WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

TYSON PEREZ, *Applicant*

vs.

CHICAGO DOGS, LIBERTY MUTUAL INSURANCE COMPANY; HOUSTON ASTROS, ACE AMERICAN INSURANCE COMPANY/ CHUBB as administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ16597333
Santa Ana District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

(En Banc)

To secure uniformity of decisions in the future, the Chair of the Appeals Board, upon a unanimous vote of its members, assigned this case to the Appeals Board as a whole for an en banc decision.[1] (Lab. Code, § 115.)

Defendant Chicago Dogs, insured by Liberty Mutual Insurance Company (Chicago Dogs) seek reconsideration of the Findings and Order issued by a workers' compensation administrative law judge (WCJ) on May 13, 2025. The WCJ found in pertinent part that applicant, while employed as a baseball player, from June 1, 2011 to June 25, 2022, as a baseball player by the Chicago Dogs from May 18, 2018 to July 7, 2018, and the Houston Astros from June 9, 2011 to July 18, 2017, claims to have sustained injury arising out of and in the course of employment to various body parts; that the Chicago Dogs and Liberty Mutual did not waive the objection to

[1] En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and workers' compensation administrative judges. (Cal. Code Regs., tit. 8, § 10325; C*ity of Long Beach v. Workers' Comp. Appeals Bd*. (*Garcia*) (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].) This en banc decision is also adopted as a precedent decision pursuant to Government Code section 11425.60(b).

personal jurisdiction; and that there is personal jurisdiction by the California Workers' Compensation Appeals Board over the Chicago Dogs.

Defendant contends in relevant part that when the WCJ denied their request at trial to have their witness testify electronically, they were significantly prejudiced because they could not present evidence as to their lack of contact(s) with California. As a result, the WCJ's determination that there is personal jurisdiction over them is not based on a complete record.

We received an Answer from applicant and from defendant Houston Astros, insured by Ace American Insurance Company (Houston Astros).

We received a Report and Recommendation from the WCJ, which recommends that we deny the Petition.

We have considered the Petition for Reconsideration and the Answers 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 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.

Former Labor Code[2] 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, 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.

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

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on June 13, 2025, and 60 days from the date of transmission is Tuesday, August 12, 2025. This decision is issued by or on Tuesday, August 12, 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, it was served on June 13, 2025, and the case was transmitted to the Appeals Board on June 13, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on June 13, 2025.

II.

As relevant here, the WCJ stated in the Report that:

> The Applicant filed an Application for Adjudication of Claim on August 24, 2022, alleging a cumulative trauma injury while working as a professional baseball player for the Houston Astros from June 1, 2011, to June 25, 2022. Applicant filed an Amended Application for Adjudication[] of Claim on April 21, 2023, and May 19, 2023, joining the Chicago Dogs as a party defendant.
>
> The Chicago Dogs and its carrier, Liberty Mutual, filed a Declaration of Readiness to Proceed seeking adjudication on the sole issue of personal jurisdiction. The matter was set for a trial on personal jurisdiction over the Chicago Dogs at the Mandatory Settlement Conference on May 23, 2024. . . .

At trial, the Chicago Dogs offered a witness statement into evidence. Counsel for the Applicant and Co-Defendant, Houston Astros, objected to the witness statement of Trish Zuro because it was not served before the close of discovery and because admitting the written statement into evidence would deprive the parties of their due process to cross-examine the witness (Minutes of Hearing/Summary of Evidence if February 4, 2025 (MOH/SOE), 3: 17 – 19). The WCJ denied Chicago Dogs' request to permit witness Trish Zuro to testify by telephone.

The Findings and Order, dated May 13, 2025, found that the California Workers' Compensation Appeals Board may exercise personal jurisdiction over the Chicago Dogs for the Applicant's alleged cumulative trauma injury claim (Findings and Order, May 13, 2025). The WCJ noted: "Defendant's conduct in obtaining the employment agreement with the Applicant involved multiple contacts within the State of California. The Applicant's unrebutted testimony is that the Chicago Dogs contacted him ten to twelve times in California to secure his employment with the team. Chicago Dogs' team manager, Butch Hobson, called the Applicant while he was in California (MOH, 4: 18 – 20). The pitching coach for the Chicago Dogs, Stan, also contacted the Applicant and extended an offer (MOH 4: 24 – 25)."

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Chicago Dogs filed a Petition for Reconsideration, appealing the trial court's decision not to allow the witness statement into evidence and not allow the witness to testify remotely. However, no stipulation or petition was filed before the trial showing good cause to allow the witness to testify remotely.

