

# Legal Research Report: California Workers' Compensation Petitions for Reconsideration Under Labor Code §§5900–5911

## (PART-A INJURED WORKERS ANALYSIS)

March 1, 2026

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# CALIFORNIA WORKERS' COMPENSATION: PETITIONS FOR RECONSIDERATION UNDER LABOR CODE §§ 5900–5911

A Petition for Reconsideration is your main way to challenge a decision made by a workers' compensation judge or the Workers' Compensation Appeals Board (WCAB). This report explains the rules, deadlines, and recent legal changes you need to know as of March 2026. The law changed significantly on July 2, 2024, when Assembly Bill 171 amended how the WCAB calculates its deadline to act on petitions. Missing any deadline in this process can permanently end your right to appeal.

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## Part 1: The Law That Gives You the Right to Petition

This part explains the statutes (written laws) and regulations (government rules) that create and govern petitions for reconsideration in California workers' compensation cases.

### Your Right to Petition

The right to petition comes from Cal. Lab. Code §§ 5900–5911 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5900/>). These sections are grouped as "Article 1" of the workers' compensation reconsideration and judicial review chapter.

Cal. Lab. Code § 5900(a) (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5900/>) states that any person "aggrieved" (meaning harmed or negatively affected) by a final order, decision, or award from a workers' compensation judge or the WCAB may petition for reconsideration. This right belongs to injured employees, dependents of deceased workers, employers, insurance carriers, and lien claimants (people or companies owed money from the case).

### The Five Grounds for Reconsideration

You must file your petition within 20 days after the decision is served on you. Cal. Lab. Code § 5903 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5903/>) limits your petition to exactly five reasons:

- The WCAB acted without or beyond its legal authority
- The decision was obtained through fraud (intentional lying or hiding of facts)
- The evidence does not support the judge's factual findings
- You found new evidence that you could not reasonably have found before the hearing
- The judge's own findings do not logically support the final order or award

You cannot petition for any reason outside these five grounds.

### The WCAB's Deadline to Act

Cal. Lab. Code § 5909(a) (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5909/>), as amended effective July 2, 2024 by Assembly Bill 171, now states that a petition is "deemed denied" (automatically treated as denied) unless the WCAB acts within 60 days from the date the trial judge transmits the case to the WCAB. Before this amendment, the 60 days started from the date you filed your petition.

**Important: This amended version of the law expires on July 1, 2026. After that date, the deadline may revert to the old rule (60 days from filing) unless the Legislature extends the amendment.**

### The Mailbox Rule: Extra Days for Mailed Decisions

Cal. Code Regs. tit. 8, § 10605 (<https://www.dir.ca.gov/t8/10605.html>) extends your filing deadline when a decision is served by mail instead of hand delivery:

- 5 extra days if you are served at a California address (giving you 25 days total)
- 10 extra days if you are served outside California but within the United States (30 days total)
- 20 extra days if you are served outside the United States (40 days total)

Most injured workers in California have 25 days to file. Recent WCAB panel decisions suggest that when any party is served at an out-of-state address, all parties may receive the longer deadline, but you should not rely on this without checking your specific situation.

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## Part 2: Major Court Decisions That Changed the Rules (2023–2025)

Recent court rulings have dramatically changed how petitions for reconsideration work. This part explains the key decisions you need to understand.

### Zurich: The 60-Day Deadline Is Absolute

In *Zurich American Insurance Co. v. Workers' Compensation Appeals Bd.*, 97 Cal.App.5th 1213 (2d Dist. 2023) (<https://law.justia.com/cases/california/court-of-appeal/2023/b321864.html>), the Second District Court of Appeal ruled that the 60-day deadline in Lab. Code § 5909 is jurisdictional. This means the WCAB simply has no legal power to decide a petition after 60 days have passed. Any decision issued after that deadline is void (has no legal effect at all).

For about 30 years before this ruling, the WCAB had relied on an older case called *Shipley v. WCAB*, 7 Cal.App.4th 1104 (1992), to allow late decisions when the WCAB's own administrative errors caused the delay. The Zurich court rejected that practice, holding that the statute's "deemed denied" language creates a hard deadline with no exceptions for administrative problems.

### Mayor: Confirming Zurich and Rejecting Further Exceptions

In *Mayor v. Workers' Compensation Appeals Bd.*, 104 Cal.App.5th 713 (1st Dist. 2024) (<https://www.sullivanoncomp.com/blog/special-report-1st-district-court-of-appeal-holds-that-wcab-must-act-on-petition-for-reconsideration-within-60-days>), the First District Court of Appeal agreed with Zurich and rejected the WCAB's continued attempts to find exceptions to the 60-day rule. The court stated that "a long-standing and incorrect procedure remains incorrect" no matter how long it has been practiced.

The court also noted that the Legislature's response—amending Lab. Code § 5909 through Assembly Bill 171 to start the clock from case transmission instead of filing—confirmed that the old practice was wrong. Rather than allowing the WCAB to ignore the deadline, the Legislature gave the WCAB more time by changing when the clock starts.

### Earley: No More "Grant for Study" Orders

In *Earley v. Workers' Compensation Appeals Bd.*, 94 Cal.App.5th 1 (2d Dist. 2023) (<https://ieatraining.org/court-invalidates-common-wcab-reconsideration-practice/>), the court struck down the WCAB's common practice of issuing "grant-for-study" orders. These were orders where the WCAB would grant reconsideration without explaining why, just to buy more time to review the case.

The court held that Cal. Lab. Code § 5908.5 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5908.5/>) requires the WCAB to state the evidence it relied on and explain in detail the reasons for granting or denying reconsideration. Simply saying "further study is necessary" violates this requirement.

***Important: The WCAB does not need to issue its final ruling on the merits within 60 days. It only needs to issue a properly reasoned decision to grant or deny reconsideration within that period. If it grants reconsideration with proper reasoning, it can take additional time to reach a final decision.***

### DPR Construction: Credibility and Discovery Rules

In *DPR Construction v. WCAB (McClanahan)*, 111 Cal.App.5th 1136 (3d Dist. 2025) (<https://www.sullivanoncomp.com/blog/3rd-district-court-of-appeal-clarifies-credibility-standards-and-discovery-closure-rules>), the Third District Court of Appeal clarified two important points:

- The WCAB should not reject a trial judge's credibility determination (the judge's decision about which witnesses to believe) unless there is evidence of such "considerable substantiality" that no reasonable person could accept it
- Violations of Cal. Lab. Code § 5502 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5502/>)'s discovery rules (rules about sharing evidence before trial) are not subject to "harmless error" analysis—meaning even a small procedural violation can require reversal

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### Part 3: Final Orders vs. Nonfinal Orders

You must understand the difference between final and nonfinal orders because filing the wrong type of petition can result in fines.

#### What Makes an Order "Final"

A final order is one that determines a substantive right or liability, or settles a critical issue in your claim for benefits. Examples include a decision granting or denying your claim, setting your disability rating, or determining your right to medical treatment.

A nonfinal order (also called an interlocutory order) is one that does not resolve a key issue. Examples include an order taking your case off the calendar, scheduling a hearing, or ruling on a discovery dispute.

In *Latrice Reed v. County of San Bernardino*, 89 Cal.Comp.Cases (WCAB Significant Panel Decision 2024) (<https://bradfordbarthel.com/2024/11/08/best-remedy-for-otoc-is-removal-not-reconsideration/>), the WCAB clarified that only final orders may be challenged by a petition for reconsideration. Nonfinal orders must be challenged through a petition for removal under Cal. Lab. Code § 5310 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5310/>).

#### Why This Matters: Sanctions for Filing the Wrong Petition

In *Ledezma v. Kareem Cart Commissary and Mfg.*, 89 Cal.Comp.Cases 462 (WCAB En Banc 2024) (<https://www.dir.ca.gov/WCAB/EnBancdecisions2024/AlfredoLedezma.pdf>), the WCAB ruled that filing a petition for reconsideration when removal is clearly the correct remedy is sanctionable (you can be fined) under Cal. Lab. Code § 5813 (<https://www.pbw-law.com/the-11000-mistake-when-active-defense-becomes-bad-faith/>) and Cal. Code Regs. tit. 8, § 10421 (<https://www.dir.ca.gov/t8/10421.html>).

