WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ANTONIO HERNANDEZ, *Applicant*

vs.

AR, INC. DBA NEW SMILE AUTO BODY; THE HARTFORD, *Defendants*

Adjudication Number: ADJ17109812
Los Angeles District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings and Order (F&O) issued on January 21, 2026 wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed by defendant as a car painter on November 11, 2022, did not sustain injury arising out of and occurring in the course of employment (AOE/COE) to the head, face, mouth, eyes, neck, ears, chest, forehead, or nose and ordered a take nothing.

Applicant contends that the WCJ "exceeded her powers in concluding that [he] deceived the court" and failed to look at all available evidence, including reporting from Sergio Chavez, P.A., Scott Rosenzweig, M.D, and chiropractic panel Qualified Medical Evaluator (PQME), Lar Lundstrom, D.C. (Petition for Reconsideration (Petition), pp. 5-7.)

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 contents of the Petition, the Answer, and the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petition.

FACTS

On December 27, 2022, applicant filed an Application for Adjudication of Claim (Application) alleging that while employed by defendant as a painter on November 11, 2022, he sustained injury AOE/COE to the head, face, mouth, eyes, neck, ears, chest, forehead, and nose.

Thereafter, defendant issued a Notice of Denial dated December 22, 2022.

On January 16, 2023, applicant began treatment with Dr. Rosenzweig and was diagnosed with neck muscle, fascia, and tendon strains and a headache. (Exhibit H, pp. 4-5.) Dr. Rosenzweig concluded that applicant sustained injury AOE/COE on November 10, 2022. (*Ibid*.)

The parties proceeded with discovery and retained Dr. Lundstrom as the chiropractic PQME and Raffi Mesrobian, M.D. as the otorhinolaryngological PQME.

On August 10, 2023, applicant was evaluated by Dr. Lundstrom who issued a report dated August 15, 2023 concluding that there was substantial medical evidence of injury AOE/COE to the neck. (Exhibit B, p. 21.) Dr. Lundstrom deferred his findings on impairment pending completion of a cervical MRI, trigger point therapy for applicant's suboccipital muscles, and a consult with an ear, nose, and throat specialist for applicant's nosebleeds. (*Ibid*.)

On November 5, 2024, Dr. Lundstrom completed a reevaluation and issued a corresponding report concluding that applicant reached permanent and stationary (P&S) status with a resulting 17% whole person impairment to the lumbar spine. (Exhibit C, p. 42.) His findings were based upon the history provided by the applicant, medical records, exam findings, and diagnostics. (*Ibid*.)

On April 29, 2024, Dr. Mesrobian evaluated applicant and issued a report dated May 27, 2024 noting complaints of nosebleeds and tinnitus. (Exhibit D, p. 4.) Applicant was ultimately diagnosed with epistaxis and tinnitus. (*Id*. at p. 6.) Dr. Mesrobian recommended a CAT scan of the fascial bones without contrast and a comprehensive audiogram prior to issuing an opinion on causation. (*Id*. at p. 7.) After the testing, Dr. Mesrobian issued an April 11, 2025 supplemental report concluding that there was no injury AOE/COE. (Exhibit E, p. 2.) He noted that the CAT scan showed no evidence of facial fractures and the audiogram showed that applicant's tinnitus was due to non-industrial sensorineural hearing loss in both ears. (*Ibid*.)

On October 3, 2025, defendant filed a Declaration of Readiness to Proceed to a priority conference. The matter continued to a hearing wherein it was set for trial on January 12, 2026.

At trial, issues set for determination included injury AOE/COE and body parts injured. Exhibits entered into the record included defendant's denial letter; the PQME reports of Drs. Lundstrom and Mesrobian; the transcript of applicant's May 24, 2023 deposition; subpoenaed records of P.A. Chavez; and a report from Dr. Rosenzweig dated January 16, 2023.

On January 21, 2026, the WCJ issued an F&O wherein he found that while employed by defendant as a car painter on November 11, 2022, applicant did not sustain injury AOE/COE to the head, face, mouth, eyes, neck, ears, chest, forehead, or nose and ordered a take nothing.

DISCUSSION

I.

Preliminarily, 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.
>
> (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 under the Events tab 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 March 10, 2026, and 60 days from the date of transmission is May 9, 2026, which is a Saturday. The next business day that is 60 days from the date of transmission is May 11, 2026. (See Cal. Code Regs.,

[1] All further statutory references will be to the Labor Code unless otherwise indicated.

tit. 8, § 10600(b).)[2] This decision was issued by or on May 11, 2026, 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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on March 10, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on March 10, 2026.

