WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

WILLIAM MAZZUCA, ***Applicant***

vs.

CITY OF SAN BERNARDINO,
permissibly self-insured, administered by ADMINSURE, ***Defendants***

Adjudication Number: ADJ18038876
San Bernardino District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant and defendant have each filed a Petition for Reconsideration of the September 12, 2025 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that while employed by defendant as an equipment mechanic, applicant sustained injury arising out of and in the course of said employment to his right shoulder and right arm; that applicant reached maximum medical improvement (MMI) as of November 18, 2023, the date of the panel qualified medical evaluator (PQME) evaluation; and that applicant's injury caused 52% permanent disability.

Applicant contends that it was error to exclude the treating physician reports of Jonathan Nassos, M.D., dated May 8, 2025 and May 23, 2025. Applicant further contends that the finding regarding the date of MMI should have been based upon the reports of Dr. Nassos, and not PQME Alexander Peterson, M.D., and that the record should be developed to obtain additional medical evaluations in response to defendant's assertion that any rating for loss of muscle strength must be supported by evaluations from two separate examiners.

Defendant contends that the evidence does not justify the award of 52% permanent disability Specifically, the Petition asserts that: (1) The *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition* (AMA Guides) prohibit rating strength loss when pain and loss of motion are present, except in rare cases, and the WCJ failed to address the central issue of

whether applicant rebutted the AMA Guides (p. 508) with an *Almaraz/Guzman*[1] analysis; (2) the results of manual muscle testing outlined by the PQME are invalid and therefore may not be relied upon in determining applicant's level of permanent disability; (3) if strength loss rating is permissible, it should be proportionately reduced based upon the extent of loss of motion to avoid duplication; (4) the apportionment analysis of the PQME was valid and should have been applied to reduce permanent disability indemnity; (5) further development of the record is not warranted; and (6) by not issuing rating instructions to the Disability Evaluation Unity (DEU), the WCJ violated due process and the requirements of the Appeals Board's en banc decision in *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613 (Appeals Bd. en banc).

We received an Answer from applicant. We received a Report and Recommendation from the WCJ, which recommends that we amend the F&A to admit Defendant's Exhibit D and to not admit Applicant's Exhibits 1-M and 1-N, and otherwise deny the Petitions.

We have considered the allegations of the Petitions for Reconsideration and the Answer and the contents of the Report. Based on our review of the record, and for the reasons stated herein, we will deny defendant's Petition for Reconsideration, grant applicant's Petition for Reconsideration, amend the WCJ's decision to admit the two treating physician reports dated May 8, 2025 and May 23, 2025, identified as Applicant's Exhibits 1-M and 1-N and to find that applicant's date of injury is February 11, 2022, and otherwise affirm the decision of September 12, 2025.

FACTS

Trial in this matter commenced on April 22, 2025. The parties stipulated that applicant sustained injury arising out of and in the course of employment to his right shoulder, and claims to have sustained injury arising out of and in the course of employment to his right arm while employed by defendant on February 11, 2022, as an equipment mechanic. The parties further stipulated to applicant's earnings rate and periods of benefits paid. (Minutes of Hearing/ Summary of Evidence (MOH), 4/22/2025, p. 2, lines 3-19.) Issues submitted for decision included: (1) whether the right arm was injured in addition to the right shoulder; (2) the permanent and stationary date, whether applicant had reached maximal medical improvement, and the related issue of

[1] *Almaraz v. Environmental Recovery Services / Guzman v. Milpitas Unified School Dist. (*2009) 74 Cal.Comp.Cases 1084 (Appeals Bd. en banc) (*Almaraz/Guzman*); affirmed by the Sixth District Court of Appeals in *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Guzman)* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837].

whether temporary disability was overpaid; and (3) permanent disability and apportionment, with the related issues of occupational group number, whether loss of strength can be measured under the AMA Guides in the presence of pain and loss of motion, whether the *Almaraz/Guzman* cases were correctly applied to the permanent disability rating, whether the private rating consultation report of Tim Null was admissible, and whether it was appropriate to rate permanent disability if applicant had not reached maximal medical improvement and had failed to appear for an authorized surgery. (*Id*. pp. 3-4.)