In *Ledezma*, the WCAB consolidated eight cases where the same attorney had repeatedly filed reconsideration petitions when removal was appropriate, even after being warned. The WCAB imposed \$2,500 per case (totaling \$20,000) plus attorney's fees to the opposing party.

- You may file alternative petitions (seeking both reconsideration and removal) only when there is genuine confusion about whether an order is final
- You must include a good-faith explanation of why you believe the order is final
- Filing reconsideration petitions as a delay tactic invites serious financial penalties

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### Part 4: The Five Grounds Explained in Detail

Each petition must be based on one or more of the five grounds listed in Cal. Lab. Code § 5903 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5903/>). This part explains each ground and what you must prove.

#### Ground 1: The Board Acted Without or Beyond Its Powers

This ground covers jurisdictional errors (the judge had no legal authority to act) and legal errors (the judge applied the wrong law). You must identify the specific statute or constitutional provision the judge violated and explain exactly how the decision goes beyond that limit. Simply disagreeing with how the law was applied is not enough—you must show the judge acted outside the scope of authority entirely.

#### Ground 2: The Decision Was Obtained by Fraud

Fraud means intentional lying about or hiding of important facts by a party. You must prove that fraud actually occurred, and that the judge relied on the fraudulent information when making the decision. This ground is rarely successful because you must show a direct connection between the fraud and the decision. If other evidence also supported the judge's ruling, the fraud did not "procure" the decision in the way the law requires.

#### Ground 3: The Evidence Does Not Support the Findings

This is the most commonly used ground. You argue that the judge's factual findings are not supported by substantial evidence (evidence that a reasonable person would accept as adequate to support a conclusion).

After *DPR Construction v. WCAB (McClanahan)*, 111 Cal.App.5th 1136 (3d Dist. 2025) (<https://www.sullivanoncomp.com/blog/3rd-district-court-of-appeal-clarifies-credibility-standards-and-discovery-closure-rules>), the WCAB gives significant weight to the trial judge's credibility determinations. You must show evidence of such "considerable substantiality" that the judge's finding becomes unreasonable.

For medical evidence, you must show that the doctor's opinion fails legal requirements—for example, the doctor relied on an incomplete history, speculated instead of stating reasonable medical probability, or contradicted themselves within the same report.

#### Ground 4: Newly Discovered Evidence

You must prove two things: (1) the evidence is material (it could reasonably have changed the outcome), and (2) despite reasonable diligence (reasonable effort to find it), you could not have discovered and presented the evidence at trial. Evidence that existed before trial but was overlooked does not qualify. You must explain in detail when you found the evidence and why you could not have found it sooner.

#### Ground 5: Findings Do Not Support the Order

This ground challenges logical consistency. Even if each individual finding has evidence behind it, the findings taken together may not logically support the final order. For example, if a judge finds you were injured at work but then denies all benefits without explanation, the findings contradict the order. This ground is less common but is often raised alongside Ground 3.

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## Part 5: How to File Your Petition Step by Step

This part walks you through the procedural requirements for filing a petition for reconsideration.

### What Your Petition Must Include

Cal. Lab. Code § 5902 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5902/>) requires your petition to:

- State specifically and in full detail why you believe the decision is unjust or unlawful
- Identify every issue you want the WCAB to consider
- Be verified under oath (signed under penalty of perjury), the same as verified pleadings in courts of record
- Include a general statement of the evidence or matters you rely on

You should use the official DWC/WCAB Form 45 (Rev. 4-14) (<https://www.dir.ca.gov/dwc/forms/petitionofrecon.pdf>) or a document that substantially complies with it. Your filing must include a document cover sheet, document separator sheet, and copies for all parties.

***Important: Vague or boilerplate language risks dismissal. You must explain exactly why the trial judge was wrong, with references to specific evidence and legal authority.***

### Where to File

Under WCAB filing procedures (<https://www.dir.ca.gov/wcab/wcabpetitionforreconsideration.htm>) and Cal. Code Regs. tit. 8, § 10962 (<https://www.dir.ca.gov/wcab/wcabpetitionforreconsideration.htm>), you must file your petition in the Electronic Adjudication Management System (EAMS) or with the appropriate district office. Do not file directly with the Appeals Board except in limited "carve-out" cases.

### Serving All Parties

Cal. Lab. Code § 5904 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5904/>) requires you to serve (deliver) a copy of your petition on all adverse parties. This includes the injured worker (or their attorney), the employer, the insurance carrier, any lien claimants, and any other parties of record.

Your proof of service must:

- Identify the date and method of service
- List the names and addresses of all parties served
- Include a signed statement under penalty of perjury that service was completed

- Use addresses matching the "Official Address Record" at the time of service

### The Filing Deadline

1. Identify the date the decision was served on you (not the date you received it)
2. Add 20 days for the base filing period under Cal. Lab. Code § 5903 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5903/>)
3. Add 5 extra days if served by mail within California (under Cal. Code Regs. tit. 8, § 10605 (<https://www.dir.ca.gov/t8/10605.html>)), giving you 25 days total
4. Mark your calendar 7–10 days before the deadline as a safety alert
5. File your petition before the deadline expires—there are no extensions for good cause, attorney error, or any other reason

***Critical: This deadline is jurisdictional. A petition filed even one day late must be dismissed. The WCAB has no discretion to accept late petitions.***

### What Happens After You File

Under Cal. Code Regs. tit. 8, § 10961 (<https://www.dir.ca.gov/t8/10961.html>), the trial judge must act within 15 days of your timely filing by doing one of three things:

- Preparing a report and recommendation for the WCAB
- Rescinding (canceling) the order and starting further proceedings
- Rescinding the order and issuing an amended order

After 15 days pass, the trial judge loses all authority to issue orders in the case until the WCAB acts on your petition.

### Answers from the Opposing Party

Under Cal. Lab. Code § 5905 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5905/>), the opposing party may file an answer (a written response opposing your petition) within 10 days of being served. The answer must also be verified under oath. If no answer is filed, the WCAB will still review your petition on its merits.

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## Part 6: The WCAB's 60-Day Deadline and What Happens If It Is Missed

This part explains the critical 60-day period during which the WCAB must act on your petition, and your options if it does not.

### How the 60-Day Clock Works Now

Under amended Cal. Lab. Code § 5909(a) (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5909/>) (effective July 2, 2024), the 60-day clock starts when the trial judge transmits your case to the WCAB, not when you file your petition.

You can track this in EAMS by looking under "Case Events" for the entry "Sent to Recon" with the note "The case is sent to the Recon board." The date of that entry is when the 60-day clock begins.

Cal. Lab. Code § 5909(b)(1) (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5909/>) requires the trial judge to notify you and the WCAB when the case is transmitted. Under § 5909(b)(2), service of the judge's report and recommendation counts as that notice. So the date the judge serves the report typically matches the transmission date.

### If the WCAB Does Not Act in Time

If the WCAB fails to act within 60 days from transmission, your petition is automatically deemed denied. The WCAB then has no power to reconsider—any decision issued after the deadline is void ab initio (void from the beginning, with no legal effect).

This was confirmed in both *Zurich American Insurance Co. v. WCAB*, 97 Cal.App.5th 1213 (2d Dist. 2023) (<https://law.justia.com/cases/california/court-of-appeal/2023/b321864.html>) and *Mayor v. WCAB*, 104 Cal.App.5th 713 (1st Dist. 2024) (<https://www.sullivanoncomp.com/blog/special-report-1st-district-court-of-appeal-holds-that-wcab-must-act-on-petition-for-reconsideration-within-60-days>).

