WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARGARET RUSSOTTO, *Applicant*

vs.

PARK MANAGEMENT CORPORATION DBA SIX FLAGS DISCOVERY KINGDOM, PROPERTY AND CASUALTY INSURANCE COMPANY OF HARTFORD,[1] administered by CORVEL, *Defendants*

Adjudication Number: ADJ17937030
Oakland District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant filed a Petition for Reconsideration (Petition) of the Findings and Award (F&A) issued July 28, 2025, wherein the workers compensation judge (WCJ) found in the pertinent part that while employed on August 17, 2019 as marine mammal trainer by defendant, applicant sustained injury arising out of and occurring in the course of employment to her lumbar spine, right hip, right thigh, left hip, and scarring, and that based on the substantial medical evidence, applicant's injury caused 42% disability.

In the Petition, defendant asserts the lumbar and separate scarring impairments are not in compliance with the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (AMA Guides), and further asserts the right and left hip impairments and left hip injury are not supported by substantial medical evidence.

We have not received an Answer from applicant.

The WCJ's Report and Recommendation (Report) recommends the Petition be denied.

We have considered the allegations of the Petition and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, for the reasons discussed below and for the reasons stated in the WCJ's Report, we will deny reconsideration.

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[1] The insurer is identified under several different names in various documents. As will be discussed below, it appears the correct name of the insurer is Property and Casualty Insurance Company of Hartford.

I.

Former 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. (Former Lab. Code, § 5909.)[2] 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.

(Lab. Code, § 5909.)

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 5, 2025, and 60 days from the date of transmission is Tuesday, November 4, 2025. This decision issued by or on November 4, 2025, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

According to the proof of service, the Report was served on September 5, 2025, and the case was transmitted to the Appeals Board on September 5, 2025. Service of the Report and

[2] Unless otherwise stated, all further statutory references are to the Labor Code.

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 5, 2025.

II.

As found by the WCJ in the August 4, 2025, F&O, applicant, while employed on August 17, 2019, by defendant as a marine mammal trainer, sustained injury to the lumbar spine, right hip, right thigh, left hip, and scarring.

A.

The record consists of three PQME reports, thirteen chiropractor treatment records, and applicant's testimony.

On February 6, 2024, Panel Qualified Medical Examiner (PQME) Jagtar Dhesi, D.C., evaluated the applicant and issued a report dated February 13, 2024, diagnosing lumbar sprain/strain/pain, lumbar neuritis/radiculitis, and right hip sprain/strain/pain. (Exhibit 101, PQME Jagtar Dhesi, D.C., February 13, 2024, page 15.) The injury occurred when applicant was hosing down an animal enclosure that had bridges over water. As applicant walked over a bridge it folded and applicant fell against a chain link fence, her leg went down into the channel, and a nail cut straight down her leg. (Exhibit 101, PQME Jagtar Dhesi, D.C., February 13, 2024, pages 1-2.) Industrial injury was found. Applicant was not at maximum medical improvement and was not considered permanent and stationary. (Exhibit 101, PQME Jagtar Dhesi, D.C., February 13, 2024, page 16.)

A PQME re-evaluation occurred on November 8, 2024, with applicant permanent and stationary with objective factors of disability including a 17 cm by 1 cm scar on the lateral aspect of the right thigh. (Exhibit 102, PQME Jagtar Dhesi, D.C., November 8, 2024, page 22.) The PQME reviewed multiple medical records covering the period June 26, 2018, through July 3, 2024. (Exhibit 102, PQME Jagtar Dhesi, D.C., November 8, 2024, pages 9-21.) "Based on the history, review of medical records, clinical examination, and current reviewed medical literature, there is an industrial injury as the injury arose out of the employment and occurred during the course of employment. This injury is industrial in causation." (Exhibit 102, PQME Jagtar Dhesi, D.C.,

November 8, 2024, page 23.) Impairment was described as lumbar Category III at 13%, right hip loss of motion of 6%, left hip loss of motion 2%, Class 1 scar formation of 9%, and a pain add on of 3% which was assigned 1% to the lumbar spine and 2% to the right hip. (Exhibit 102, PQME Jagtar Dhesi, D.C., November 8, 2024, pages 24-25.)

PQME Jagtar Dhesi, D.C., completed a supplemental report dated January 22, 2025, after reviewing diagnostic tests without changing opinions on impairment or injury. (Exhibit 103, PQME Jagtar Dhesis, D.C., January 22, 2025.)

The treating records from Megan D. McConnell, D.C., cover the period April 22, 2022, through May 30, 2023. (Exhibits 1 through 13.) These treating records were reviewed and digested by the PQME. (Exhibit 101, PQME Jagtar Dhesi, D.C., February 13, 2024, pages 8-12; Exhibit 102, PQME Jagtar Dhesi, D.C., November 8, 2024, pages 15-17.)

