary criteria are met. (Applicant Exhibit 10, page 39)

Mr. Largo based his conclusions on the 2018 work restrictions imposed by Dr. Merritt. (Applicant Exhibit 10, page 38) In that 2018 report, Dr. Merritt declared the Applicant unable to work regular or consistent hours in any capacity.

The 2018 work restrictions imposed by Dr. Merritt were imposed prior to significant medical and surgical care afforded the Applicant. Dr. Secor noted in 2025 that the medical treatment improved Applicant's condition.

Dr. Secor in 2025 opines:

> "…It is noted that Ms. Pelletier has had extensive treatment after the note that was authored by Dr. Merritt in 2018. On December 27, 2021, Dr. Kim performed revision surgery. It was noted at the time of surgery that she had developed pseudoarthrosis at multiple levels and that had been hardware failure. She underwent a revision fusion from T10 to L6. This procedure was augmented with iliac crest bone graft as well as bone morphogenic protein. In addition, she underwent posterior-lateral osteotomies to correct the deformities at L2, L3, L4, and L5. She had a revision laminectomy at L5 and S1. Ms. Pelletier had additional surgery on November 17, 2022, after she was diagnosed with pseudoarthrosis at the ilio-lumbar junction because of mechanical hardware failure. The surgery required augmentation with methyl methacrylate bone cement. On February 8, 2024, Ms. Pelletier underwent additional surgery to stabilize her left sacroiliac joint. The subsequent surgeries after Dr. Merritt's evaluation in 2018 did provide her with some degree of clinical improvement…" (Joint Exhibit 1, page 7-8)

Dr. Secor is deposed and asked to comment upon Mr. Largo's findings of unemployability. Dr. Secor is questioned, and answers as follows: "Q. So you found her to be a qualified injured worker? A. Yes, sir. Q. And so, you do not believe she could do the job that she was doing previous? So, if she could not do that sedentary

job before – do you believe she could find some job after? THE WITNESS: Yes, absolutely. I have people that have found employment that have a very high level of disability…" (Joint Exhibit 4, Deposition of Dr. Secor 11/26/2018, page 30:2-23)

In Joint Exhibit 6, QME Secor reviews and comments upon the vocational reporting of both Ray Largo and Nick Corso. Specifically, Dr. Secor reviews the December 16, 2021, Vocational Expert Report of Corso Vocational Counseling, the 33-page deposition of Nick Corso, and the June 21, 2021, Forensic Disability Evaluation Report of Ray Largo & Associates.

Dr. Secor reviewed Mr. Largo's report and did not change his apportionment findings, nor did he indicate any change to his earlier findings that the Applicant was a qualified injured worker for vocational rehabilitation purposes. Mr. Largo's opinions are based in significant part upon the conclusionary, unsupported opinions of Dr. Merritt.

The conclusions of Ray largo are not substantial evidence on issues of apportionment or impairment and were rejected by the Court.

**THE PETITION FOR RECONSIDERATION CONTENDS THAT APPLICANT IS PERMANENTLY AND TOTALLY DISABLED UNDER A LEBOEUF STANDARD**

In the Petition for Reconsideration, petitioner contends the evidentiary record does not justify the finding of partial disability. As support, petitioner argues: 'The record supports that Applicant is 100% permanently and totally disabled (PTD) under the LeBoeuf and Ogilvie standards because of Applicant's significant work restrictions, which have rendered her not amenable to rehabilitation and unable to return to the open labor market…" (Petition For Reconsideration, page 5:5-8)

In his report of June 21, 2021 (Exhibit 10), Mr. Largo reviews only some of the reporting of QME Perry Secor. Mr. Largo did not review Dr. Secor's reporting beyond March 4, 2021. Mr. Largo did not review Dr. Secor's August 21, 2024, or January 14, 2026, medical reports.

These unreviewed August 21, 2024, and January 14, 2026, QME medical reports were considered significant by the parties and the Court. The parties at trial offered these reports of Dr. Secor (8/21/2024-Joint Exhibit 5 and 1/14/2026-Joint Exhibit 1) as Joint Exhibits.

Joint Exhibit 5 (medical report of Dr. Secor dated 8/21/2024) expresses the findings of Dr. Secor upon re-examination of the Applicant. To aid in his re-evaluation of the Applicant, Dr. Secor was provided with and reviewed 264-pages of additional records, which included without limitation the deposition of vocational expert Nick Corso. In this 30-page August 21, 2024, report, Dr. Secor expressed well-reasoned conclusions.

Joint Exhibit 1 (medical report of Dr. Secor dated signed 1/14/26) finds Dr. Secor having reviewed further additional records, including without limitation the reporting of Ray Largo.