## Your Next Step: Petition for Writ of Review

If your petition is deemed denied, your remedy is to file a petition for writ of review with the California Court of Appeal under Cal. Lab. Code § 5950 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-2/section-5950/>). You must file this within 45 days of the deemed denial. This deadline is also jurisdictional—miss it and you lose all appellate rights permanently.

- You file the writ petition in the Court of Appeal in the district where you live
- The WCAB is named as a respondent (the party you are challenging)
- The court reviews legal questions without deferring to the WCAB
- The court reviews factual findings under the "substantial evidence" standard (whether any reasonable person could have reached the same conclusion)
- The court gives significant deference to the trial judge's credibility determinations

***Critical: You cannot re-file a petition for reconsideration or ask the WCAB to reconsider its deemed denial. The only path forward is the Court of Appeal.***

## The July 2026 Sunset Date

Cal. Lab. Code § 5909(c) (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-7/article-1/section-5909/>) provides that the amended version of the statute expires July 1, 2026. After that date, the 60-day period will revert to running from the date your petition is filed, unless the Legislature extends the amendment. You should monitor this closely, as it could significantly change the timeline for cases filed after July 1, 2026.

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## Part 7: Practical Decisions and Strategy

This part offers guidance on when and how to petition, and how to avoid costly mistakes.

### Should You File a Petition?

Not every unfavorable decision is worth challenging. Consider these factors:

- **Strength of your grounds:** Honestly assess whether the decision has a real legal or factual error under one of the five statutory grounds. If the decision is supported by solid evidence and applies the law correctly, a petition will likely fail.
- **Credibility issues:** If the trial judge's decision rests mainly on believing one witness over another, the WCAB is unlikely to overturn it. You need evidence of such "considerable substantiality" that the credibility finding is unreasonable.
- **Medical evidence problems:** Petitions often succeed when a medical opinion contains internal contradictions, relies on incomplete information, or speculates instead of stating reasonable medical probability.
- **Cost vs. benefit:** Filing requires legal fees, preparation time, and possibly new evidence costs. Weigh these against the potential benefit of reversal.
- **Preserving writ review:** Even if reconsideration seems unlikely to succeed, filing may be wise to build a detailed record and force the WCAB to issue a reasoned decision, which strengthens any later writ petition.

### Managing Your Deadlines

- Calendar the 20/25-day filing deadline immediately when the decision is served
- Set an alert 7–10 days before the deadline
- Monitor EAMS to identify the case transmission date (which starts the WCAB's 60-day clock)
- Calculate the 60-day expiration and the 45-day writ deadline after any deemed denial
- Verify all dates with the WCAB or EAMS if there is any question about service dates

### Building Strong Arguments

- For Ground 1 (excess of powers): Name the specific statute or rule the judge violated
- For Ground 2 (fraud): Provide concrete evidence of intentional misrepresentation and show it directly caused the decision

- For Ground 3 (evidence insufficient): Address each factual finding individually and explain why no reasonable person could reach that conclusion
- For Ground 4 (new evidence): Explain in detail when you found it and why you could not have found it sooner
- For Ground 5 (findings don't support order): Point to the specific logical disconnect between the judge's findings and the final order

### Consider Settlement

The petition process can create opportunities for settlement. The trial judge's report and recommendation gives both sides a chance to reassess their positions. Some courts hold settlement conferences before the WCAB decides reconsideration petitions. Early resolution may be preferable to the uncertainty and delay of continued appeals.

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## Part 8: Sanctions and Frivolous Petitions

Filing a petition without a proper basis can result in serious financial penalties.

### What Counts as a Frivolous Petition

Under Cal. Lab. Code § 5813 (<https://www.pbw-law.com/the-11000-mistake-when-active-defense-becomes-bad-faith/>) and Cal. Code Regs. tit. 8, § 10421 (<https://www.dir.ca.gov/t8/10421.html>), the WCAB may impose sanctions for actions that are:

- The result of a willful failure to comply with a statutory or regulatory obligation
- Done with willful intent to disrupt or delay proceedings
- Done for an improper motive or are indisputably without merit

### The Ledezma Warning

In *Ledezma v. Kareem Cart Commissary and Mfg.*, 89 Cal.Comp.Cases 462 (WCAB En Banc 2024) (<https://www.dir.ca.gov/WCAB/EnBancdecisions2024/AlfredoLedezma.pdf>), the WCAB sanctioned an attorney \$2,500 per case across eight cases (\$20,000 total) plus attorney's fees for repeatedly filing reconsideration petitions when removal was clearly the correct remedy. The attorney had been previously warned but continued the practice.

***Important: Sanctions apply personally to the attorney, not just the law firm. Understand the difference between final and nonfinal orders before filing, and always include a good-faith explanation if you file alternative petitions.***

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## (PART-B LEGAL ANALYSIS)

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## Executive Summary

A Petition for Reconsideration under California Labor Code sections 5900 through 5911 is the primary appellate mechanism within the workers' compensation system that allows parties to challenge final orders, decisions, or awards issued by workers' compensation judges or the Workers' Compensation Appeals Board itself.<sup>[1][4]</sup> This report provides comprehensive guidance on the statutory framework, recent case law developments, procedural requirements, and strategic considerations governing these petitions as of March 2026. The landscape has changed significantly since July 2, 2024, when Assembly Bill 171 amended Labor Code section 5909, fundamentally altering how the Workers' Compensation Appeals Board calculates its deadline to act on reconsideration petitions.<sup>[7][10]</sup> Courts have consistently held that strict compliance with statutory deadlines is non-negotiable, and decisions issued outside the jurisdictional window are void.<sup>[7][13]</sup> Practitioners and parties must understand five statutory grounds for reconsideration, distinguish between final orders eligible for reconsideration and nonfinal orders requiring petitions for removal instead, and navigate the interplay between strict filing deadlines for petitioners and an expanded decision-making timeline for the WCAB itself. This report addresses each component with current authority, practical guidance for compliance, and analysis of how appellate decisions have reshaped the procedural landscape in ways that create both opportunities and significant pitfalls for unwary practitioners.

## I. Statutory and Regulatory Framework

### Legislative Foundation and Operative Statutes

The right to petition for reconsideration of workers' compensation decisions rests on California Labor Code sections 5900 through 5911, collectively termed "Article 1" of the workers' compensation reconsideration and judicial review chapter.<sup>[4]</sup> Labor Code Section 5900(a) provides the foundational principle: "Any person aggrieved directly or indirectly by any final order, decision, or award made and filed by the appeals board or a workers' compensation judge under any provision contained in this division, may petition the appeals board for reconsideration in respect to any matters determined or covered by the final order, decision, or award, and specified in the petition for reconsideration."<sup>[4]</sup> This statute establishes that the right to petition belongs to any "aggrieved" party—a term including injured employees, dependents of deceased workers, employers, insurance carriers, and lien claimants.<sup>[1][3]</sup>

The petition must be filed within a strictly enforced timeframe. Labor Code Section 5903 mandates that "[a]t any time within 20 days after the service of any final order, decision, or award made and filed by the appeals board or a workers' compensation judge granting or denying compensation, or arising out of or incidental thereto, any person aggrieved thereby may petition for reconsideration upon one or more of the following grounds and no other."<sup>[4]</sup> The five enumerated grounds are exhaustive: the board acted without or in excess of its powers; the decision was procured by fraud; the evidence does not justify the findings of fact; newly discovered evidence exists that could not have been produced at the hearing; or the findings of fact do not support the order, decision, or award.<sup>[1][4]</sup>

A critical distinction exists between the petitioner's deadline and the WCAB's decision deadline. Labor Code Section 5909(a), as amended effective July 2, 2024, now states: "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."<sup>[7][10][35]</sup> This represents a significant change from the prior version, which measured the 60-day period from the date the petition was filed.<sup>[7]</sup> Under the amended statute, the clock for the WCAB's obligation to act now begins when the case is transmitted to the reconsideration unit, as reflected in the Electronic Adjudication Management System (EAMS) under "Sent to Recon."<sup>[7][10][35]</sup>

### The Mailbox Rule and Filing Deadline Extensions

The statutory 20-day filing deadline is extended by California Code of Regulations Title 8, Section 10605, which operates as the "mailbox rule" in workers' compensation practice.<sup>[6][6]</sup> When a decision is served by any method other than personal service—mail, fax, email, or other agreed-upon method—the time to act is extended by five calendar days if the address is within California, ten calendar days if outside California but within the United States, and twenty calendar days if outside the United States.<sup>[5][6][6]</sup> Since most injured workers and attorneys are served at California addresses, the practical result is that most parties have 25 days

to file a petition for reconsideration following service by mail within California.[6] However, courts have interpreted section 10605 to apply a single deadline to all parties when at least one party is served at an out-of-state address-potentially extending the period to 30 days for all parties.[6] Practitioners should calendars conservatively, marking 25 days as the safe threshold unless specific facts demonstrate an out-of-state service address warranting the extended period.

