

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

KRISHNA SRIVASTAVA, *Applicant*

vs.

**DIGNITY HEALTH MEDICAL FOUNDATION- MERCY MEDICAL GROUP,
permissibly self-insured, *Defendant***

**Adjudication Number: ADJ15488463
Sacramento District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact, Awards and Orders (FA&O) of August 18, 2025, wherein the workers' compensation judge (WCJ) found in relevant part that applicant sustained injury arising out of and in the course of employment to her low back, right hip, and left wrist/hand and awarded further medical care, \$29,217.50 in permanent partial disability indemnity, and attorney's fees. Defendant contends that there is not substantial evidence of an industrial left wrist injury and that the findings of fact do not support the award as the combined permanent disability rating is inaccurate.

We have not received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted to correct an error in calculating the amount of permanent partial disability indemnity.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the WCJ with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will grant reconsideration, amend the FA&O as recommended in the report, and otherwise affirm the decision of August 18, 2025.

BACKGROUND

In addition to the background included in the Report, additional facts relevant to the left wrist injury are discussed here. Applicant, while employed on January 29, 2021, as a medical assistant, occupational group No. 212, by defendant, sustained an injury arising out of and in the course of employment to her right hip and low back and claimed industrial injury to her left wrist due to a fall at work.

The Agreed Medical Evaluator (AME) Dr. James Shaw, board certified pain specialist, produced four reports regarding applicant's injuries that were entered into evidence. In his first report of May 26, 2022, Dr. Shaw stated that to a degree of reasonable medical probability, applicant's need for medical care stems from the industrial injury of January 29, 2021, to her left wrists, right hip, and low back. (Jt. Ex. 4, AME Report of Dr. Shaw, dated 5/26/22, p. 37.) In his report of September 21, 2023, Dr. Shaw reported that applicant has an injury AOE/COE to her left wrist. (Jt. Ex. 1, AME Report dated 9/21/23, pp. 2, 43.) Applicant told Dr. Shaw that she had not had any prior injury to her left wrist. (Jt. Ex. 1, p. 4.) Dr. Shaw concluded that that applicant had a 7% whole person impairment rating referable to the left thumb/wrist. (Jt. Ex. 1, p. 42.)

In the report of May 15, 2024, Dr. Shaw responded to defendant's question regarding which wrist applicant injured on January 29, 2021. (Jt. Ex. 2, AME Supp. Report, dated 5/15/24, p. 2.) Dr. Shaw responded that injury AOE/COE for the left wrist injury should be deferred to the trier of fact. (Jt. Ex. 2, p. 3.) In the report of June 1, 2024, Dr. Shaw noted that applicant, in her deposition, reported that when she fell at work on January 29, 2021, she bruised and hurt her left wrist as she tried to break her fall with her left wrist. (Jt. Ex. 3, AME Report dated 6/1/24, p. 3.)

At the trial on August 6, 2025, applicant testified that on January 29, 2021, she tripped on a computer wire at work while working with a patient, fell backward, and hit the floor with her back and both hands. (8/6/25 Minutes of Hearing/ Statement of Evidence (MOH/SOE), p. 5.) She landed on the floor predominantly on her right side but injured both wrists as she tried to break her fall with both hands. (MOH/SOE, p. 5.) She received medical treatment immediately after the fall and reported to the doctor that she had severe pain in her left hand; she was not sure why her left wrist was not in the medical record until she saw Dr. Shaw. (MOH/SOE, p. 5.) She currently had problems with three fingers on her left hand and was unable to make a fist with that hand. (MOH/SOE, p. 5.)

Following the hearing, the WCJ issued the FA&O, finding in relevant part that applicant sustained injury AOE/COE to her low back, right hip, and left wrist/hand and that applicant had 25% permanent partial disability after appropriate adjustments as a result of her industrial injury. (FA&O, p. 1.) The WCJ awarded applicant further medical care; \$29,217.50 in permanent partial disability, and attorney's fees in the amount of \$4,382.63. (FA&O, p. 2.)

DISCUSSION

I.

Former Labor Code¹ 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.

