WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JUAN SALAZAR, *Applicant*

vs.

REDLANDS UNIFIED SCHOOL DISTRICT, Permissibly Self-Insured;
KEENAN AND ASSOCIATES, *Defendants*

Adjudication Numbers: ADJ10961264, ADJ13374764
Anaheim District Office

OPINION AND ORDERS GRANTING PETITION FOR RECONSIDERATION

Defendant Redlands Unified School District seeks removal in response to the "Joint Findings; Order Vacating Submission and Orders Developing the Record" (F&O) issued by the workers' compensation administrative law judge (WCJ) on December 2, 2024. In the F&O in applicant's consolidated cases, the WCJ found, in relevant part, that applicant was employed by defendant, who was permissibly self-insured; that applicant sustained injury arising out of and in the course of employment (AOE/COE) to his left shoulder, left wrist and psyche in case number ADJ13374764; that the reports and depositions of panel qualified medical evaluator (PQME) Dr. Patchett are not substantial medical evidence and will be stricken from the record; that further development of the record is necessary; that a replacement QME panel in orthopedics is required; that applicant must undergo an echocardiogram; that applicant's requests to strike QME Dr. Ross's reports are denied; that applicant must be reevaluated by Dr. Ross, after he is provided with all relevant documents; that additional PQMEs are needed in neurology and internal medicine; that a formal job analysis must be arranged and the results provided to all doctors for their review; and that all other issues are deferred. The F&O includes orders that submission is vacated for further development of the record; that applicant's motion to strike the PQME reporting of Dr. Patchett is granted; that the parties obtain a replacement PQME in Orthopedics; that applicant's motion to strike the reporting of Dr. Ross is denied; that applicant undergo an echocardiogram; that applicant

be reevaluated by Dr. Ross after all necessary reports are provided to him; that the parties arrange for a formal job analysis to be conducted and provide that report to the evaluating doctors; that the parties submit joint requests to the medical unit for additional PQMEs in neurology and internal medicine; and, that all other issues are deferred.

Defendant contends in its Petition for Removal (Petition) that there is no good cause for ordering an additional panel in neurology when headaches or neurological system problems were not included in applicant's claims; that there is no basis for ordering an additional internal medicine panel, when Dr. Ross's report is substantial medical evidence; that there is no adequate basis for the WCJ's order for a formal job analysis; that there is no need for an echocardiogram, since Dr. Ross reviewed a prior echocardiogram from August 2022; and, lastly, that there is no adequate basis for the order that Dr. Patchett's orthopedic reporting be stricken.

We did not receive an Answer from any party.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that removal be granted, as to the order appointing a replacement PQME in internal medicine and recommending that removal be denied regarding the remainder of defendant's contentions.

We have considered the Petition 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 treat defendant's Petition for Removal as one for reconsideration and grant defendant's Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

I.

Preliminarily, we note that former Labor Code section 5909[1] 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:

[1] All section references are to the Labor Code, unless otherwise indicated.

> (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 December 31, 2024 and 60 days from the date of transmission is Saturday, March 1, 2025. The next business day that is 60 days from the date of transmission is Monday, March 3, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, March 3, 2025, 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.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on December 31, 2024, and the case was transmitted to the Appeals Board on December 31, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that

[2] 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.

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 December 31, 2024.

II.

The WCJ provided the following factual background in the Report:

> This case began with the applicant filing an application for adjudication of claim on 8/1/17 ADJ10691264 for a continuous trauma claim alleging injury to his ear, neck, upper and lower back, left wrist, left elbow, left hand, bilateral shoulders, and left leg, EAMS Doc. ID #23714191. There have been five (5) amended applications filed on this claim, EAMS Doc. IDs #33769818, 35542148, 35565476, 35765479, 42363867, and 42733232. In the first amended application filed on 9/14/20, EAMS Doc. ID #33769818, it amended the body parts to include the head. The joint amended application filed on 2/12/21, EAMS Doc. ID #35542148, it amended the body parts on both claims to include the excretory system and reproductive system. The amended application filed on 2/16/21, EAMS Doc. ID #35565476, it amended the body parts to include the circulatory system/diabetes, and psyche, depression, while the joint amended application filed 3/3/21, EAMS Doc. ID #35765479, amended the claim to include constipation/excretory system. The fifth amendment, EAMS Doc. ID #42363867, filed 7/22/22, included injuries to the applicant's left leg, right shoulder, and ear, all of these body parts were included in the first application filed.
>
> In ADJ13374764 the applicant pled a specific injury occurring on 1/8/15, was filed on 7/6/20 EAMS Doc. ID #32976100. The original application claimed injury to the left shoulder and left hand. There were three (3) amendments to this application. The first, was the joint amended application filed on 2/12/21, EAMS Doc. ID #35542148, it amended the body parts in both claims to include the excretory system and reproductive system. While the second joint amended application filed 3/3/21, EAMS Doc. ID #35765479, amended the claim to include constipation/excretory system, Then final amendment filed 8/18/22, EAMS Doc. ID 342733232, was filed in the Specific injury claim only and amended the claim to include psyche.
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> …
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> This matte[r] has been on and off this court's trial calendar for regular trial and expedited hearing many times. Including MSCs and Status Conferences this matter has been on the court's calendar 18 times, getting this matter ready to be submitted for decision. Prior to setting the matter for trial the applicant filed two petitions to strike the medical reporting of the panel QMEs, Dr. Patchett and Dr. Ross, the court deferred these petitions to be heard with the trial on the case in chief as one of the issues to be addressed, see EAMS Doc. IDs #77966048, 77965691, both orders dated, 5/16/24. The parties framed the issues for the court on the PTCS dated 6/18/24 and set the matter for trial on 7/25/24 …. Subsequent to this an