On the first day of trial, medical reports of PQME Dr. Peterson and treating physicians Dr. Nassos, Dr. Dini, and Dr. Fenison were admitted into evidence, and private rater Tim Null provided detailed testimony on his opinions regarding the requirements of the AMA Guides, as well as a rating analysis marked for identification as Defendant's Exhibit D. (*Id*. pp. 7-16.)

Trial continued on May 28, 2025. Applicant testified, and submitted two additional reports of treating physician of Dr. Nassos, both of which had been issued after the first day of trial. The report of Dr. Nassos dated May 8, 2025 was marked for identification as Applicant's Exhibit 1-M, and a report dated May 23, 2025 was marked as Applicant's Exhibit 1-N. The admissibility of these two reports was deferred, but the grounds for defendant's objection was not specified in the minutes of hearing and summary of evidence. (MOH/SOE, 5/28/2025, p. 2, lines 2-8.)

The F&A issued on September 12, 2025. The accompanying Opinion on Decision indicated that the private rater's report should be admissible, and that the two treating physician reports dated May 8, 2025 and May 23, 2025 should be inadmissible because they were not identified in the pre-trial conference statement by the time of the mandatory settlement conference (MSC) on March 17, 2025. (Opinion on Decision, 9/12/2025, pp. 3-4.) However, the decision did not include an order admitting Defendant's Exhibit D or sustaining defendant's objection to Applicant's Exhibits 1-M and 1-N.

DISCUSSION

I.

Former Labor Code section 5909[2] 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:

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

> (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.
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> (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 17, 2025, and 60 days from the date of transmission is December 16, 2025. This decision is issued by or on December 16, 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 17, 2025, and the case was transmitted to the Appeals Board on October 17, 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 October 17, 2025.

II.

We agree with the WCJ's findings as to the MMI date and as to permanent disability and apportionment.

In her Report, the WCJ explains her decision with respect to the MMI date as follows:

> It was not error to determine that applicant became MMI as of 11/18/2023. Applicant had been previously determined to be MMI by the initial PTP, Dr. Fenison on 7/20/2023, after the failure of a further attempt to repair applicant's "massive irreparable rotator cuff tear" in August of 2022. Applicant was told by Dr. Fenison at that appointment on 7/20/2023 that there was not much else that he could offer or add, the doctor determined that applicant was MMI, but he also then proceeded to provide a steroid injection during that last appointment, designating active treatment.
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> Thereafter, applicant changed PTP to Dr. Nassos, who first saw applicant on 9/14/2023. Dr. Nassos had none of the prior medical reports or records to review at the initial evaluation, and requested they be sent to him. He requested a number of treatment modalities and declared applicant TTD as of the date of the initial evaluation. However, this declaration of TTD status was not based upon having a complete record to review.
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> The Panel QME, Alexander Peterson, M.D., evaluated the applicant on 11/18/2023. He reviewed the very lengthy and complex history of applicant's injury, reviewed the records and performed an examination. Dr. Peterson determined applicant was MMI at that 11/18/2023 appointment. Dr. Peterson's follow-up report, after review of additional records including the 12/1/2023 MRI of the right shoulder, noted there to be no change to his conclusions as set forth in the prior report. He recommended conservative management with the potential for reverse total shoulder replacement surgery.
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> Dr. Nassos, after review of the 12/1/2023 MRI, determined that the only salvage procedure at this point would be a reverse total shoulder arthroplasty for the patient (the same recommendation previously opined by Dr. Peterson). Applicant was referred to a shoulder specialist, Dr. Dini, who determined that a reverse total shoulder arthroplasty was contraindicated, since applicant's risk of getting infection was too high, in light of his past history of significant intra-articular infection. Another procedure was recommended and authorized, but applicant did not go through with the authorized procedure, thus not supporting the continuation of TTD.
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> Applicant's medical status remains as it was when he was declared MMI by Dr. Peterson. As noted in the Opinion on Decision, none of the physicians rendering opinions after applicant was last seen by Dr. Jenison or by PQME Dr. Peterson have provided sufficient substantiation as to why applicant should continue to be deemed TTD and not merely treating under the future medical treatment recommendations