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 September 4, 2025, and 60 days from the date of transmission is November 3, 2025. This decision is issued by or on November 3, 2025, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are

¹ All further statutory references are to the Labor Code unless otherwise noted.

notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on September 4, 2025, and the case was transmitted to the Appeals Board on September 4, 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 September 4, 2025.

II.

Substantial evidence supports the finding of industrial injury to applicant's left wrist. It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Although AME Dr. Shaw reported that injury AOE/COE for the left wrist injury should be deferred to the trier of fact. (Jt. Ex. 2, p. 3), applicant provided testimony regarding injury to her left wrist. According to applicant, on January 29, 2021, she tripped on a computer wire at work, fell backward, and hit the floor with her back and both hands. (MOH/SOE), p. 5.) She landed on the floor predominantly on her right side but injured both wrists as she tried to break her fall with both hands. (MOH/SOE, p. 5.) She received medical treatment immediately after the fall and reported to the doctor that she had severe pain in her left hand; she was not sure why her left wrist was not in the medical record until she saw Dr. Shaw. (MOH/SOE, p. 5.) She currently had

problems with three fingers on her left hand and was unable to make a fist with that hand. (MOH/SOE, p. 5.)

The WCJ noted the following in the Opinion on Decision (OOD):

Dr. James Shaw M.D. evaluated Applicant as the Agreed Medical Examiner. Dr. Shaw issued reports dated May 26, 2022, May 15, 2024 and June 1, 2024. (Joint Ex. 1, 2 & 3) Dr. Shaw identified and documented Applicant had complaints in her lumbar spine, right hip and left wrist/hand as a result of her industrial injury at the time of his initial evaluation. There is no preexisting left wrist/hand injury. There is no documentation of a non-industrial cause of her left wrist/hand injury. Applicant credibly testified that she hurt her left wrist/hand at the time of the industrial injury when she used both hands to help break her fall. Therefore, Applicant proved by a preponderance of the evidence that she injured her left hand/wrist as part of her accepted industrial injury.

(OOD, p. 3.)

We have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen's Comp. Appeals Bd.*, *supra*, 3 Cal.3d at pp. 318-319.) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination(s). (*Id.*) Therefore, substantial evidence supports the finding of injury to the left wrist.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the Findings of Fact, Awards, and Orders of August 18, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact, Awards, and Orders of August 18, 2025 is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

5. Applicant was shown to have 24% permanent partial disability after appropriate adjustments as a result of her industrial injury.

AWARDS & ORDERS

2. Applicant is Awarded \$27,695.00 in Permanent Partial Disability Indemnity payable at \$290.00 per week commencing May 21, 2023 less a reasonable attorney fee of \$4,154.25 to be commuted from the far end of the Award if necessary. Thereafter Defendant is entitled to credit for Permanent Disability Indemnity advances subject to proof with Board jurisdiction reserved.

3. Applicant's attorney's fee lien is allowed in the amount of \$4,154.25 to be paid from the Permanent Disability Indemnity Awarded in Paragraph 2 by commutation from the far end of the Award if necessary. Defendant is directed to pay this amount within thirty (30) days.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 3, 2025

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

**KRISHNA SRIVASTAVA
LAW OFFICE OF JOSEPH T. TODOROFF
KAESER HULL, LLP**

JMR/abs

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

abs

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION
AND NOTICE OF TRANSMISSION**

RECOMMENDATION:

GRANT IN PART

INTRODUCTION

Trial in the primary proceedings of the above-captioned case was held on August 6, 2025, and the matter was submitted at that time to Workers' Compensation Judge Christopher M. Brown who issued a Findings of Fact, Awards and Orders; with Opinion on Decision on August 18, 2025. Defendant filed a timely, verified and sufficiently served Petition for Reconsideration on September 2, 2025.

The Petition does not state the legal basis for the filing, but the arguments are consistent with Labor Code Section 5903 (a), (c) and (e). Specifically, Petitioner argues Applicant did not prove by a preponderance of the evidence that she injured her left hand/wrist in the industrial injury and that the disabilities were combined inappropriately.