### Regulatory Requirements for Petition Content and Procedure

Labor Code Section 5902 requires that a petition for reconsideration "set forth specifically and in full detail the grounds upon which the petitioner considers the final order, decision or award made and filed by the appeals board or a workers' compensation judge to be unjust or unlawful, and every issue to be considered by the appeals board. The petition shall be verified upon oath in the manner required for verified pleadings in courts of record and shall contain a general statement of any evidence or other matters upon which the applicant relies in support thereof." [4] This requirement mandates specificity; vague, conclusory petitions risk dismissal without review. [1][2] The petition must address each disputed issue comprehensively and explain precisely why the trial court erred-merely disagreeing with the outcome is legally insufficient. [1]

Procedurally, Labor Code Section 5904 requires the petitioner to "serve a copy of the petition for reconsideration upon all adverse parties by the person petitioning for reconsideration." [1][4] An adverse party may file an answer within 10 days. [1][4][30] The petition must be filed either in the Electronic Adjudication Management System (EAMS) or with the appropriate district office, not directly with the Appeals Board (except in limited "carve-out" cases). [16][16] California Code of Regulations Section 10961 requires that within 15 days of a timely petition filing, the trial judge must either prepare a report and recommendation, rescind the order and initiate further proceedings, or rescind and issue an amended order. [59] After 15 days have elapsed, the workers' compensation judge loses authority to issue any order until the Appeals Board acts. [59]

## II. Current Legal Landscape and Recent Developments (2024-2026)

### The Transformative Impact of AB 171 and Amended Labor Code Section 5909

The most consequential recent development in reconsideration procedure stems from the July 2, 2024 effective date of Assembly Bill 171's amendment to Labor Code Section 5909. [7][10] For approximately 30 years, the Workers' Compensation Appeals Board had relied on *ShIPLEY v. WCAB* (1992) 7 Cal.App.4th 1104 to permit reconsideration decisions beyond the 60-day statutory period when the WCAB's own administrative errors or delays caused the missed deadline. [7][11][7] The WCAB reasoned that denying parties review due to administrative deficiencies violated due process principles. [11]

However, in *Zurich American Insurance Co. v. Workers' Compensation Appeals Board* (2023) 97 Cal.App.5th 1213, the Second District Court of Appeal rejected this interpretation. [7][15][13] The court held that "the language and purpose of section 5909 show a clear legislative intent to terminate the Board's jurisdiction to consider a petition for reconsideration after the 60 days have passed, and thus, decisions on the petition made after that date are void as in excess of the agency's jurisdiction." [7][7] The court disagreed with the WCAB's reliance on *ShIPLEY*, stating that *ShIPLEY* should be narrowly construed to apply only when the WCAB actively misled a diligent petitioner, not merely when administrative irregularities caused delays. [7][13] The court emphasized that statutory provisions using "deemed denied" language establish jurisdictional limits, not discretionary exceptions. [7] Further, the court noted that the California Constitution requires the workers' compensation system to accomplish "substantial justice" both "expeditiously" and "inexpensively," and that strict adherence to the 60-day deadline furthers that mandate. [7]

Shortly thereafter, in *Mayor v. Workers' Compensation Appeals Board* (2024) 104 Cal.App.5th 713, the First District Court of Appeal affirmed Zurich's holding and rejected the WCAB's continued efforts to distinguish the decision. [11][7] The court explained that "a long-standing and incorrect procedure remains incorrect" regardless of how long it has been practiced. [11][7] Critically, the court noted that the Legislature's amendment of section 5909 through Assembly Bill 171 implicitly confirmed Zurich's interpretation. [11][7] Rather than clarify that the prior practice should continue, the Legislature changed the trigger for the 60-day period-from filing of the petition to transmission of the case to the WCAB. [11] The court explained that this change represents "a short-term fix to the WCAB's need for resources" and gives the Board "the additional time to act on petitions review that it says it needs to resolve normal human errors or administrative

irregularities." [11][7] The temporary amendment expires July 1, 2026, at which point the deadline will presumably revert to the former language—a fact practitioners should monitor carefully. [7][10][11]

### Practical Implementation of the Amended 60-Day Deadline

Current WCAB decisions clarify how the amended section 5909 operates in practice. [35][38][53] The 60-day period now runs from the date the trial judge transmits the case to the reconsideration unit, as reflected in EAMS under "Case Events" with the phrase "Sent to Recon" and "The case is sent to the Recon board." [35][38] Labor Code Section 5909(b)(1) requires that "the trial judge shall provide notice to the parties and the WCAB when the judge transmits a case to the WCAB." [10][35] Section 5909(b)(2) provides that "service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice." [10][35][38] As a practical matter, when a workers' compensation judge files a report and recommendation, that filing and service date typically matches the transmission date to the WCAB. [35][38][53] Parties must monitor EAMS carefully to identify the actual transmission date, as this governs the commencement of the 60-day period for the WCAB's obligation to act. [35][38]

The consequences of missing this deadline are severe: the WCAB lacks jurisdiction to grant reconsideration after 60 days have elapsed, and any decision issued thereafter is void. [11][7][13] The proper remedy for a party denied reconsideration due to the WCAB's failure to act timely is to file a petition for writ of review in the Court of Appeal, not to seek further relief from the WCAB itself. [7][13] This creates a scenario where a party whose petition is deemed denied must act quickly to file a writ petition within 45 days of the deemed denial, or risk losing the right to appellate review entirely. [11][31]

### The Earley Decision and Requirements for Granting Reconsideration

Prior to the Zurich and Mayor decisions, the WCAB had engaged in a practice of issuing "grant-for-study" orders—granting reconsideration without initially deciding whether reconsideration was warranted, ostensibly to allow the Board additional time to study the case. [21][21][40] In *Earley v. Workers' Compensation Appeals Board* (2023) 94 Cal.App.5th 1, the Second District invalidated this practice. [21][21][40] The court held that Labor Code Section 5908.5 requires the WCAB to "state the evidence relied upon and specify in detail the reasons for the decision" when granting or denying reconsideration. [21][21] Simply stating that "further study is necessary" violates this requirement. [21][21]

The practical implication is profound: the WCAB cannot buy itself additional time by issuing boilerplate grant-for-study orders. [21][21][40] Instead, when the WCAB grants reconsideration, it must articulate which of the five statutory grounds in Labor Code Section 5903 support granting the petition and explain the evidence supporting that determination. [21][21][40] However, the Court of Appeal clarified that the WCAB does not need to issue a final ruling on the merits within 60 days—the 60-day deadline applies only to the decision to grant or deny reconsideration, not to the final decision on the merits. [21][21][40] This means the WCAB may issue an order granting reconsideration within 60 days and then take additional time to issue a final decision on the merits, provided the initial grant order complies with the statutory requirement to state reasons and evidence. [21][21][40]

### Distinguishing Final Orders from Nonfinal Orders: The Reed Decision

In *Latrice Reed v. County of San Bernardino* (2024) 89 Cal.Comp.Cases (significant panel decision), the WCAB clarified that a petition for reconsideration may be filed only for "final" orders, not for nonfinal or interlocutory orders. [9][12][12][53] A "final" order is one that "determines any substantive right or liability" or "settles for purposes of the compensation proceeding, an issue critical to the claim for benefits." [9][12][12][24] An order taking a matter off calendar, for instance, is not a final order because it does not resolve threshold issues like the existence of employment or the applicability of the statute of limitations. [9][12] Instead, such orders require a petition for removal under Labor Code Section 5310, not a petition for reconsideration. [9][12][12]