Petitioner urges the Board to adopt the conclusions of Ray Largo as set forth in his June 21, 2021, vocational report, determine 100% vocational apportionment to apply, and find the Applicant permanently, totally disabled.

Serving as a basis for Mr. Largo's conclusions is the medical reporting of Dr. Merritt, which the court finds insubstantial and unpersuasive. Further, Mr. Largo has not reviewed the 2024 & 2026 reporting of the QME. Mr. Largo's findings acknowledge the detailed commentary of the QME regarding apportionment but dismisses those findings in favor of Dr. Merritt's unsupported conclusionary findings.

As noted, *supra*, the court does not consider the conclusions of Mr. Largo to be persuasive.

The factors of permanent disability found by the Court are based upon the medical reporting of Dr. Perry Secor, Joint Exhibits 1, 2, 3 and 5, which are well-reasoned and persuasive. In arriving at these findings, the court has given due consideration to Applicant's testimony and to the vocational findings of Nick Corso and Ray Largo. Dr. Secor's findings **before apportionment** rate as follows:

15.03.02.04-35-49-110C-40-46
15.02.02.04-32-45-111C-36-41
46C41-68% permanent disability, before apportionment**.**

Based upon the findings of Dr. Secor, the Court finds that Applicant is entitled to a permanent disability award of 34%, after apportionment.

**RECOMMENDATION**

It is respectfully recommended that the Petition for Reconsideration be denied.

(Report, at pp. 2-7, emphasis in original.)

**III.**

We highlight the following legal principles that may be relevant to our review of this matter:

Section 4660 provides that permanent disability is determined by consideration of whole person impairment within the four corners of the AMA Guides, as applied by the Permanent Disability Rating Schedule (PDRS) in light of the medical record and the effect of the injury on the worker's future earning capacity. (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th

1313, 1321 [72 Cal.Comp.Cases 565] ["permanent disability payments are intended to compensate workers for both physical loss and the loss of some or all of their future earning capacity"]; *Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd. (Fitzpatrick)* (2018) 27 Cal.App.5th 607, 614 [83 Cal.Comp.Cases 1680] (*Fitzpatrick*); *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Guzman)* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837] (*Guzman*).)

However, the scheduled rating is not absolute. (*Fitzpatrick, supra*, at pp. 619-620.) A rating obtained pursuant to the PDRS may be rebutted by showing an applicant's diminished future earning capacity is greater than that reflected in the PDRS. (*Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262 [76 Cal.Comp.Cases 624] (*Ogilvie*); *Contra Costa County v. Workers' Comp. Appeals Bd. (Dahl)* (2015) 240 Cal.App.4th 746 [80 Cal.Comp.Cases 1119] (*Dahl*).) In analyzing the issue of whether and how the PDRS could be rebutted, the Court of Appeal has observed:

> Another way the cases have long recognized that a scheduled rating has been effectively rebutted is when the injury to the employee impairs his or her rehabilitation, and for that reason, the employee's diminished future earning capacity is greater than reflected in the employee's scheduled rating. This is the rule expressed in LeBoeuf v. Workers' Comp. Appeals Bd. (1983) 34 Cal. 3d 234 [193 Cal.Rptr. 547, 666 P.2d 989]. In *LeBoeuf*, an injured worker sought to demonstrate that, due to the residual effects of his work-related injuries, he could not be retrained for suitable meaningful employment. (*Id*. at pp. 237-238.) Our Supreme Court concluded that it was error to preclude LeBoeuf from making such a showing, and held that "the fact that an injured employee is precluded from the option of receiving rehabilitation benefits should also be taken into account in the assessment of an injured employee's permanent disability rating."
>
> (*Ogilvie, supra*, at p. 1274.)

Thus, "an employee may challenge the presumptive scheduled percentage of permanent disability prescribed to an injury by showing a factual error in the calculation of a factor in the rating formula or application of the formula, the omission of medical complications aggravating the employee's disability in preparation of the rating schedule, or by demonstrating that due to industrial injury the employee is not amenable to rehabilitation and therefore has suffered a greater loss of future earning capacity than reflected in the scheduled rating.' (*Ogilvie, supra*, at p. 1277.)

Moreover, it is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.*

(1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza, supra*; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion … It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) To constitute substantial evidence "… a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Here, it appears from our preliminary review that the record may not be complete regarding the issues of permanent disability and apportionment. Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

**IV.**

In addition, 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 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 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) 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 Labor Code sections 5950 et seq.

**V.**

Accordingly, we grant applicant'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 applicant's Petition for Reconsideration 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/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**SEPTEMBER 8, 2026**

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

**SHARON PELLETIER**
**KATNIK KATNIK SANTA ANA**
**ALBERT MACKENZIE ONTARIO**

**PAG/cm**

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