DISCUSSION

Applicant suffered an accepted industrial injury on January 29, 2021 when she tripped and fell at work. Defendant accepted the claim for injury to Applicant's low back, right hip and right hand/wrist. Defendant denied Applicant's claim of injury to her left hand/wrist. Applicant credibly testified at trial that she injured her left wrist at the time of her industrial injury as she used both hand to help break her fall. There was no evidence of an injury to Applicant's left wrist/hand other than the industrial injury. Therefore, a preponderance of the evidence established Applicant did injure her left wrist/hand in the January 29, 2021 fall.

Dr. James Shaw M.D. evaluated Applicant as the Agreed Medical Examiner. Dr. Shaw issued reports dated May 26, 2022, May 15, 2024 and June 1, 2024. (Joint Ex. 1, 2 & 3) Dr. Shaw gave his expert medical opinion that Applicant has 8% Whole Person Impairment (WPI) for her lumbar spine. He apportioned 60% of the disability to her industrial injury and 40% to non-industrial factors. He determined Applicant has 6% WPI in her right hip that is 100% industrial. He also determined she has 7% left wrist/hand impairment that is apportioned 70% to the industrial injury and 30% to non-industrial factors. He determined Applicant's right hand/wrist recovered with no permanent partial disability. Applicant's WPI adjusts as follows based on the stipulations of the parties at trial:

Lumbar Spine	$(60\%)(15.03.01.00-8-[1.4] \ 11-212E-10-13) = 8\%$
Right Hip	$(100\%)(17.03.10.04-6-[1.4] \ 8-212E-7-9) = 9\%$
Left Wrist/Hand	$(70\%)(16.04.02.00-7-[1.4] \ 10-212F-10-13) = 9\%$

Petitioner is correct that the permanent partial disability impairments were combined incorrectly. These disabilities actually combine as follows pursuant to the Combined Values Chart:

$$9C9 = 17 \text{ } 17C8 = 24\% \text{ } 24\% \text{ PPD} = \$27,695.00 \text{ @\$290.00/week}$$

Finding of Fact Number 5 needs to be corrected to reflect the appropriate level of permanent partial disability is 24%. Awards and Orders 2 and 3 should be amended as follows: **[changes in bold text]**

2. Applicant is Awarded **\$27,695.00** in Permanent Partial Disability Indemnity payable at \$290.00 per week commencing May 21, 2023 less a reasonable Attorney fee of **\$4,154.25** to be commuted from the far end of the Award if necessary. Thereafter Defendant is entitled to credit for Permanent Disability Indemnity advances subject to proof with Board jurisdiction reserved.
3. Applicant's Attorney's fee lien is allowed in the amount of **\$4,154.25** to be paid from the Permanent Disability Indemnity Awarded in Paragraph 2 by commutation from the far end of the Award if necessary. Defendant is directed to pay this amount within thirty (30) days.

If it is found the left wrist/hand is not industrial the permanent partial disability for Applicant's lumbar spine and right hip combine as follows:

$$9C8 = 16\% = \$16,095.00$$

Finding of Fact Number 5 would be corrected to reflect the appropriate level of permanent partial disability is 16%. Awards and Orders 2 and 3 would be amended as follows: **[changes in bold text]**

2. Applicant is Awarded **\$16,095.00** in Permanent Partial Disability Indemnity payable at \$290.00 per week commencing May 21, 2023 less a reasonable Attorney fee of **\$2,414.25** to be commuted from the far end of the Award if necessary. Thereafter Defendant is entitled to credit for Permanent Disability Indemnity advances subject to proof with Board jurisdiction reserved.
3. Applicant's Attorney's fee lien is allowed in the amount of **\$2,414.25** to be paid from the Permanent Disability Indemnity Awarded in Paragraph 2 by commutation from the far end of the Award if necessary. Defendant is directed to pay this amount within thirty (30) days.

Reconsideration should be granted to correct the error made combining Applicant's permanent partial disabilities and the finding of 24% permanent partial disability along with the amended awards of Permanent Partial Disability Indemnity at \$27,695.00 and Attorney Fee being allowed of \$4,154.25 should issue or the matter should be returned to the WCJ to issue the corrected Findings, Awards and Orders.

NOTICE OF TRANSMISSION

Pursuant to Labor Code, Section 5909, the parties and the appeals board are hereby notified that this matter has been transmitted to the appeals board on date set out below.

DATE: September 4, 2025

Christopher Brown
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE