WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

TERSIT ASSEFA, ***Applicant***

vs.

YOSEMITE FALLS CAFÉ, INC.;
ILLINOIS MIDWEST INSURANCE AGENCY, LLC on behalf of PROCENTURY INSURANCE COMPANY, ***Defendants***

Adjudication Number: ADJ19310869
Fresno District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact and Order (F&O) of September 16, 2025, wherein the workers' compensation judge (WCJ) found in relevant part that while employed during the periods of July 1, 2009 through May 21, 2024, as a wait server by defendant, applicant claimed injury arising out of and in the course of employment (AOE/COE) to the body systems, circulatory system, stress and psyche; and that applicant "failed to sustain her burden of proving she sustained an industrial injury to her psyche" and ordered that she take nothing further in the case.

Applicant contends in pertinent part that the F&O should be vacated and the case returned to the trial level for additional evidence on the issue of whether applicant sustained injury AOE/COE.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration and the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we

will grant the Petition for Reconsideration, rescind the F&O, and return this matter to the WCJ for further proceedings.

FACTS

Applicant, while employed from July 1, 2009, through May 21, 2024, as a wait server for defendant, claims to have sustained injury AOE/COE to the body systems, circulatory system, stress, and psyche.

The panel Qualified Medical Evaluator (PQME) in psychiatry, Dr. Micah Hoffman, M.D., produced two reports after evaluating applicant. In his report of October 3, 2024, Dr. Hoffman stated that "within reasonable medical probability, the actual events of employment were predominant (> 50%) to all causes combined to have produced a psychiatric injury." (Ex. A, PQME Report of Micah Hoffman, M.D., dated 10/3/24, p. 20.) He further stated that "within reasonable medical probability, 100% of the psychiatric injury can be attributed to the alleged stress and alleged harassment by the applicant's supervisor/ owner during the period of continuous trauma." (Ex. A., p. 20.) Dr. Hoffman concluded that applicant's injuries were AOE/COE. (Ex. A, pp. 20, 22.) Dr. Hoffman deferred the determination of causation regarding her internal medicine injuries to the appropriate medical specialists and recommended that applicant undergo an evaluation by a PQME or agreed medical evaluator (AME) in the field of internal medicine to determine if the other injuries were industrial. (Ex. A, p. 20.) Applicant had not reached maximum medical improvement (MMI) at that time. (Ex A., p. 21.) In the supplemental report of January 23, 2025, Dr. Hoffman stated that he had reviewed additional records and that there were no changes to his report from October 2024. (Ex. B, PQME Report of Micah Hoffman, M.D., dated 1/23/25, p. 11.)

The case proceeded to trial on the issue of injury AOE/COE on February 18, March 19, May 13, and July 24, 2025. Applicant testified that she had worked for defendant for 16 years. (2/18/25 Minutes of Hearing/ Summary of Evidence (MOH/SOE), p. 3.) She claimed that she filed a workers' compensation claim due to poor treatment by her co-workers and management that caused stress and worry in her life. (2/18/25 MOH/SOE, p. 2.) The treatment caused physical manifestations such as not being able to sleep, high sugar levels, high blood pressure, vision issues, and bloody noses. (2/18/25 MOH/SOE, p. 4.) She stated that her manager yelled at her, her co-workers made fun of her accent, the cooks told her she was old, and some co-workers called her a

monkey and put bananas on the floor. (2/18/25 MOH/SOE, p. 4; 3/19/25 MOH/SOE, pp. 2, 5.) A co-worker Mario Silva repeatedly made comments about her age. (2/18/25 MOH/SOE, p. 4; 3/19/25 MOH/SOE, p. 2.) The human resources worker, Miss Rita, was aware of the behavior but did not stop the behavior. (2/18/25 MOH/SOE, p. 4; 3/19/25 MOH/SOE, p. 2.) She is supposed to sign a form each month indicating there is no discrimination at work and she never signs the form. (2/18/25 MOH/SOE, p. 5; 3/19/25 MOH/SOE, pp. 4-5.)