> additional petition was filed for an additional PQME in Neurology, an issue raised on the PTCS. The court placed the stipulations and issues on the Corrected SOE/MOH dated 9/16/24 …. The matter was continued to 10/28/24 at which time the trial was completed and the matter stood submitted on the record. The court issued its Opinion on Decision and Findings and Orders on 12/2/24 ….

(WCJ's Report, at pp. 2-4.)

III.

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 (*Rymer*); *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (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.

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 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 decision includes findings regarding threshold issues, including a finding regarding employment and a finding that some of applicant's claimed injuries were AOE/COE. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal. Although the F&O in this matter contain findings that are final, defendant is only challenging interlocutory findings and orders regarding discovery. Therefore, we will apply the removal standard to our review. (See *Gaona, supra*.)

IV.

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

All parties in workers' compensation proceedings retain their fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157–158, [65 Cal.Comp.Cases 805].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses, introduce and inspect exhibits, and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, *supra*, at pp. 157–158 citing *Kaiser Co. v. Industrial Acci. Com.* (*Baskin*) (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) The California Supreme Court, in *Carstens v. Pillsbury* (1916) 172 Cal. 572, 577, explained that the "commission, … must find facts and declare and enforce rights and liabilities,—in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law."

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) The Appeals Board has a constitutional mandate to "accomplish substantial justice" in all cases. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th

396, 403 [65 Cal.Comp.Cases 264].) The Board has "a duty to develop an adequate record" and "it is well established that the WCJ or the Board may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence." (*Id.,* at pp. 403-404.)

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 v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) To constitute substantial evidence "a medical opinion must be predicated on reasonable medical probability." (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd*., (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687], citing *McAllister v. Workmen's Comp. App. Bd.* (1968) 69 Cal.2d 408, 413, 416–417, 419.) A medical opinion "is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess." (*Id*., citing *Hegglin v. Workmen's Comp. App. Bd.* (1971) 4 Cal.3d 162, 169.) "Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions." (*Id*., citing *Granado v. Workmen's Comp. App. Bd.* (1968) 69 Cal.2d 399, 407.)

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) Sections 5701 and 5906 "authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings. Before directing augmentation of the medical record, however, the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete." (*McDuffie v. L.A. County Metro. Transit Auth.* (2002) 67 Cal.Comp.Cases 138, 141 (Appeals Board en banc).)

To obtain a QME panel in a represented case, section 4062.2 provides, in relevant part:

> (a) Whenever a comprehensive medical evaluation is required to resolve any dispute arising out of an injury or a claimed injury occurring on or after January 1, 2005, and the employee is represented by an attorney, the evaluation shall be obtained only as provided in this section.

(b) No earlier than the first working day that is at least 10 days after the date of mailing of a request for a medical evaluation pursuant to Section 4060 or the first working day that is at least 10 days after the date of mailing of an objection pursuant to Sections 4061 or 4062, either party may request the assignment of a three-member panel of qualified medical evaluators to conduct a comprehensive medical evaluation. The party submitting the request shall designate the specialty of the medical evaluator, the specialty of the medical evaluator requested by the other party if it has been made known to the party submitting the request, and the specialty of the treating physician. The party submitting the request form shall serve a copy of the request form on the other party.

(Lab. Code, § 4062.2(a)-(b).)