> of both Dr. Jenison and Dr. Peterson, who found applicant MMI/P&A in July and November of 2023, respectively. None of the current treating physicians, Dr. Nassos or Dr. Dini, have indicated that applicant's condition is anything other than static, pending the further procedures recommended by Dr. Dini, authorized by defendant, but which applicant chose not to have.
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> The reason Dr. Peterson's MMI date, versus the MMI date of Dr. Fenison, was determined to be most persuasive is because Dr. Fenison rendered active treatment to the applicant at that July 2023 appointment (a steroid injection) and did not further evaluate the applicant thereafter or comment upon its effectiveness. I found and continue to find it reasonable to conclude that applicant became MMI on 11/18/2023, the date of the comprehensive examination by Dr. Peterson, the PQME. The parties stipulated at trial that applicant is in need of further medical treatment, and since found MMI by Dr. Peterson, the applicant has been accessing that future treatment through Dr. Nassos and Dr. Dini. Until such time as applicant actually has the surgery recommended to him by Dr. Dini (and previously authorized by defendant), he remains MMI. His condition is unchanging.
>
> Applicant remains in the statutory period within which he may still receive TTD, but it is not reasonable to find him TTD until such time as he avails himself of the surgery. Based on the record presented, it was not error to find applicant MMI until such point as applicant undergoes further surgical procedures recommended by all the evaluators, but which, to this point, applicant has been unwilling to have.

(Report, 10/17/2025, pp. 8-10.)

We agree with the reasoning set forth in the Report, and observe that a WCJ may rely on the medical opinion of a single physician unless it is "based on surmise, speculation, conjecture, or guess." (*Place v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525]; *Market Basket v. Workers' Comp. Appeals Bd.* (1978) 86 Cal.App.3d 137 [46 Cal.Comp.Cases 913.)

With respect to the finding of 52 percent permanent disability, and the requirements of the AMA Guides, the Opinion on Decision, recited in the Report explains as follows:

> The only reporting physicians who provided actual range of motion measurements in all planes of motion for the right shoulder were Dr. Peterson, the Panel QME, and Dr. Fenison, the initial PTP. Other physicians provided some range of motion measurements in limited planes of motion, but without comparison to the contralateral member. None of these reports could be used to determine applicant's level of impairment.
>
> I find the opinions of the Panel QME in regard to impairment rating to be more persuasive than the opinions of the initial PTP, Dr. Fenison. Dr. Peterson determined that applicant had the following deficits in the right shoulder:

60° deficit of motion in abduction = 3% UE rating
10° deficit of motion in adduction = 1% UE rating
90° deficit of motion in flexion = 6% UE rating
0° deficit of motion in extension = 0% UE rating
20° deficit of motion in internal rotation = 2% UE rating
60° deficit of motion in external rotation (no range of motion) = 2% UE rating

These UE ratings are added to make a 14% UE rating based on range of motion.

Dr. Peterson also noted that applicant has weakness in the shoulder as a ratable factor, quoting the AMA Guides, 16.8a (Page 508), which notes that an evaluator may rate loss of strength if strength represents an impairing factor that has not been considered adequately by other methods in the Guides. Dr. Peterson opined that applicant's strength loss should be rated. He felt that applicant gave a maximal effort and that pain did not prevent him from giving maximal effort. Dr. Peterson opined that the rating should be combined with the range of motion impairment and relied upon the Guides (Page 508) which indicates that loss of strength and other impairments may be combined if they are based on unrelated etiological or pathomechanical causes.

Dr. Peterson also determined that applicant had strength deficits in the supraspinatus (3/5), infraspinatus (2/5), and teres minor (2/5), but no deficit in the subscapularis. Dr. Peterson used Table 16-11 (Page 484) to determine the severity grade of the strength loss. He noted that per the Guides (Page 510), the upper extremity unit of motion value (UV) is multiplied by the decreased shoulder strength. He calculated shoulder strength deficit (SD) as follows:

Flexion (UV 24%)	SD 70% = 17% UE (Fig. 16-35, Pg 510)
Abduction (UV 12%)	SD 70% = 8% UE (Fig. 16.35, Pg 510)
Ext. Rotation (UV 6%)	SD 70% = 4% UE (Fig. 16-35, Pg 510)

These UE strength loss ratings are added to make a 29% UE rating based on strength loss.