***

The WCJ did not permit Trish Zuro to testify by telephone because the Chicago Dogs did not file a petition before the trial, showing good cause for why she should be allowed to testify remotely. Per CCR 10618(a), "If a witness intends to testify electronically, a petition showing good cause shall be filed pursuant to rule 10510 by the witness or by the party offering the witness's testimony before the hearing, and shall identify the witness and contain the witness's full legal name, mailing address, email address, and telephone number."[3] There was no such petition requesting remote appearance filed in this matter.

Furthermore, the parties did not stipulate that the witness could testify remotely or that the hearing should be conducted remotely. When the Applicant did not appear at the trial setting on October 22, 2024, the WCJ ordered the Applicant to appear at the next trial date. Absent a stipulation agreement between the parties, there would be no rational reason to require the Applicant to appear in person to testify but allow the defense witness to testify remotely. In sum, the WCJ did not find sufficient evidence either that the Chicago Dogs obtained a stipulation to have the witness testify remotely, or that they followed the requirements of CCR 10618(a) and filed

[3] In his Report, the WCJ referred to WCAB Rule 10818 (Cal. Code Regs., tit. 8, § 10818). Since the issue is WCAB Rule 10817, we treat this reference as a clerical error.

> a petition before the hearing showing good cause, or that they made some other arrangement to have the witness testify. Based on the above, the witness was not allowed to testify remotely.

(Report, pp. 2-3, 6.)

> In its Petition, defendant alleges in pertinent part that:
>
> On June 7, 2024, the initial Pre-Trial conference statement was filed and served on all parties. The Pre-Trial statement listed the applicant, Tyson Perez, and also Trish Zuro, the Chief Operating Officer of the Chicago Dogs as witnesses, among other individuals. On June 11, 2024, the undersigned served all parties with an affidavit from Trish Zuro. This affidavit was also e-filed with the Santa Ana Workers' Compensation Appeals Board. In the affidavit, Ms. Zuro offered very significant information which indicated the team never operated any offices in California, and never had any games in California. In the affidavit, Ms. Zuro also attested to the fact the applicant never played in any games in California, nor sustained any injuries in California. Overall, she attested the team did not have any minimum contacts with California.
>
> ***
>
> The applicant attorney and co-defendant objected to the testimony and the admission of the affidavit at the Trial date, and after 8 months when the affidavit was previously served to the parties and more than 8 months when the parties were notified on the Pre-Trial Conference statement that Ms. Zuro was listed as a witness.
>
> ***
>
> At Trial, Judge Brennen refused to allow the affidavit of Ms. Zuro into evidence and also refused to allow Ms. Zuro to testify via phone even though the undersigned informed the WCAB of the failure of any of the parties to object to such prior to the February 4, 2025. The undersigned also informed Judge Brennen the testimony was necessary to rebut the applicant's contentions of minimum contacts of the team with California. . . .
>
> ***
>
> Ultimately, when the WCAB refused to allow the affidavit into evidence and refused to allow Ms. Zuro to testify remotely, the WCAB allowed the applicant to testify to facts which he felt proved the team had minimum contacts with California. The WCAB failed to provide the defendants with the same opportunity by holding the defendants to a different higher standard . . . . Ms. Zuro's testimony was essential to show the Court the extent and or lack of contacts the Chicago Dogs actually had with California.

(Petition for Reconsideration, pp. 2-5, emphasis omitted.)

III.

The issue that concerns us is the interpretation and application of WCAB Rule 10817(a), which states in relevant part that: "If a witness intends to testify electronically, a petition showing good cause shall be filed pursuant to rule 10510 by the witness or by the party offering the witness's testimony before the hearing, and shall identify the witness and contain the witness's full legal name . . . ." (Cal. Code Regs., tit. 8, § 10817(a).)

In conducting our preliminary review, we observe that in addition to our constitutional mandate to accomplish substantial justice, the following fundamental legal principles must guide us:

> (A) Only the Appeals Board has statutory authority to establish procedures in workers' compensation proceedings and to promulgate rules.
>
> (B) Parties have a due process right to a fair hearing and a determination based on the merits.
>
> (C) In workers' compensation proceedings, pleadings are liberally construed and may be amended to conform to proof.

A. Only the Appeals Board has statutory authority to establish procedures in workers' compensation proceedings and to promulgate rules.

Section 5500.3 states that:

> (a) The appeals board shall establish uniform district office procedures, uniform forms, and uniform time of court settings for all district offices of the appeals board. No district office of the appeals board or workers' compensation administrative law judge shall require forms or procedures other than as established by the appeals board. A workers' compensation administrative law judge who violates this section may be subject to disciplinary proceedings.
>
> (b) The appeals board shall establish uniform court procedures and uniform forms for all other proceedings of the appeals board.

In addition to this statutory authority granted only to the Appeals Board, the Appeals Board has statutory authority under sections 5307 and 5708 to promulgate regulations regarding the adjudicatory process.