II.

Turning now to the merits of the Petition, it is well established that the burden of proof rests upon the party holding the affirmative of the issue. (Lab. Code, § 5705.) As such, when an employee claims injury AOE/COE, it is the employee, or the lien claimant who steps in the shoes of the employee, who carries the burden of proof in establishing industrial causation and they must show that the employment was a contributing cause. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297- 298, 302; §§ 5705; 3600.) Pursuant to section 3202.5, the evidentiary burden of proof is to be met by a preponderance of the evidence.

Further, substantial medical evidence is used to establish industrial causation. "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.) Pursuant to *E.L. Yeager*

[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.

v. Workers' Comp. Appeals Bd. (*Gatten*) (2006) 145 Cal.App.4th922, 928 [71 Cal.Comp.Cases 1687], "[a] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (citations.) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (citation.)" "A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial evidence to support a denial of benefits. (citation.)" (*Kyle v. Workers' Comp. Appeals Bd* (*City and County of San Francisco*) (1987) 195 Cal.App.3d 614, 621.)

Here, the WCJ found that applicant failed to meet his burden of proof by a preponderance of the evidence due to applicant's "deception" to the court, including testimony under oath that he filed no claims against prior employer, Radical Collision, and sustained no other work injuries, despite evidence of prior claims and prior workers' compensation settlements, including a Compromise and Release (C&R) agreement with Radical Collision in the amount of $20,000 which was approved via an Order Approving Compromise and Release (OACR) on August 18, 2025. (F&A, p. 3.)

The WCJ further found that applicant's claim was not supported by substantial medical evidence as the submitted medical records were based upon similar "false and inaccurate histories." (*Ibid*.) In her F&A and Opinion on Decision (OOD), the WCJ referenced a May 27, 2024 report by PQME, Dr. Mesrobian, wherein applicant apparently reported only one prior injury despite the existence of four prior injury claims.

Based upon our review of the record, we agree that the various inconsistences and lack of a complete medical history, including a history of applicant's prior injuries, render the submitted medical reports problematic. In the August 15, 2023 report of Dr. Lundstrom, applicant reported only one prior left knee injury but no other injuries. (Exhibit B, p. 4.) In a subsequent report of Dr. Lundstrom dated November 5, 2024, applicant reported two prior injuries, one to the left knee, and another to the back, but alleged "no residuals." (Exhibit C, p. 4.) This information directly conflicts with existing evidence of prior injuries and settlements. The January 16, 2023 report of Dr. Rosenzweig similarly fails to document and discuss applicant's prior claims and their impact on the issue of causation. These inconsistencies undermine the credibility of both applicant and the medical evidence.

As the parties are well aware, pursuant to *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500], credibility determinations of the WCJ, as the trier of fact, are entitled to great weight based upon the WCJ's opportunity to observe the demeanor of the witnesses and weigh the witnesses' statements in connection with their manner on the stand. Credibility determinations are not to be disturbed except where there is contrary evidence of considerable substantiality. No such evidence was provided here.

Further, while minor inconsistencies in the testimony of an applicant may not discredit all of applicant's testimony in the face of substantial medical evidence (*Albertson's/Lucky Stores v. Workers' Compensation Appeals Bd*., (2006) 71 Cal. Comp. Cases 624.), such support was found to be lacking by the WCJ here, and we find no basis to disturb her finding.

Applicant contends that the WCJ failed to look at all available evidence in support of industrial causation, including reporting from P.A. Chavez, Dr. Rosenzweig, and chiropractic PQME, Dr. Lundstrom and "exceeded her powers in concluding that [he] deceived the court." (Petition, pp. 5-7.)

Based upon our review of the record, there is no evidence that said reports were not considered by the WCJ. In fact, in her Report the WCJ cites to a November 15, 2022 medical report by P.A. Chavez which noted complaints of onset and worsening of nosebleeds due to the subject injury. (Report, p. 3.) This was ultimately determined to be inconsistent with applicant's testimony and the submitted medical records, as previously expressed by the WCJ in her F&A and OOD. (Report, pp. 3-5, 9-10; F&A and OOD, p. 3.)

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Order issued on January 21, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 11, 2026

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

ANTONIO HERNANDEZ
LAW OFFICES OF ANTHONY CHOE
LAW OFFICES OF LYDIA B. NEWCOMB

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