Dr. Peterson also determined that applicant had a distal clavicle excision that warranted a 10% upper extremity impairment. No deficits were noted in the right elbow range of motion and no tenderness or defect otherwise noted in the elbow.

Dr. Peterson provided a right shoulder impairment of 26% WPI, but his addition of the applicant's weakness was done incorrectly, with the doctor finding 28% UE rather than the 29% figure I determined to be correct (above).

The upper extremity impairments are combined as follows: 29 c 14 c 10 = 45 UE rating. Per Table 16-3 (Page 439) converts to a 27% WPI.

Defendant sought an outside rating from Tim Null, who not only used an incorrect Occupation Group Number (370 vs. 470), but he also reduced the rating substantially by proportionally reducing the strength impairment by the percentage of lost range of motion. His rationale was to prevent applicant from getting credit for lost strength in a range of motion they no longer possess, which in this case was External Rotation. He noted that applicant had 0° of measured range of motion, which he determined precludes any strength loss impairment as the applicant has no motion with which to lose strength. However, the undersigned WCALJ finds this determination to be outside of the Rater's role in the rating process, as it should have been something questioned of the physician and not merely assumed by the rater. In this instance, the rater, Mr. Null, overstepped his job per *Blackledge* and unilaterally changed an opinion provided by a physician.

As we know, *Blackledge* sets forth that each participant in the rating process has their specific role. The doctor makes medical determinations, the judge provides instructions to the rater based upon the judge's determination of substantiality of the physician's opinions, and the rater provides the mechanical rating based on the instructions provided to them by the judge. On Page 12 of the initial report of Dr. Peterson, he clearly finds no duplication and sets forth that applicant should be provided a rating for **both** the loss of motion as well as the strength loss. There is no substantial medical evidence to lead me to find otherwise. I do not find Mr. Null's consultative rating to be substantial evidence to persuade me to reduce the impairments determined to exist by Dr. Peterson. Applicant sustained a very serious injury to his right shoulder – an irreparable rotator cuff tear that has failed multiple attempts to repair it and he has had several serious infection set-backs. He should be provided every benefit of the doubt when it comes to rating his impairment, and I find that Dr. Peterson does a clear and convincing job of that.

(*Id*. pp. 4-6.)

The WCJ's Report provides the following further explanation:

As pointed out in the Opinion on Decision, the only reporting physicians who provided actual range of motion measurements in all planes of motion for the right shoulder were Dr. Peterson, the Panel QME, and Dr. Fenison, the initial PTP. Other physicians have provided some range of motion measurements in limited planes of motion, but without comparison to the contralateral member, so none of those reports could be used to determine applicant's level of impairment.

Defendant asserts that the undersigned WCALJ's inclusion of the loss of strength rating recommended and justified by Dr. Peterson per the AMA Guides, 16.8a (Page 508) is in error. Dr. Peterson opined that applicant gave maximal effort and clearly indicated that pain did not prevent him from giving maximal effort, stating that an evaluator may rate loss of strength if strength represents an impairing factor that has not been considered adequately by other methods in the guides and are based on unrelated etiological or pathomechanical causes.

> Dr. Peterson pointed out that applicant's shoulder surgery was a failure, leaving him with deficits beyond mere range of motion, including strength deficits in the supraspinatus, infraspinatus and teres minor. These are pathomechanical causes. Dr. Peterson correctly determined the severity grade of the strength loss using Table 16-11 (Page 484) for flexion, abduction and external rotation, but he incorrectly added those to equate to a 28% UE rather than the 29% UE figure this judge determined to be correct. Dr. Peterson also determined applicant was entitled to a 10% UE impairment for the distal clavicle excision, as well as 14% UE impairment for the range of motion loss. In this judge's opinion, based upon the thorough review of the medical evidence and applicant's testimony, this case falls in the "rare case" exception contemplated by the AMA Guides for which strength loss may be rated separately. It was not error to combine strength loss with both loss of motion and distal clavicle resection to reach a final WPI of 27%, which, when adjusted for age and occupation, resulted in a final PD rating of 52%.
>
> Insofar as defense witness, Tim Null, is not a physician, but is an outside, non-DEU rater, it is outside of his scope to insert his own impairment opinion in the place of the opinion of a physician. Mr. Null raised some interesting, but non-persuasive (to this judge, anyway) arguments as to why Dr. Peterson's determination that the applicant's loss of strength should not be rated in addition to the loss of motion ratings. However, those arguments were never put to the reporting physicians for consideration, and it is the physicians' determinations of the ratable impairments that are required to be considered by the judge, and not the substituted opinions of raters, who are not physicians. The testimony and rating of Mr. Null were admitted, but not given evidentiary weight, insofar as he used the wrong occupational variant and insofar as he attempted to substitute his own opinion for a medical opinion of a physician to determine that this case was not one of the "rare cases" when strength loss can be added to motion loss.