B. Parties have a due process right to a fair hearing, and a determination based on the merits.

As a matter of due process, all parties to a workers' compensation proceeding retain the 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].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd*. (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) 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].) As stated by the Court of Appeal:

> A denial of due process to a party ordinarily compels annulment of the Board's decision only if it is reasonably probable that, absent the procedural error, the party would have attained a more favorable result. However, if the denial of due process prevents a party from having a fair hearing, the denial of due process is reversible per se.

(*Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd*. (*Pinkney*) (1994) 26 Cal.App.4th 789, 806 [59 Cal.Comp.Cases 461], citations omitted.)

It is the policy of the law to favor, whenever possible, a hearing on the merits. (*Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205 [57 Cal.Comp.Cases 149]; see also *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478 [243 Cal. Rptr. 902] ("when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default.") This is particularly true in workers' compensation cases, where there is a constitutional mandate "to accomplish substantial justice in all cases." (Cal. Const., art. XIV, § 4.)

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 WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.*

(1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure 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 may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) Furthermore, decisions of 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].) Section 5701 allows the WCJ to "cause testimony to be taken, or inspection of the premises where the injury occurred to be made, or . . . direct any employee claiming compensation to be examined by a regular physician." (Lab. Code, § 5701; see also Lab. Code, § 5906 [permitting the Appeals Board to grant reconsideration and direct the taking of additional evidence].)

In 1890, the California Supreme Court opined: "The principal purpose of vesting the court with the discretionary power to correct 'a mistake in any other respect' is to enable it to mold and direct its proceedings so as to dispose of cases upon their substantial merits, when it can be done without injustice to either party, whether the obstruction to such a disposition of cases be a mistake of fact or a mistake as to the law, although it may be that the court should require a stronger showing to justify relief from the effect of a mistake of law than of a mistake of fact." (*Ward v. Clay* (1890) 82 Cal.502, 23 P.50, 1890 Cal. LEXIS 591; see *Dunzweiler v. Superior Court of Alameda County* (1968) 267 Cal.App.2d 569, 577 [73 Cal. Rptr. 331].)

C. In workers' compensation proceedings, pleadings are liberally construed and may be amended to conform to proof.

Section 5708 states that:

> All hearings and investigations before the appeals board or a workers' compensation judge are governed by this division and by the rules of practice and procedures adopted by the appeals board. In the conduct thereof they shall not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division. All oral testimony, objections, and rulings shall be taken down in shorthand by a competent phonographic reporter.

Section 5709 states that:

> No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division. No order, decision, award, or rule shall be invalidated because of the admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure.

The workers' compensation system "was intended to afford a simple and nontechnical path to relief." (*Elkins v. Derby* (1974) 12 Cal.3d 410, 419 [39 Cal.Comp.Cases 624]; Cf. Cal. Const., art. XX, § 21; § 3201.) Generally, "the informality of pleadings in workers' compensation proceedings before the Board has been recognized." (*Zurich Ins. Co. v. Workmen's Comp. Appeals Bd.* (1973) 9 Cal.3d 848, 852 [38 Cal.Comp.Cases 500, 512]; *Bland v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 324, 328–334 [35 Cal.Comp.Cases 513].) "[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee's entitlement to rehabilitation benefits." (*Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal. App.4th 485, 490 [67 Cal.Comp.Cases 1273].) Courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (*Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200–01 [50 Cal.Comp.Cases 160]; *Liberty Mutual Ins. Co. v. Workers' Comp. Appeals Bd.* (1980) 109 Cal.App.3d 148, 152–153 [45 Cal.Comp.Cases 866].) "Necessarily, failure to comply with the rules as to details is not jurisdictional." (*Rubio*, *supra*, at pp. 200–201; see Cal. Code Regs., tit. 8, § 10517.)

Therefore, in workers' compensation proceedings, it is settled law that (1) *pleadings may be informal*. (*Zurich Ins. Co.*, *supra*, 9 Cal.3d at p. 852; *Beaida v. Workmen's Comp. Appeals Bd.* (1968) 263 Cal.App.2d 204, 207– 210 [33 Cal.Comp.Cases 345]); (2) *claims should be adjudicated based on substance rather than form* (*Bland*, *supra*, 3 Cal.3d at pp. 328–334; *Martino*, *supra*, 103 Cal.App.4th at p. 491; (3) *pleadings should liberally construed so as not to defeat or undermine an injured employee's right to make a claim* (*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal.App.4th at pp. 925–926 [72 Cal.Comp.Cases 778]); *Martino*, *supra*, 103 Cal.App.4th at p. 490; and (4) *technically deficient pleadings, if they give notice and are timely, normally do not deprive the Board of jurisdiction* (*Bland*, *supra*, 3 Cal.3d at pp. 331–332).