Some of the cooks accused applicant of threatening to call immigration on them but applicant denied that she made this threat. (3/19/25 MOH/SOE, p. 3.) Before Covid, she had worked five days per week but was only given four days per week once the restaurant reopened after the Covid shutdown. (3/19/25 MOH/SOE, p. 3.) A manager, Joseph Perales, yelled at her. (3/19/25 MOH/SOE, p. 3.) She was shown two warnings, dated October 19, 2023 and May 21, 2024, but she did not remember seeing either of those documents previously. (3/19/25 MOH/SOE, p. 3.) Some of the cooks also refused to push the food out for her to collect and she had to use a stick to reach the food. (3/19/25 MOH/SOE, p. 4.) The managers Joseph Perales and Byron Flores both told her about mistakes she was making. (3/19/25 MOH/SOE, pp. 5-6.)

Flores testified that he was the general manager for defendant for seven years, ending on July 27, 2024, and that he worked with applicant for approximately two years during that time from 2023-2024. (5/13/25 MOH/SOE, p. 2.) When applicant shared her concerns about treatment by her co-workers, he would pass that information to Ms. Rita in HR so that she could deal with the issue. (5/13/25 MOH/SOE, pp. 2-3.) He observed applicant making mistakes but everyone made mistakes. (5/13/25 MOH/SOE, p. 2.) One of the cooks complained to him that applicant threatened to call immigration on him. (5/13/25 MOH/SOE, p. 2.) Flores stated that he never called applicant old but that Mario Silva, Jr. called her old. (5/13/25 MOH/SOE, p. 2.)

Human resources worker Rita testified that she had worked for defendant for 13 years and conducted performance evaluations there as needed. (5/13/25 MOH/SOE, p. 3.) She had completed performance evaluations for applicant, noting that she had made mistakes such as double tickets, different orders, mistakes in taking orders, and losing tickets. (5/13/25 MOH/SOE, p. 3.) The paychecks had a form attached called the “employee reporting opportunity” but applicant had never signed any of those forms. (5/13/25 MOH/SOE, p. 3.) Rita testified that she gave a warning to Mario Silva, Sr., about calling applicant old; Flores denied calling applicant old but was also given a warning. (5/13/25 MOH/SOE, pp. 3-5.) Rita denied hearing about anyone

calling applicant a monkey, throwing bananas at her, or being asked why she was wearing clothing. (5/13/25 MOH/SOE, p. 4.) She received a complaint from the cooks that applicant said she was going to call immigration on them. (5/13/25 MOH/SOE, pp. 4-5.) Applicant denied making those threats but was given two written warnings, dated October 19, 2023 and May 21, 2024, regarding the situation. (5/13/25 MOH/SOE, p. 4.) Applicant never received a copy of the May 21, 2024, warning. (5/13/25 MOH/SOE, p. 6.) Mario Silver, Jr. also received a written warning in 2024, regarding making a comment about applicant's age. (5/13/25 MOH/SOE, p. 6.)

Selena Perales, who worked as a bartender for defendant for 14 years, testified that she heard applicant tell the cooks that she was going to report them to immigration in March 2024. (5/13/25 MOH/SOE, p. 6.)

Mario Silva, Sr., the kitchen manager, testified that he worked for defendant for three years and did not recall ever saying anything about applicant's age and was not aware of anyone else making comments about her age. (5/13/25 MOH/SOE, pp. 6-7.) He was also not aware of any of the other incidents regarding other employees saying applicant should be naked in the bush or failing to push the food plates for her. (5/13/25 MOH/SOE, p. 7.)

Mario Silva, Jr., a chef for defendant for five years, testified that he had asked applicant about her age out of curiosity. (5/13/25 MOH/SOE, p. 7.) Another time he asked her why she was pacing around but that was not related to her age. (5/13/25 MOH/SOE, p. 7.) He never heard anyone tell her she should quit, call her a monkey, tell her she should be naked in the bush, or fail to push food towards her, and he did not hear her threaten to call immigration on anyone. (5/13/25 MOH/SOE, p. 7.)