(*Id*. pp. 10-11.)

We disagree with the defendant's contention that due process and the Appeals Board's en banc decision in *Blackledge* required the WCJ to issue formal rating instructions to the DEU. In *Blackledge v. Bank of America*, *supra*, 75 Cal.Comp.Cases 613, we explained the role of a doctor, judge, and DEU rater in the context of obtaining formal permanent disability rating reports. We noted that the physician's role is to assess percentages of whole person impairment in a report that sets forth facts and reasoning to support its conclusions and that comports with the AMA Guides and case law. The WCJ may then frame rating instructions, based on substantial medical evidence, that specifically and fully describe the whole person impairment(s) to be rated; in addition, the instructions may ask the DEU rater to offer an expert opinion on what whole person impairment(s) should or should not be rated. In the event that a WCJ issues instructions to a DEU rater, the rater is required to issue a recommended permanent disability rating based solely on the WCJ's formal

rating instructions. Unless specifically instructed to do so, the rater has no authority to issue a rating based on the rater's own assessment of whether the whole person impairment rating(s) referred to in the instructions are based on substantial evidence or are consistent with the AMA Guides. (*Blackledge*, *supra*, 75 Cal.Comp.Cases 613, 615-616.)

In this case, *Blackledge* is not directly applicable, because the WCJ did not issue any formal rating instructions to the DEU. The only rating issued by the DEU in this case was a consultative rating. A consultative rating, unlike a formal rating, is inadmissible in judicial proceedings. (Cal. Code Regs., tit. 8, § 10166.) Since the consultative rating is inadmissible, a privately hired rating expert is not required to rebut what is not in evidence as a matter of law. Although *Blackledge* did not address the scenario in the present case, where a private rater is attempting to rebut a consultative rating, it is absolutely clear from *Blackledge* that physicians, not raters, determine impairment. Even if the present case did involve a formal rating from an official DEU rater, *Blackledge* clearly indicates that it is the WCJ, not the rater, who finds the correct impairment percentage. A rater does not instruct the WCJ on the correct impairment percentage, unless expressly instructed to do so by the WCJ.

Futhermore, nothing in *Blackledge* requires a WCJ to obtain a formal rating from the DEU in every case where permanent disability rating methods are at issue. Indeed, the en banc opinion in *Blackledge* explicitly states that "a WCJ may elect to independently rate an employee's permanent disability; however, a WCJ's rating still must be based on substantial evidence." (*Blackledge*, *supra*, 75 Cal. Comp. Cases 613, 616.)

It is well established that any decision of the WCAB must be supported by substantial evidence. (*Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604, 620 (Appeals Bd. en banc), citing Lab. Code, § 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. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) In order to constitute substantial medical evidence, a medical opinion "must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions. (*Escobedo*, *supra*, 70 Cal. Comp. Cases 604, 621.)

With respect to apportionment, we agree with the WCJ's conclusion that the PQME's apportionment determination did not constitute substantial medical evidence. Apportionment of

permanent disability is based on causation. (Lab. Code, § 4663(a).) To be substantial evidence on the issue of the approximate percentages of permanent disability caused by the direct results of the injury and the approximate percentage of permanent disability due to other factors, a medical opinion must explain how and why the injury, and each other factor, is causally related to the industrial injury. The medical opinion must also explain how and why each approximate percentage of causation was selected. Without a cogent explanation of each mechanism of causation, and a justification for each approximate percentage of causation, a medical opinion cannot be considered substantial medical evidence. (*Escobedo*, *supra*, 70 Cal. Comp. Cases 604, 621.)