Section 4628, regarding physicians' reports, requires, in pertinent part, that:

(a) Except as provided in subdivision (c), no person, other than the physician who signs the medical-legal report, except a nurse performing those functions routinely performed by a nurse, such as taking blood pressure, shall examine the injured employee or participate in the nonclerical preparation of the report, including all of the following:

(1) Taking a complete history.
(2) Reviewing and summarizing prior medical records.
(3) Composing and drafting the conclusions of the report.

(b) The report shall disclose the date when and location where the evaluation was performed; that the physician or physicians signing the report actually performed the evaluation; whether the evaluation performed and the time spent performing the evaluation was in compliance with the guidelines established by the administrative director pursuant to paragraph (5) of subdivision (j) of Section 139.2 or Section 5307.6 and shall disclose the name and qualifications of each person who performed any services in connection with the report, including diagnostic studies, other than its clerical preparation. If the report discloses that the evaluation performed or the time spent performing the evaluation was not in compliance with the guidelines established by the administrative director, the report shall explain, in detail, any variance and the reason or reasons therefor.

(c) If the initial outline of a patient's history or excerpting of prior medical records is not done by the physician, the physician shall review the excerpts and the entire outline and shall make additional inquiries and examinations as are necessary and appropriate to identify and determine the relevant medical issues.

(d) No amount may be charged in excess of the direct charges for the physician's professional services and the reasonable costs of laboratory examinations, diagnostic studies, and other medical tests, and reasonable costs of clerical expense necessary to producing the report. Direct charges for the physician's professional services shall include reasonable overhead expense.

(e) Failure to comply with the requirements of this section shall make the report inadmissible as evidence and shall eliminate any liability for payment of any medical-legal expense incurred in connection with the report.

(f) Knowing failure to comply with the requirements of this section shall subject the physician to a civil penalty of up to one thousand dollars ($1,000) for each violation to be assessed by a workers' compensation judge or the appeals board. All civil penalties collected under this section shall be deposited in the Workers' Compensation Administration Revolving Fund.

(g) A physician who is assessed a civil penalty under this section may be terminated, suspended, or placed on probation as a qualified medical evaluator pursuant to subdivisions (k) and (*l*) of Section 139.2.

(h) Knowing failure to comply with the requirements of this section shall subject the physician to contempt pursuant to the judicial powers vested in the appeals board.

…

(Lab. Code, § 4628.)

Defendant contends that the order for an additional panel in neurology was made in error, because neither headaches nor neurological system problems were alleged by applicant, and because the report of the prior neurologist Dr. Kent provides no good cause for ordering an additional panel in neurology. (Petition, at pp. 5-7.) It appears that the record supports the WCJ's order for an additional PQME panel in neurology. It also appears that defendant has established that it opposes the order. Based on our initial review, however, we require further time to determine if the order that the parties make a "joint request" for the panel is incompatible with section 4062.2(b), and if it could be construed, in a future proceeding, as an indication that defendant waived its objection to the additional panel in neurology. (Lab. Code, § 4062.2(b).)

Defendant also contends that there was no need for an additional internal medicine panel, when Dr. Ross's report is substantial medical evidence. (Petition, at pp. 7-8.) It appears that the

order for a panel in internal medicine was issued in error, as pointed out by the WCJ in his report. (Report, at p. 6.)

Finally, defendant contends that the order, pursuant to section 4628, striking Dr. Patchett's orthopedic reporting was made in error, arguing that it would be burdensome for the QME to be replaced, that not all violations of section 4628 will render a report inadmissible, and that Dr. Patchett's reporting "can be easily rehabilitated." (Petition, at pp. 12-13.) We observe that striking a QME's report may result in serious consequences for the QME. (Lab. Code, §§ 139.2(d)(2), 4628(e)-(h).) In light of these consequences, and based on our initial review, we require further time to analyze the order pursuant to section 4628 and to determine if due process requires that a QME be provided with notice and an opportunity to be heard prior to any such order striking their report. (*Rucker v. Workers' Comp. Appeals Bd*. (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].)

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.

V.

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 appeals board has continuing jurisdiction over all 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, supra,* 211 Cal.App.3d at 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*), *supra*, (1980) 104 Cal.App.3d at 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Kramer*), supra, 82 Cal.App.3d at 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., supra,* 81 Cal.App.4th at 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra,* at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision

is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

VI.

Accordingly, we grant defendant'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.

For the foregoing reasons,

IT IS ORDERED that defendant'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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 3, 2025

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

JUAN SALAZAR
PEREZ LAW, APC
MICHAEL SULLIVAN & ASSOCIATES

MB/*ara*

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