Joseph Perales, the general manager for approximately a year, testified that there were several times when applicant had issues at the end of her shift closing out her tickets. (5/13/25 MOH/SOE, p. 8.) When he confronted applicant about her mistakes, she would become very angry and confrontational. (5/13/25 MOH/SOE, p. 8.) When Mario Silva, Jr. made an inappropriate comment to applicant about her age, Silva, Jr. was suspended for three days without pay and the schedule was changed so that he would no longer work with applicant. (7/24/25 MOH/SOE, p. 3.) Another employee, Rowena Martin, asked applicant if she was a monkey when she ate a banana; Martin was suspended indefinitely and has not returned to work. (7/24/25 MOH/SOE, p. 3.) He had not witnessed the cooks make any disparaging remarks about applicant but he had heard her be disrespectful to the cooks and her co-workers. (7/24/25 MOH/SOE, p. 3.)

Applicant further testified that that she was aware of the suspension of Martin and that someone else had been suspended for calling her old. (7/24/25 MOH/SOE, pp. 4-5.) She testified that she got into trouble every day and that she received verbal warnings. (7/24/25 MOH/SOE, p. 4.) Co-worker Manuel Perales told her to do some things about her appearance, such as to use makeup. (7/24/25 MOH/SOE, p. 5.)

Manuel Perales was called as a rebuttal witness despite an earlier stipulation that he would not testify. (7/24/25 MOH/SOE, p. 5.) He testified that he had been the owner of the defendant restaurant for 20 years and was currently semi-retired. (7/24/25 MOH/SOE, p. 5.) He denied telling applicant to change her appearance or wear makeup. (7/24/25 MOH/SOE, p. 5.) He provided two backscratchers to help employees reach the plates of food at the kitchen window so that they would be able to reach the plates. (7/24/25 MOH/SOE, p. 6.) He was not aware of any incident regarding bananas being thrown at applicant or anyone calling her a monkey; he would have terminated an employee for those actions. (7/24/25 MOH/SOE, p. 6.) He was aware of the law regarding age discrimination and followed the law. (7/24/25 MOH/SOE, p. 6.)

On October 16, 2025, the WCJ found that applicant had failed to sustain her burden of proving she sustained an industrial injury to her psyche. (F&O, p. 2.) The WCJ further found that the defendant's witnesses were more credible than applicant; that the medical reports of Dr. Hoffman do not constitute substantial medical evidence; and that all other issue were moot by the finding that there was no industrial injury AOE/COE to applicant during the period of July 1, 2009, to May 21, 2024. (F&O, p. 2.) The WCJ ordered that applicant take nothing further in the case. (F&O, p. 2.)

Applicant filed her Petition for Reconsideration of the F&O on October 6, 2025.

DISCUSSION

I.

Former Labor Code[1] 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.

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

(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 October 15, 2025, and 60 days from the date of transmission is Sunday, December 14, 2025. The next business day that is 60 days from the date of transmission is Monday, December 15, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, December 15, 2025, so that we have timely acted on the petition as required by section 5909(a).

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

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on October 15, 2025, and the case was transmitted to the Appeals Board on October 15, 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

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[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 15, 2025.

II.

Section 3208.3 governs claims for psychiatric injury. To establish that a psychological injury is compensable, an injured worker must show by a preponderance of the evidence that actual events of employment predominantly caused the psychological injury. (Lab. Code, § 3208.3(b)(1).) Therefore, under section 3208.3, the first determination to be made with respect to the compensability of an alleged psychiatric injury is whether actual events of employment are involved, a factual/legal issue for the WCJ to determine, not a medical issue. (*Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal. Comp. Cases 241, 245 (Appeals Bd. en banc).).