In this case, the WCJ found that although Dr. Peterson's opinions on impairment percentages were sufficiently explained, his conclusions regarding apportionment did not meet the requirements for substantial medical evidence set forth in *Escobedo*:

> Dr. Peterson apportioned 20% to pre-existing conditions, based on the degree of degeneration seen on the diagnostic studies and applicant's age. I do not find this opinion on apportionment to be substantial, insofar as the doctor did not explain the nature of the disease process or condition to which apportionment is applied and explain how and why it is causing permanent disability at the time of evaluation and how and why it is responsible for the percentage of PD the doctor attributes to it. I am giving applicant an unapportioned award.

(*Id*. p. 6.)

With respect to the admissibility of Mr. Null's report, we note that it could have been excluded from evidence, and his testimony stricken from the record, on the grounds of relevance because Mr. Null is neither a physician nor the author of a formal rating in this case. However, we do not disturb that portion of the WCJ's opinion suggesting that it is admissible, because it is of no consequence to the outcome in this case, and because it was never ordered into evidence.

We amend the WCJ's decision to admit the two treating physician reports of Dr. Nassos, dated May 8, 2025 and May 23, 2025 (Applicant's Exhibits 1-M and 1-N). The WCJ indicated in her Opinion that Applicant's Exhibit 1-M should not be admitted because no argument was provided by applicant as to its admissibility, and that Exhibit 1-N should not be admitted because it was not identified on the pre-trial conference statement, citing *DPR Construction v. Workers' Comp. Appeals Bd.* (*McClanahan*) (2025) 111 Cal.App.5th 1136 [90 Cal.Comp.Cases 491]. We note that section 5703(a) provides that reports of attending or examining physicians may be received as evidence, and AD Rule 9785(f)(8) requires that a primary treating physician issue a

progress report at least once every forty-five days from the last report of any type. (Lab. Code, § 5703(a); Cal. Code Regs., tit. 8, § 9785(f)(8).) Accordingly, it is frequently held that there is good cause to admit readily anticipated treating physician reports that were not in existence at the time of trial setting. Furthermore, *McClanahan* is distinguishable from the present case on the basis that in *McClanahan*, the Court of Appeal found that there was no good cause to admit PQME reports that could easily have been listed on the pre-trial conference statement because they were in existence for years prior to the discovery cutoff date imposed by section 5502(d)(3). The facts in *McClanahan* did not involve treating physician reports that did not exist before the discovery cutoff date. (Lab. Code, § 5502(d)(3), 5703(a); *McClanahan*, *supra*, 111 Cal.App.5th 1136, 1145 [90 Cal.Comp.Cases 491, 497].) We note that the admission of Applicant's Exhibits 1-M and 1-N does not in any way alter the findings and award, which we otherwise affirm.

Finally, we note that the date of applicant's injury was omitted from the finding of injury, in what appears to be a clerical error. Thus, we will amend the F&A, so as to include the date of applicant's injury of February 11, 2022.

Accordingly, we deny defendant's Petition for Reconsideration, we grant applicant's Petition for Reconsideration and amend the F&A to admit Applicant's Exhibits 1-M and 1-N and to find that applicant's date of injury is February 11, 2022.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the decision of September 12, 2025 is **DENIED**.

IT IS FURTHER ORDERED that applicant's Petition for Reconsideration of the decision of September 12, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of September 12, 2025 is **AFFIRMED, EXCEPT** that it is **AMENDED** to add applicant's date of injury (Finding of Fact 1) and Orders, as follows:

FINDINGS

(1) William Mazzuca, [ ], while employed as an Equipment Mechanic II, Occupational Group Number 470, on February 11, 2022, at San Bernardino, California, by the City of San Bernardino, permissibly self-insured and adjusted by Adminsure, sustained injury arising out of and in the course of employment to his right shoulder and right arm.

ORDERS

IT IS ORDERED THAT the treating physician report of Jonathan Nassos, M.D. dated May 8, 2025 is admitted into evidence as Applicant's Exhibit 1-M.

IT IS FURTHER ORDERED THAT the treating physician report of Jonathan Nassos, M.D. dated May 23, 2025 is admitted into evidence as Applicant's Exhibit 1-N.

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

DECEMBER 16, 2025

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

WILLIAM MAZZUCA
PEREZ LAW, PC
GOLDMAN MAGDALIN STRAATSMA, LLP

CWF/*cs*

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