These principles of liberal pleading are further reflected in section 5506, which authorizes the Appeals Board to relieve a defendant from default or dismissal due to mistake, inadvertence, surprise or excusable neglect in accordance with Code of Civil Procedure section 473. Moreover,

the Court of Appeal has made it clear that the protections afforded under Code of Civil Procedure section 473(b) are applicable in workers' compensation proceedings. (*Fox*, *supra*, 4 Cal.App.4th at p. 1196.)

IV.

Therefore, based on these principles, interpretation of our rules must necessarily incorporate California's public policy in favor of adjudication of claims on their merits, rather than on the technical sufficiency of the pleadings.

For example, WCAB Rule 10617 provides for considerable latitude in accepting nonstandard pleadings, so long as the pleadings contain "a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file." (Cal. Code Regs., tit. 8, §10617(b).) Similarly, WCAB Rule 10517 specifies that pleadings are deemed amended to conform to the stipulations agreed to by the parties on the record or may be amended by the Appeals Board to conform to proof. (Cal. Code Regs., tit. 8, §10517.) Because an evidentiary record must be created to allow for appellate review, and to safeguard due process, a request for electronic testimony must not be denied without an opportunity to be heard. WCAB Rule 10515 specifically disallows "[d]emurrers, petitions for judgment on the pleadings and petitions for summary judgment." (Cal. Code Regs., tit. 8, §10515.) The principles of liberal pleading and amendment of pleadings to conform to proof outlined above mean that any petition should be considered on its merits and not based on its title.

In considering the application of WCAB Rule 10817(c), we preliminarily conclude that a request on the record for electronic witness testimony at the beginning of the hearing, with an opportunity for any party to respond, satisfies the petition requirement and is sufficient to adjudicate the issue of electronic testimony. Moreover, we preliminarily conclude that the due process right to a fair hearing and a determination based on the merits is <u>good cause</u> to allow the electronic testimony of the witness. Therefore, when a witness is unable to appear in person, as a matter of due process, a request to testify electronically should be readily permitted.

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 *Industrial Acc. Com.* 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 Acc. 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. Appeals 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 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 of the May 13, 2025 Findings of Fact and Orders 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 (EN BANC)

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 12, 2025

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

TYSON PEREZ
PRO ATHLETE LAW GROUP
GOLDBERG SEGALLA
MICHAEL SULLIVAN & ASSOCIATES
GARBER & AV
LIU HUTTON

AS/abs

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

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

TYSON PEREZ, *Applicant*

vs.

CHICAGO DOGS, LIBERTY MUTUAL INSURANCE COMPANY; HOUSTON ASTROS, ACE AMERICAN INSURANCE COMPANY/ CHUBB as administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ16597333
Santa Ana District Office

OPINION AND ORDER CORRECTING CLERICAL ERROR

(EN BANC)

It has come to the Appeals Board's attention that the Opinion and Order Granting Reconsideration (En Banc) issued on August 12, 2025, contains the following clerical errors and the following corrections are made:

> Page 4, Footnote 3: WCAB Rule *10818* (Cal. Code Regs., tit. 8, § *10818*), corrected to read WCAB Rule *10618* (Cal. Code Regs., tit. 8, § *10618*); and
>
> Page 10, third full paragraph, first sentence: WCAB Rule 10817*(c)*, corrected to read WCAB Rule 10817*(a)*.

We correct these clerical errors by virtue of this decision without granting reconsideration, as such errors may be corrected without further proceedings at any time. (*Toccalino v. Workers' Comp. Appeals Bd*. (1982) 128 Cal.App.3d 543, 558, [47 Cal.Comp.Cases 145].)

For the foregoing reasons,

IT IS ORDERED that the clerical errors in the Opinion and Order Granting Petition for Reconsideration (En Banc) issued by the Workers' Compensation Appeals Board on August 12, 2025 are **CORRECTED** as follows:

Page 4, Footnote 3: WCAB Rule *10818* (Cal. Code Regs., tit. 8, § *10818*), corrected to read WCAB Rule *10618* (Cal. Code Regs., tit. 8, § *10618*); and

Page 10, third full paragraph, first sentence: WCAB Rule 10817*(c)*, corrected to read WCAB Rule 10817*(a)*.

WORKERS' COMPENSATION APPEALS BOARD (EN BANC)

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 14, 2025

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

AS/abs

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

SERVICE LIST

TYSON PEREZ
PRO ATHLETE LAW GROUP
GOLDBERG SEGALLA
MICHAEL SULLIVAN & ASSOCIATES
GARBER & AV
LIU HUTTON