The distinction has procedural teeth: when a petition for reconsideration is filed, the trial judge loses authority to issue further orders until the WCAB acts, effectively halting the case. [51][24] By contrast, filing a petition for removal does not suspend the judge's authority. [51][24] Consequently, parties have attempted to file petitions for reconsideration even when removal is the appropriate remedy, as a tactical delay mechanism. [9][12][28][49] The WCAB responded by issuing an en banc decision in *Ledezma v. Kareem Cart Commissary and Mfg.* (2024) 89 Cal.Comp.Cases establishing that filing an alternative petition for

reconsideration when removal is warranted is sanctionable under Labor Code Section 5813 and California Code of Regulations Section 10421.[24][28][46][49] Practitioners must exercise care to file the correct petition type, and may only file alternative reconsideration/removal petitions when there is genuine confusion about whether an order is final.[24][28][46]

### Standards of Review and Burden of Proof

The WCAB conducts de novo review of petitions for reconsideration, meaning it reviews the entire record and does not defer to the trial judge's factual or legal conclusions.[43][53] However, the WCAB does afford considerable weight to the trial judge's credibility determinations.[55] In *DPR Construction v. WCAB (McClanahan)* (2025) 111 Cal.App.5th 1136, the Third District Court of Appeal held that Labor Code Section 5313's requirement to state "reasons or grounds" for determinations does not mandate detailed credibility analysis; instead, the statute requires findings on ultimate facts and an explanation of the evidence relied upon.[55] The court emphasized that the WCAB may not reject a trial judge's credibility determination unless there is evidence of such a "considerable substantiality" that a reasonable mind could not accept it.[55] Further, the court held that violations of Labor Code Section 5502's discovery requirements are not subject to harmless error analysis-strict compliance is required, and improper admission of evidence, even if not determinative, can warrant reversal.[55]

For evidence to constitute "substantial evidence" supporting WCAB findings, it must be "relevant evidence as a reasonable mind might accept as adequate to support a conclusion," be "reasonable in nature, credible, and of solid value," and (for medical evidence) be "framed in terms of reasonable medical probability" without speculation or guesswork.[57] Medical opinions based on inadequate examination or history, or that contain internal contradictions, do not constitute substantial evidence and may be rejected even if offered by the parties' selected medical evaluators.[62]

### III. The Five Statutory Grounds for Reconsideration

#### Ground One: The Board Acted Without or In Excess of Its Powers

The first ground for reconsideration under Labor Code Section 5903(a) is "that by the order, decision or award made and filed by the appeals board or the workers' compensation judge, the appeals board acted without or in excess of its powers." [1][3][4] This ground encompasses jurisdictional errors, such as a trial judge proceeding when the WCAB lacked jurisdiction, or a judge exceeding statutory limits on authority.[3] For example, a judge awarding benefits for a period beyond what the statute permits, or issuing an order on an issue not properly before the court, would constitute acting in excess of powers.[3] This ground also covers misapplication of law-applying an incorrect legal standard or failing to follow binding precedent.[3]

To successfully petition on this ground, the petitioner must identify with specificity which statutory or constitutional provision the trial judge violated and explain how the decision transgresses that limit.[1][3] Mere disagreement with how the law was applied is insufficient; the petitioner must show the trial judge acted outside the scope of authority altogether.[3] Courts interpret this ground narrowly, requiring clear evidence that the decision lacks any valid legal basis.[3]

#### Ground Two: The Decision Was Procured by Fraud

The second ground is "[t]hat the order, decision, or award was procured by fraud." [1][3][4][32] Fraud in the context of workers' compensation decisions means intentional misrepresentation or concealment of material facts by a party, either to the trial judge or to a medical evaluator, that induced the judge to issue an unfavorable decision.[1][3] This ground is rarely successful because the petitioner must prove not only that fraud occurred, but that the trial judge relied on the fraudulent representation in reaching the decision.[1][3]

For instance, if an applicant misrepresented work duties to a qualified medical evaluator, and the evaluator's resulting opinion (based on the misrepresentation) formed the sole basis for the trial judge's decision to deny benefits, the applicant's misrepresentation might constitute fraud procuring the decision.[3] However, if other evidence also supported the judge's decision, the fraud did not "procure" the order in the causal sense required.[3] Petitioners must offer specific and detailed proof of fraud, not mere suspicion or inference.[3] Because fraud is difficult to establish and courts interpret this ground conservatively, it is rarely the sole ground cited in a successful petition.[3]

#### Ground Three: The Evidence Does Not Justify the Findings of Fact

The third and most commonly invoked ground is "[t]hat the evidence does not justify the findings of fact." [1][3][8][32] This ground allows petitioners to argue that the trial judge's factual findings rest on insufficient or unsupported evidence. [1][8] Under the substantial evidence standard, a finding is supported only if reasonable minds could have reached it based on credible evidence in the record. [1][3][57] If the petitioner can demonstrate that no reasonable fact-finder could have reached the trial judge's conclusion given the evidence, the finding should be overturned on reconsideration. [1][3]

However, post-DPR Construction, petitioners must understand that the WCAB affords significant weight to the trial judge's assessment of witness credibility. [55] Simply re-arguing facts or asserting that different evidence should have been credited does not overcome this deference. [55] Instead, the petitioner must identify evidence of such "considerable substantiality" that the trial judge's credibility determination becomes unreasonable or unsupported. [55] For medical evidence specifically, the petitioner must demonstrate that the medical opinion fails to meet statutory requirements—for example, that the doctor relied on an inadequate history or examination, or that the opinion contains internal logical contradictions. [57][62] Internally contradictory medical reports (e.g., finding an applicant both temporarily totally disabled and permanent and stationary simultaneously) provide strong grounds for arguing that the report does not constitute substantial evidence. [62]

#### Ground Four: Newly Discovered Evidence

The fourth ground is "[t]hat the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and produced at the hearing." [1][3][4][32] This ground requires the petitioner to prove two elements: first, that the evidence is material (meaning it could reasonably have affected the outcome), and second, that despite reasonable diligence, the evidence could not have been discovered and presented at trial. [1][3] "Reasonable diligence" is a fact-intensive standard; evidence available before trial but overlooked does not qualify as newly discovered. [1][3] The petitioner must demonstrate that the evidence came into existence after the trial hearing or that, despite reasonable investigation beforehand, the evidence's existence or availability was genuinely unknown. [1][3]

Examples of newly discovered evidence include medical records that were not available before trial (perhaps because they were created by a treating physician after the initial hearing), or deposition testimony of a witness who was unavailable or not identified before trial. [1][3] Documents in a party's possession that could have been discovered but were negligently overlooked do not qualify. [1][3] The bar for this ground is high because it requires courts to revisit trials after they conclude; consequently, petitioners must present a detailed, factual narrative explaining why the evidence could not reasonably have been discovered earlier. [1][3]

#### Ground Five: Findings of Fact Do Not Support the Order, Decision, or Award

The fifth and final ground is "[t]hat the findings of fact do not support the order, decision, or award." [1][3][4][32] This ground challenges the logical consistency of the decision: even if individual factual findings are supported by evidence, they may not logically support the ultimate award or denial of benefits. [1][3] For example, if a trial judge found that an applicant sustained a work-related injury but then denied all benefits, the findings would not support the order. [1][3] Similarly, if a judge found that a medical opinion regarding permanent disability lacked supporting evidence, but then adopted that opinion's specific disability rating, the findings would contradict the award. [3] This ground is sometimes conflated with Ground Three but is technically distinct; it focuses on logical coherence rather than factual support for individual findings. [3]