The next determination is whether such actual events were the predominant cause of the psychiatric injury, a determination which requires competent medical evidence. (*Rolda v. Pitney Bowes, Inc*., *supra*, 66 Cal.Comp.Cases at p. 245.) The phrase "predominant as to all causes" means that the work-related cause has greater than a 50 percent share of the entire set of causal factors. *(Dep't of Corr. v. Workers' Comp. Appeals Bd.* (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356].) "The foregoing analysis requires the evaluating physicians to take a history of all events alleged to have contributed to the psychiatric injury, to render an opinion as to causation in terms of first whether the employment events were a predominant, or greater than fifty percent, cause of the injury." (*Rolda v. Pitney Bowes, Inc*., *supra*, 66 Cal.Comp.Cases at p. 247.)

When deciding a medical issue, the WCJ must utilize expert medical opinion. (See *Insurance Company of North America v. Workers' Comp. Appeals Bd*. (*Kemp*) (1981) 122 Cal.App.3d 905, 912 [46 Cal.Comp.Cases 913].) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]*; Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the

Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

On the other hand, there must be some solid basis in the medical report for the doctor's ultimate opinion; the Appeals Board may not blindly accept a medical opinion which lacks a solid underlying basis, and must carefully judge its weight and credibility. (*National Convenience Stores v. Workers' Comp. Appeals Bd. (Kesser)* (1981) 121 Cal.App.3d 420, 426 [46 Cal.Comp.Cases 783].) In other words, the Appeals Board must look to the underlying facts of a medical opinion to determine whether or not that opinion constitutes substantial evidence, and accordingly, the expert's opinion is no better than the facts on which it is based. (*Turner v. Workers' Comp. Appeals Bd.* (1974) 42 Cal.App.3d 1036, 1044 [39 Cal.Comp.Cases 780].)

In the instant case, the WCJ did not address whether the workplace incidents were actual events of employment. (Lab. Code § 3208.3(b)(1); *Rolda v. Pitney Bowes, Inc., supra,* 66 Cal. Comp. Cases at pp. 245-247.) Therefore, the WCJ must perform a proper analysis of the psych claim.

Further, the medical opinion of Dr. Hoffman is insufficient as a basis for a finding of whether applicant sustained an industrial psych injury. First, Dr. Hoffman did not consider the testimony of the employer witnesses who the WCJ found more credible than applicant. Additionally, Dr. Hoffman lumped all of the causal factors together in concluding that applicant sustained injury AOE/COE. Dr. Hoffman stated that "within reasonable medical probability, the actual events of employment were predominant (> 50%) to all causes combined to have produced a psychiatric injury." (Ex. A., dated 10/3/24, p. 20.) He further stated that "within reasonable medical probability, 100% of the psychiatric injury can be attributed to the alleged stress and alleged harassment by the applicant's supervisor/ owner during the period of continuous trauma." (Ex. A., p. 20.) However, Dr. Hoffman was required to provide breakdown of the percentage contribution of each factor so the threshold determinations could be made.

Finally, applicant also claimed industrial injury to the body systems, circulatory system, and stress. Dr. Hoffman deferred the determination of causation regarding her internal medicine injuries to the appropriate medical specialists and recommended that applicant undergo an evaluation by a PQME or agreed medical evaluator (AME) in the field of internal medicine to determine if the other injuries were industrial. (Ex. A, p. 20.) However, no medical evidence was presented on any of applicant's physical injuries.

The Board generally "may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence." *(Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 404 [65 Cal.Comp.Cases 264; *West v. Industrial Acc. Com.* (1947) 79 Cal.App.2d 711, 719.) The Board's power to develop the record is appropriately exercised when there is insufficient medical evidence in the record upon which to base a determination. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394–395 [62 Cal.Comp.Cases 924].) Therefore, the medical evidence must be further developed for all of applicant's claimed injuries.

Therefore, we will grant the Petition for Reconsideration, rescind the F&O, and return this matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings of Fact and Order of September 16, 2025, is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the Findings of Fact and Order of September 16, 2025, is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 15, 2025

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

TERSIT ASSEFA
GEOFFREY SIMS
BRADFORD & BARTHEL

JMR/*pm*

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