At trial, applicant testified in part:

> From the injury, she also felt pain in her left hip due to compensating for the injured hips during workouts or walking.
>
> **
>
> Applicant has a scar from the injury. It is four to five inches and has healed but has remained.
>
> Applicant confirms that she still has pain in the injured body parts today. She experiences tightness and discomfort if she sits for a long time. When she gets up after sitting for a long time, she limps before she is able to move properly.
>
> **
>
> Her chiropractor in Benicia is Dr. McConnell, and she told him about the pain in her left hip. If the medical records do not mention her left hip, she would not know why.

(Minutes of Hearing, Summary of Evidence (MOH), July 8, 2025, page 5, lines 15-16, lines 24-30, and lines 39-40.)

B.

The Petition raises only limited concerns regarding the existence of left hip injury and impairment for the hips, scarring and lumbar spine. We address those concerns below.

1.

In the Petition, defendant asserts "there is no discussion or analysis explaining how the left hip decreased range of motion is a compensable consequence of the right leg injury" and that "while applicant testified at [t]rial that she complained to her treating chiropractor of left hip pain, there is no reference [to this pain] in any of the treatment records." Defendant asserts any left hip findings are "based on speculation" and not based on "substantial medical legal evidence." (Petition, page 5, lines 13-21.)

Further, defendant contends substantial medical legal evidence is lacking for the right hip impairment as there "is no comment in the treatment records" of right hip decreased range of motion and no explanation by the PQME of why applicant's right hip range of motion changed between evaluations. (Petition, page 4, line 26, to page 5, line 7.)

A decision must be based on admitted evidence in the record and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16].) Where the issue in dispute is a medical one, expert medical evidence is ordinarily needed to resolve the issue. (*Insurance Co. of North America v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 905, 912 [46 Cal.Comp.Cases 913]; *Peter Kiewit Sons v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].)

Medical evidence that industrial injury was reasonably probable, although not certain, constitutes substantial evidence for finding injury AOE/COE. (*McAllister v. Workers' Comp. Appeals Bd*. (1968) 69 Cal.2d 408, 417 [33 Cal.Comp.Cases 660].) Although the factual issue of the occurrence of the alleged incident is a determination for the WCJ, the issue of injury is a medical determination, which requires expert medical opinion. "Where an issue is exclusively a matter of scientific medical knowledge, expert evidence is essential to sustain a [WCAB] finding; lay testimony or opinion in support of such a finding does not measure up to the standard of substantial evidence. Expert testimony is necessary where the truth is occult and can be found only by resorting to the sciences." (*Peter Kiewit Sons*, *supra*, at page 838.)

The question of left hip injury and right and left hip impairment is clearly "a medical determination, which requires expert medical opinion." (*Peter Kiewit Sons*, *supra*.) Here, PQME

Jagtar Dhesi reviewed extensive medical records, evaluated the applicant and provided expert medical opinion that industrial injury was reasonably probable. (Exhibits 101 and 102.)

Defendant seeks to characterize the record as containing no reference to left hip pain and inconsistent right hip decreased range of motion. Such sweeping generalizations are not persuasive. Defendant invites us to replace PQME Jagtar Dhesi's medical opinion with our own lay opinion. We decline to do so. That a party may incorrectly assess a medical record is exactly why expert medical opinion is required to resolve a medical issue. In such situations the truth is occult.

For example, PQME Jagtar Dhesi digests a May 30, 2024, physical therapy report which appears to include complaints of right sided weakness, hip stiffness, clunking in the hip with occasional numbness and tingling in the thighs, and a tendency to favor weight bearing through the left lower extremities when standing from a chair. (Exhibit 102, PQME Jagtar Dhesi, D.C., November 8, 2024, page 20.) While a lay person may interpret these findings as medically supporting both injury and limited range of motion in the hips, such interpretation is not founded in science. The interpretation of medical evidence requires expert medical opinion.

Here, the only expert medical opinion that addresses the issues raised in the Petition are provided by PQME Jagtar Dhesi. It is clear "the relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence. [citation]." (*Place v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525].) In this case PQME Jagtar Dhesi resolved the issues raised by defendant and there are no contrasting medical opinions.

The Petition seeks to challenge applicant's credibility by stating that although she complained to the chiropractor about left hip pain, there is no reference to this pain in any of the treatment records. Leaving aside this problematic interpretation of the medical record discussed above, credibility determinations are to be made by the WCJ. Here, the WCJ noted the applicant "testified credibly." (F&A, Opinion on Decision, page 4; Report, page 2.) We give 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.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500].) That applicant is credible is further supported by PQME Jagtar Dhesi's expert medical opinions, which are consistent with her testimony.

We note the record is devoid of any attempt by defendant to challenge the expert medical opinions of PQME Jagtar Dhesi either by providing rebuttal medical evidence, or seeking cross examination by deposition or supplemental report request.[3] Defendant has an affirmative duty to aid the parties and the WCJ in developing the record if it believes there is any doubt about the provision of benefits to an injured worker.

"The claims administrator may not restrict its investigation to the specific benefit claimed if the nature of the claim suggests that other benefits might also be due." (Cal. Code Reg., tit. 8, § 10109(b)(2).) Indeed, the "duty to investigate requires further investigation if the claims administrator receives later information, not covered in an earlier investigation, which might affect benefits due." (Cal. Code Reg., tit. 8, § 10109(c).) This duty upholds the constitutional mandate to provide "full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury" and to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal Const, Art. XIV § 4, emphasis added.) If a defendant has concerns about benefits due it must conduct further investigation timely. Such investigation not only assures the proper provision of benefits when due, it protects defendant from providing benefits that are not due.

Here, at the latest, defendant was on notice of the claim for benefits for both hip injuries as of PQME Jagtar Dhesi's November 8, 2024, report. (Exhibit 102.) It would appear, and defendant makes no argument otherwise, there was ample opportunity to conduct discovery on any disputed benefits due before the matter was set for trial at the May 7, 2025, conference. Where a PQME has provided expert medical opinion consistent with the evidence on issues well within the realm of scientific medical knowledge, and defendant has presented no substantial medical evidence to undermine that opinion, the PQME reporting will be found substantial medical evidence.

Here, PQME Jagtar Dhesi's reporting is substantial medical evidence that logically supports the WCJ's findings.

[3] The May 7, 2025, Pre-Trial Conference Statement (PTCS) exhibit list for defendant does reflect as a possible exhibit the January 30, 2025, deposition of PQME Jagtar "Deshi" [*sic*]. However, this possible exhibit was not discussed nor submitted at trial on July 8, 2025. As such, we do not consider its possible existence any further. (MOH, pages 2-4.) For clarity, we note the May 7, 2025, PTCS is incorrectly dated on page one as May 7, 2023.

2.

The Petition next asserts that PQME Jagtar Dhesi incorrectly assigned a lumbar DRE category III instead of petitioner's preferred Category II. (Petition, page 2, line 22, to page 4, line 13.) The Petition also asserts the PQME improperly assigns a Class 1 impairment of 9% for scarring. The Petition does not provide an alternative percentage should 9% be found incorrect. (Petition, page 5 line 22, to page 6, line 22.)

It is again stressed that defendant did not follow the mandate to investigate perceived issues with a medical expert before trial. On the record presented to us, we see no error in the expert medical opinion of PQME Jagtar Dhesi.

When considering impairment, section 4660.1 applies to injuries occurring on or after January 1, 2013, and states as relevant here:

> (a) In determining the percentages of permanent partial or permanent total disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and the employee's age at the time of injury.
>
> (b) For purposes of this section, the "nature of the physical injury or disfigurement" shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition) with the employee's whole person impairment, as provided in the Guides, multiplied by an adjustment factor of 1.4.

(Lab. Code, § 4660.1(a) and (b), emphasis added.)

The AMA Guides provides diagnosis-related estimated (DRE) categories for lumbar injuries at page 384, Table 15-3, which sets out five descriptive categories with associated whole person impairment (WPI) percentages. The descriptive differences as relevant here are "nonverifiable radicular complaints" for Category II with a range of 5% to 8%, and "[*s*]*igificant signs of radiculopathy*, *such as* dermatomal pain *and/or* in a dermatomal distribution, sensory loss, loss of relevant reflex(es), *loss of muscle strength or measured unilateral atrophy above or below the knee*" for Category III with a range of 10% to 13%. (AMA Guides, page 384, emphasis added.)

In supporting the Category III impairment of 13%, PQME Jagtar Dhesi states "Clinical history and examination findings include muscle guarding and spasm observed at the time of examination, asymmetric loss of motion, *loss of muscle strength*, *radicular complaints*, *and*

unilateral atrophy above the knee on the right." (Exhibit 102, PQME Jagtar Dhesi, D.C., November 8, 2024, pages 24-25, emphasis added.)

On this record the expert PQME Jagtar Dhesi assigned 13% impairment by finding "loss of muscle strength, radicular complaints, and unilateral atrophy above the knee on the right." Petitioner's contrary lay preference does not supplant the expert medical opinion of PQME Jagtar Dhesi in arriving at a Category III 13% determination.