Because this defect "does not occur frequently," as noted by practitioners, parties often allege it alongside Ground Three to ensure maximum coverage of their arguments. [3] The petitioner must explicitly identify how specific findings fail to logically support the ultimate decision. [3]

## IV. Procedural Requirements and Strict Compliance Obligations

### Drafting and Content Requirements

A legally sufficient petition for reconsideration must comply with multiple overlapping statutory and regulatory requirements. Labor Code Section 5903 mandates that the petition "state specifically and in full detail the grounds upon which the petitioner considers the final order, decision or award made and filed by the appeals board or a workers' compensation judge to be unjust or unlawful, and every issue to be considered by

the appeals board."<sup>[4]</sup> This requires the petitioner to identify each basis for reconsideration and explain exhaustively why that basis applies.<sup>[1][2][2]</sup> Boilerplate or conclusory language is insufficient and may result in dismissal.<sup>[1]</sup>

The petition must be verified upon oath in the manner required for verified pleadings in courts of record.<sup>[4]</sup> California Code of Regulations Section 10605 requires compliance with all formatting and procedural requirements.<sup>[5]</sup> Under DWC guidance, the petition must be completed on the official DWC/WCAB Form 45 (Rev. 4-14) or substantially comply with it.<sup>[2][2]</sup> All documents filed with the WCAB must include a document cover sheet and document separator sheet, typed or handwritten in block letters for legibility.<sup>[2][2]</sup> The filing must include an original petition and copies for all parties.<sup>[2][2]</sup>

California Code of Regulations Section 10962 provides that petitions must be filed in EAMS or with the district office, not with the Appeals Board directly (except in carve-out cases).<sup>[16][16]</sup> A proof of service must accompany the petition, demonstrating that copies were served on all adverse parties by mail at their addresses of record.<sup>[2][2]</sup> The proof of service must be under penalty of perjury and comply with section 10605 service procedures.<sup>[2][2]</sup>

#### The Strict 20-Day (or 25-Day) Filing Deadline

No aspect of petition practice is more rigidly enforced than the filing deadline. Labor Code Section 5903 provides no exception or extension for good cause, excusable neglect, or equitable circumstances.<sup>[4]</sup> The deadline is jurisdictional, meaning that failure to file within the prescribed period strips the WCAB of authority to grant reconsideration.<sup>[7][13]</sup> A petition filed on day 21 or day 26 (depending on mail service extensions) is untimely and must be dismissed.<sup>[1][3][7]</sup> Courts have repeatedly rejected arguments that the WCAB should have discretion to extend deadlines based on attorney error, client miscommunication, or other sympathetic circumstances.<sup>[11][7]</sup>

The clock begins running from the date the decision is "served" on the petitioner, not from the date the petitioner receives it.<sup>[30]</sup> Service is deemed complete when the document is properly mailed to the party's address of record or when personal service is effected.<sup>[6]</sup> If the decision is served by mail within California, the petitioner has 20 days plus 5 additional days (25 total) to file.<sup>[6][6][30]</sup> If served by mail outside California but within the United States, the extension is 10 days (30 total days).<sup>[6][6][30]</sup> If served outside the United States, the extension is 20 days (40 total).<sup>[6][6][30]</sup> Recent WCAB panel decisions have suggested that when one party is served at an out-of-state address, all parties receive the extended period-potentially 30 days for all-though this remains a developing area and practitioners should not rely on it without case-specific analysis.<sup>[6]</sup>

To safely comply, practitioners should mark calendars five to seven days before the deadline expires and verify the actual deadline with the WCAB or the address of record for all parties.<sup>[6][30][30]</sup> Courts do not extend deadlines for calendar error, mail delays, or misunderstanding of the deadline rules.<sup>[11][7][13]</sup>

#### Service and Proof of Service Requirements

Labor Code Section 5904 requires the petitioner to "serve a copy of the petition for reconsideration upon all adverse parties by the person petitioning for reconsideration."<sup>[1][4]</sup> "All adverse parties" includes the injured worker (or their representative), the employer, the insurance carrier, any lien claimants with claims in the case, and any other parties of record.<sup>[3][4][16]</sup> Failure to serve any party can result in dismissal of the petition or sanction.<sup>[3][4]</sup>

Service must comply with California Code of Regulations Section 10605 (mail, fax, email, or other agreed-upon method) and be documented with a signed, sworn proof of service.<sup>[2][5]</sup> The proof of service must identify the date of service, the method of service, the names and addresses of all parties served, and the declarant's statement under penalty of perjury that service was completed.<sup>[2]</sup> All addresses must match the "Official Address Record" at the time of service, even if service was actually accomplished by a different method (e.g., email even though the record address is a physical street address).<sup>[5]</sup>

#### Post-Filing Actions by the Trial Judge

Upon timely filing of a petition for reconsideration, California Code of Regulations Section 10961 requires the trial judge to act within 15 days by either preparing a report and recommendation, rescinding the entire order and initiating further proceedings, or rescinding the order and issuing an amended order.<sup>[59]</sup> After 15

days have elapsed, the trial judge loses all authority to issue orders in the case until the WCAB denies or dismisses the petition or issues a decision after reconsideration.[59] This temporary loss of judicial authority can have significant practical consequences, as the judge cannot issue orders on discovery disputes, scheduling matters, or enforcement of prior awards.[51][59]

The 15-day period for the trial judge to act is separate from and distinct from the 60-day period for the WCAB to act.[59] If the trial judge prepares a report within 15 days, the clock then begins running for the WCAB's 60-day obligation (now measured from case transmission under amended section 5909).[35][59]

### Answers and Opposition to Petitions

An adverse party may file an answer to the petition for reconsideration within 10 days of service.[1][4][30] Labor Code Section 5905 provides that "any adverse party may file an answer thereto within 10 days thereafter. Such answer shall likewise be verified." [4] The answer must address the petitioner's contentions and present the opposing party's arguments in support of upholding the trial court's decision.[1][4][30] The answer must also comply with verification and service requirements.[4][30] Failure to file an answer does not waive the right to oppose the petition; the WCAB will review the petition on its merits regardless.[1][4] However, filing a substantive answer provides an opportunity to respond to the petitioner's arguments and address weaknesses in the petitioner's factual or legal positions.[1][4]

### V. Jurisdictional Constraints and the WCAB's Obligation to Act

#### The 60-Day Deadline Under Amended Labor Code Section 5909

Labor Code Section 5909(a), effective July 2, 2024, establishes the WCAB's outer jurisdictional limit: "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." [7][10][35][38] Critically, the WCAB has no discretion to extend this deadline, and decisions issued after the 60-day period are void ab initio (void from the beginning) as in excess of the agency's jurisdiction.[11][7][13][7]

Under the prior version of section 5909 (before the July 2, 2024 amendment), courts held that the WCAB's failure to act within 60 days resulted in automatic denial of the petition unless the WCAB could show it had been misled or prevented from acting by administrative circumstances beyond its control (Shipley exception).[11][7][13][7] However, both Zurich and Mayor rejected the WCAB's reliance on Shipley exceptions for administrative delay, holding that the statute is mandatory and jurisdictional, not subject to equitable tolling for systemic failures.[11][7][13][7]

The amendment to section 5909 addresses this concern by changing the trigger date from "filing" to "transmission of the case to the appeals board," giving the WCAB additional time to receive and process petitions.[7][10][11] However, this change is temporary; Labor Code Section 5909(c) provides that the amended version expires July 1, 2026, and will revert to former language unless the Legislature extends it.[7][10] Practitioners must monitor this deadline closely in the coming months, as the reversion could significantly impact cases pending in reconsideration units.[7][10][11]

#### Identifying the Transmission Date in EAMS

The critical question for applying the amended section 5909 is: when is the case "transmitted" to the appeals board? Current WCAB decisions clarify that transmission is reflected in EAMS under "Case Events," specifically under the "Event Description" phrase "Sent to Recon" with "Additional Information" stating "The case is sent to the Recon board." [35][38][53] The date on which this EAMS entry is created is the date from which the 60-day clock begins.[35][38] For most cases, this date coincides with the date the trial judge's report and recommendation is filed and served, as the case is typically transmitted simultaneously with report service.[35][38][53]