Defendant refers to many perceived deficiencies in PQME Jagtar Dhesi's description of applicant's skin disorder to try and discredit PQME Jagtar Dhesi's expert medical opinion. (Petition, page 5, line 25 to page 6, line 22.) Here again it appears petitioner failed to use the opportunity and obligation to investigate the claim and instead took no action to clarify any of defendant's concerns with the PQME, or other medical opinion source, before submitting this case at trial.

The AMA Guides provide criteria for rating skin disorders at page 178, Table 8-2, which sets out five descriptive classes with associated percentages. As relevant here Class 1 has a range of 0 to 9%. Class 1 includes "[s]kin disorder signs and symptoms present or intermittently present **and** no or few limitations in performance of activities of daily living; exposure to certain chemical or physical agents may temporarily increase limitation **and** requires no or intermittent treatment." (Emphasis in the original.)

Here, PQME Jagtar Dhesi found 9% based "upon the patient's *large* 17 cm x 1 scar on the lateral aspect of the right hip." The PQME notes "Skin disorder signs and symptoms present or intermittently present, no or few limitations in performance of some activities of daily living and requires no or intermittent treatment." (Exhibit 102, PQME Jagtar Dhesi, D.C., November 8, 2024, page 25, emphasis added.) It is noteworthy that the next descriptive class, Class 2 with a range of 10 to 24%, only requires the addition of "limited performance of some activities of daily living **and** may require intermittent to constant treatment." (AMA Guides, page 178, Table 8-2, emphasis in original.) If applicant were limited in performance of some activities of daily living due to scarring, she would likely move to the next category which has a range of 10 to 24%. There is no reason provided to abandon PQME Jagtar Dhesi's assessment in applying a 9% in Class 1 for scarring as this percentage is within the appropriate Class 1 range and is the doctor's expert medical opinion.

Where, as here, the PQME used expert medical opinion to assign an impairment of 9%, which is within the lowest Class 1 descriptive range, for a large 17 cm x 1 scar, such opinion is properly found to be substantial medical evidence.

III.

As noted above, there is a question as to the proper name for the insurer in this case.

Defendant's Answer to Application for Adjudication of Claim dated October 16, 2023, lists the insurer as "Hartford."

The MOH and PTCS list the insurer as "The Hartford." The F&A lists the insurer as "The Hartford Property and Casualty Insurance Company" while the Report lists the insurer as "Property Casualty Ins. Co. of the Hartford" in the caption but refers to the insurer as "Property and Casualty Insurance Company of Hartford" and "The Harford" in the body of the Report.

Defense counsel's Notice of Representation (NOR) dated October 2, 2023, and defendant's Petition for Reconsideration list the insurer as "Property and Casualty Insurance Company of Hartford."

A review of the California Department of Insurance online company profile search reveals "Property and Casualty Insurance Company of Hartford" as the only entity that provides workers' compensation coverage in California.[4] For this reason it appears the proper insurer in this case is the entity listed in the NOR, the body of the Report, and the Petition: Property and Casualty Insurance Company of Hartford.

In any further proceedings the proper insurer should be confirmed. Under WCAB Rule 10390 (Cal. Code Regs., tit. 8, §10390), all parties must provide their full legal name on all pleadings and at any appearance, including the names of the employer, insurance company and any third-party administrator. (See *Coldiron v. Compuware Corp.* (2002) 67 Cal.Comp.Cases 289 (Appeals Bd. en banc) [defendant attorneys must disclose proper legal names for the employer, insurance company and any third-party administrator and failure to do so may subject the offending party to sanctions]; and see *Jillian DiFusco v. Hands On Spa* (2025) 90 Cal.Comp.Cases ***, (Appeals Bd. en banc) [WCAB Rule 10390 does not supersede the *Coldiron* decisions. Defendants must comply with WCAB Rule 10390 and the disclosure requirements in *Coldiron I* and *II*, regardless of whether there is a third-party administrator].)

[4] See: https://interactive.web.insurance.ca.gov/companyprofile/companyprofile?event=companyProfile

Here the F&A provides "AWARD IS MADE in favor of MARGARET RUSSOTTO against PARK MANAGEMENT CORP DBA SIX FLAGS DISCOVERY KINGDOM." As such we see no error in the award as the employer appears correctly named. The correct insurer may be properly substituted for the employer if appropriate. (See section 3753 [applicant may recover directly from the employer], sections 3755 and 3757 [insurer may be substituted in place of employer], and section 3759 [employer may be relieved by order when proper insurer is joined as a party].

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 4, 2025

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

MARGARET RUSSOTTO
LAW OFFICE OF CHRISTINA LOPEZ
FLOYD SKEREN MANUKIAN LANGEVIN

PS/oo

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