Labor Code Section 5909(b)(1) requires that "the trial judge shall provide notice to the parties and the Appeals Board when the judge transmits a case to the Appeals Board." [10][35] Section 5909(b)(2) provides that "service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice." [10][35] Therefore, when a trial judge serves a report and recommendation, that service date constitutes notice of transmission and commences the 60-day period for the WCAB's obligation to act.[35][38][53]

Practitioners should routinely monitor EAMS to identify the transmission date and ensure they understand when the 60-day clock expires.[35][38] If the WCAB does not act by day 60 from transmission, the petition is deemed denied, and the proper remedy is a petition for writ of review in the appropriate court of appeal, not further pleading before the WCAB.[11][7][13]

#### Consequences of Missing the 60-Day Deadline: Loss of Jurisdiction and Void Decisions

If the WCAB fails to act on a petition within 60 days from transmission, it loses jurisdiction to consider the petition.[11][7][13] Any decision issued after the 60-day period is void and of no legal effect.[11][7][13][7] The petitioner's remedy is to file a petition for writ of review with the appropriate Court of Appeal within 45 days of the deemed denial.[31][41] If the petitioner fails to file a writ petition within 45 days, the right to appellate review is forfeited.[31][41][30]

This creates a procedural trap: a party whose petition is deemed denied must act quickly to file a writ petition, or the case becomes final in an adverse posture. The party cannot simply re-file a petition for reconsideration or request that the WCAB reconsider its deemed denial; such relief is unavailable as a matter of law.[11][7][13]

#### The WCAB's Action on Petitions: Standards and Mandatory Findings

When the WCAB does act within the 60-day period, it must comply with Labor Code Section 5908.5, which requires that "any decision of the appeals board granting or denying a petition for reconsideration ... shall state the evidence relied upon and specify in detail the reasons for the decision." [21][21][40] This requirement mandates that the WCAB articulate which of the five statutory grounds support its action (if granting) or why the petition fails to meet any ground (if denying).[21][21][40] Boilerplate language is impermissible; the WCAB must address the specific facts and evidence in the case.[21][21][40]

Labor Code Section 5906 provides that "upon the filing of a petition for reconsideration, or having granted reconsideration upon its own motion, the appeals board may, with or without further proceedings and with or without notice affirm, rescind, alter, or amend the order, decision, or award made and filed by the appeals board or the workers' compensation judge on the basis of the evidence previously submitted in the case, or may grant reconsideration and direct the taking of additional evidence." [4][21] This means the WCAB may decide the petition on the existing record without additional proceedings, or it may order that further evidence be taken and remand to the trial level.[4][21]

## VI. Strategic Considerations and Decision-Making Framework

### Evaluating Whether to Petition for Reconsideration

Not every adverse decision warrants a petition for reconsideration. Practitioners and parties should evaluate several factors before committing time and resources to appellate briefing.

**Strength of Available Grounds:** Realistically assess whether the trial judge's decision is vulnerable under one or more of the five statutory grounds. If the decision is supported by substantial evidence, involved no legal error, was not procured by fraud, and relies on no newly discovered evidence, a petition will likely fail. Conversely, if the medical evidence clearly contradicts the judge's findings, or if the judge misapplied binding law, the case is strong for reconsideration.

**Credibility Challenges:** Remember that the WCAB defers significantly to the trial judge's credibility determinations.[55] If the trial judge's decision rests primarily on witness credibility rather than documentary evidence, reconsideration is more difficult.[55] Unless the credibility finding is completely unreasonable in light of the evidence, appellate reversal is unlikely.[55]

**Medical Evidence Issues:** Medical evidence is often the crux of workers' compensation disputes. Petitions succeed when medical opinions fail to meet statutory requirements—for example, inadequate examination history, speculation rather than reasonable medical probability, or internal contradictions.[57][62] If a medical report contains clear logical flaws or was based on facts known to be incorrect, the petition has strong factual support.[57][62]

**Cost-Benefit Analysis:** Filing a petition requires legal fees, filing fees, and potentially the cost of obtaining supplemental medical or other evidence. The petitioner should weigh these costs against the potential benefit

of reversal or modification of the award. For modest awards or benefit disputes, the cost of appellate briefing may exceed the financial value of relief.

**Preservation for Writ Review:** Even if reconsideration is unlikely to succeed on the merits, petitioning may be tactically wise to preserve arguments for writ review in the Court of Appeal. If you do not petition for reconsideration, you must timely file a writ petition to challenge the underlying trial court decision.<sup>[31][41]</sup> In some cases, petitioning for reconsideration to build a detailed record (and force the WCAB to issue a reasoned decision) strengthens a later writ petition.

#### Timing and Deadline Management

The 20/25-day filing deadline is absolute and non-negotiable.<sup>[1][3][7][13]</sup> Practitioners should establish systems to ensure deadlines are not missed: calendar the deadline immediately upon service of the trial judge's decision, mark an internal alert at least 7-10 days before the deadline expires, and verify the deadline with the WCAB or by checking EAMS if any question exists about service dates or addresses.

The 60-day deadline for WCAB action is equally critical. Practitioners should monitor EAMS to identify the transmission date and calculate the 60-day deadline. If the WCAB does not issue a written decision (either granting or denying reconsideration) by day 60 from transmission, the petition is deemed denied. At that point, the practitioner must file a petition for writ of review within 45 days, or all appellate rights are lost.<sup>[31][41]</sup>

#### Distinguishing Petitions for Reconsideration from Petitions for Removal

A critical strategic decision is whether to file a petition for reconsideration (for final orders) or a petition for removal (for nonfinal orders). Filing a reconsideration petition for a nonfinal order is now sanctionable.<sup>[24][28][46][49]</sup> However, the distinction between final and nonfinal orders is not always clear, and the WCAB has recognized that parties may file alternative petitions seeking both reconsideration and removal when genuine confusion exists.<sup>[24][28][46]</sup> If you do so, you must make a good-faith explanation in the petition explaining why you believe the order is final (citing to findings of threshold issues like existence of employment or applicability of statute of limitations).<sup>[24][28][46]</sup> Petitioning for reconsideration without such good-faith explanation when removal is clearly appropriate invites sanctions.<sup>[24][28][46][49]</sup>

#### Building Persuasive Arguments

Each petition ground requires specific, detailed argumentation. Boilerplate language risks dismissal or summary denial.<sup>[1][2][2]</sup>

**For Ground One (acting without or in excess of powers),** identify the specific statutory or constitutional provision violated and explain how the decision contravenes it. Generic claims of "legal error" are insufficient.

**For Ground Two (fraud),** provide concrete evidence of intentional misrepresentation and explain causation—how the fraud induced the specific findings and order.

**For Ground Three (evidence does not justify findings),** address each factual finding, identify the evidence (or lack thereof) supporting it, and explain why no reasonable fact-finder could have reached the conclusion. Acknowledge the trial judge's credibility determinations but explain where the evidence is simply insufficient as a matter of law.

**For Ground Four (newly discovered evidence),** detail when the evidence was discovered, why it could not have been discovered through reasonable prior investigation, and why it is material (could have changed the outcome).

**For Ground Five (findings do not support award),** identify the logical disconnect between specific findings and the ultimate decision, with citations to the precise findings and orders.

#### Settlement and Alternative Dispute Resolution

In many cases, the petition process itself creates leverage for settlement. The trial judge's report and recommendation provides an opportunity for the parties to discuss resolution before the WCAB acts. Some courts facilitate settlement conferences before reconsideration decisions are issued. Practitioners should

evaluate settlement opportunities alongside appellate strategy, as early resolution may be preferable to the uncertainty and delay of appellate proceedings.

## VII. Frivolous Petitions and Sanctions

### WCAB Authority to Impose Sanctions

Labor Code Section 5813 provides that the WCAB may "order payment of reasonable expenses, including attorney's fees and costs and, in addition, sanctions as provided" in the statute for bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.[49][56][58] California Code of Regulations Section 10421 specifies that bad faith actions include those "that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit." [49][58]

Filing an alternative petition for reconsideration (when removal is clearly appropriate) has been found to constitute a willful intent to delay proceedings and disrupt the WCAB's work.[24][28][49] Similarly, filing multiple frivolous petitions in separate cases has resulted in substantial sanctions-including up to \$2,500 per petition and significant attorney's fees awards to the opposing party.[24][28][46][49]

### Recent Sanctions Decisions: Practical Warnings

In *Ledezma v. Kareem Cart Commissary and Mfg.* (2024) 89 Cal.Comp.Cases, the WCAB issued an en banc decision consolidating eight cases in which the same attorney (Susan Garrett) and her law office (Garrett Law Group) had filed petitions for reconsideration when petitions for removal were clearly appropriate.[24][28][46][49] The WCAB noted that the attorney had been previously warned that reconsideration was not appropriate for orders denying continuance requests, yet continued to file reconsideration petitions in similar circumstances in other cases.[24][28][46] The panel concluded this constituted a "pattern" of willful intent to disrupt proceedings.[24][28][46][49] The WCAB imposed sanctions of \$2,500 per case (totaling \$20,000 across eight cases) plus attorney's fees and costs to the opposing party for each case.[24][28][46][49]

The practical lesson is clear: practitioners must understand the difference between final orders (subject to reconsideration) and nonfinal orders (subject to removal only). Repeated filing errors, or filing without good-faith explanation of why reconsideration is warranted, can result in severe financial consequences personally affecting the attorney, not merely the law firm.[24][28][46][49]

## VIII. Remedies When the WCAB Fails to Act or Acts Improperly

### Petition for Writ of Review Under Labor Code Section 5950

If the WCAB denies the petition for reconsideration (whether explicitly or by deemed denial due to failure to act within 60 days), the petitioner may seek judicial review through a petition for writ of review under Labor Code Section 5950.[31][41] A writ petition must be filed within 45 days after the WCAB's decision denying reconsideration or after the WCAB's decision following reconsideration.[31] This deadline is jurisdictional; missing it forfeits all appellate rights.[31][41][30]

The writ petition is filed with the Court of Appeal in the district where the petitioner resides.[31][41][16] The WCAB is named as a respondent.[16][16] Standards of review vary depending on the issues raised: legal conclusions are reviewed de novo, while factual findings are reviewed for substantial evidence.[31] The court may modify the WCAB's decision, reverse it entirely, or affirm it.[31]

### Appellate Standards of Review

When reviewing WCAB decisions on writ, California courts apply distinct standards depending on the nature of the claim:

Questions of Law: Pure questions of law-including statutory interpretation, application of binding precedent, and procedural compliance-are reviewed de novo without deference to the WCAB.[31][55]

Factual Findings: Factual findings made by the WCAB (which itself defers to the trial judge's factual determinations) are reviewed under the "substantial evidence" standard, meaning the court must uphold findings if any rational trier of fact could have reached them based on credible evidence.[31][55][57]

Mixed Questions of Fact and Law: When an issue involves both fact-finding and legal analysis (such as whether conduct constitutes "misconduct" under a specific statute), courts apply a more flexible standard, sometimes granting closer review if legal principles are implicated.[31][55]

Credibility: The trial judge's credibility determinations are afforded substantial deference, and appellate courts rarely overturn them.[55] As established in *DPR Construction*, petitioners must demonstrate that a credibility finding is of such "considerable substantiality" that a reasonable mind could not accept it.[55]

#### When the WCAB Issues a Void Decision

If the WCAB grants reconsideration or issues a final decision after reconsideration outside the 60-day deadline established by amended Labor Code Section 5909, the decision is void ab initio.[11][7][13][7] A party harmed by such a void decision should file a petition for writ of mandate under California Code of Civil Procedure Section 1085 et seq., not a petition for writ of review, to compel the WCAB to rescind the void decision.[11][7][13] The First and Second Districts have confirmed that courts have authority and obligation to void WCAB decisions exceeding the statutory deadline.[11][7][13]

### IX. Special Issues and Emerging Developments

#### The Sunset of Amended Labor Code Section 5909

Labor Code Section 5909(c) provides that the amended version of the statute (measuring the 60-day deadline from case transmission rather than petition filing) "remains in effect until July 1, 2026, and as of that date, reverts to its former language." [7][10] If the Legislature does not extend the amendment before July 1, 2026, the 60-day period will revert to running from the date the petition is filed, giving the WCAB 60 days from filing (rather than from transmission) to act.[7][10] This reversion could significantly impact cases pending in reconsideration at that date. Practitioners should monitor legislative activity in the coming months and plan accordingly. Cases filed before July 1, 2026 will operate under the amended statute; cases filed after that date (unless the Legislature extends the amendment) will operate under the reverted language, potentially accelerating WCAB decision deadlines.

#### Interaction with State Criminal Law and Immigration Consequences

While workers' compensation law is administrative rather than criminal, some workers' compensation disputes involve factual findings that interact with state criminal convictions or immigration status. For instance, a finding of "dishonesty" or "fraud" in a workers' compensation proceeding might have collateral consequences. Practitioners should be aware of California Penal Code Section 1473.7 (vacatur of convictions with immigration consequences) and Section 1203.43 (post-conviction relief based on immigration consequences), as these might affect representation strategy if the client is vulnerable to deportation based on a prior conviction that could be modified to eliminate immigration consequences.[39]

#### Medical-Legal Evidence and Emerging Issues with QME Panels

Recent WCAB en banc decisions have clarified that only the Appeals Board—not the trial judge—has authority to determine the validity of replacement QME panels.[35][36] Additionally, the WCAB has emphasized strict compliance with Labor Code Section 5502's discovery rules, holding that violations are not subject to harmless error analysis.[55] These developments have not yet fully settled into uniform practice, so emerging issues regarding medical evidence admissibility and QME panel validity remain areas where reconsideration petitions may find success.

### X. Conclusion and Strategic Recommendations

A Petition for Reconsideration remains the fundamental appellate mechanism in California workers' compensation law, but the landscape has shifted dramatically since July 2, 2024. Strict jurisdictional deadlines, the loss of administrative flexibility for the WCAB, and recent case law emphasizing the distinction between final and nonfinal orders have created a more rigid and less forgiving procedural environment.

Key Takeaways:

**Absolute Deadlines:** The 20-day (or 25-day with mail service) filing deadline is jurisdictional and non-negotiable. Missing it forfeits all appellate rights. Calculate the deadline immediately upon service and establish redundant reminder systems.

**Final vs. Nonfinal Orders:** Distinguish carefully between final orders (eligible for reconsideration) and nonfinal orders (requiring petitions for removal). Filing an alternative petition without good-faith explanation is sanctionable.

**WCAB's 60-Day Deadline:** The WCAB must act within 60 days from case transmission (under the current amended statute, in effect through July 1, 2026). If it fails to do so, the petition is deemed denied, and the proper remedy is a petition for writ of review-the WCAB cannot reconsider its missed deadline.

**Reasoned Decisions Required:** The WCAB must state detailed reasons for granting or denying reconsideration, specifying which statutory grounds support its action. Generic grant-for-study orders violate Labor Code Section 5908.5.

**Five Statutory Grounds:** Petitions succeed on grounds of clear legal error, inadequate factual support, newly discovered evidence, fraud, or jurisdictional excess. Petitions merely disagreeing with factual conclusions or trial judge discretion typically fail.

**Writ Review Preservation:** Even if reconsideration appears unlikely to succeed, consider petitioning to build a detailed appellate record and force reasoned WCAB decision-making, which strengthens a later writ petition in the Court of Appeal.

**Legislative Sunset:** Monitor the July 1, 2026 sunset of amended Labor Code Section 5909. Cases filed before that date operate under the amended deadline (60 days from transmission); cases filed after may operate under reverted language (60 days from filing), unless the Legislature extends.

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