WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ELIZABETH KENSINGER, ***Applicant***

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND, ***Defendant***

Adjudication Number: ADJ11140350
Salinas District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant's attorney filed a Petition for Reconsideration (Petition) in response to the Findings and Order (F&O) dated February 19, 2026, in which the workers' compensation administrative law judge (WCJ) found in pertinent part that applicant while employed on "September 21, 2017" by defendant did not sustain injury arising out of and in the course of employment (AOE/COE) to her psyche, sleep disorder, sexual dysfunction, skin, headaches, and teeth (dental); and that applicant did not meet her burden of proving she sustained a compensable subsequent injury and thus was not eligible for benefits from the Subsequent Injuries Benefits Trust Fund (SIBTF).

Applicant contends in pertinent part that the WCJ's conclusion that defendant's witnesses were credible does not support a conclusion that applicant's claimed injury was subjective in nature and that the testimony by the witnesses corroborated her testimony; that the WCJ disregarded the medical evidence by treating physicians, the qualified medical evaluators (QMEs) and the independent medical evaluators that found injury AOE/COE; and that applicant met her burden to show that she sustained a compensable subsequent injury.

Defendant filed an Answer.

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

After review of the record and for the reasons discussed below, we will grant the Petition for Reconsideration, rescind the February 19, 2026, Findings and Order, and return the matter to

the WCJ for further proceedings consistent with this opinion. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

I.

Former Labor Code section 5909[1] 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.) 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 April 10, 2026, and 60 days from the date of transmission is Tuesday, June 9, 2026. This decision issued by or on June 9, 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

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

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 April 10, 2026, and the case was transmitted to the Appeals Board on April 10, 2026. 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 April 10, 2026.

II.

Applicant, while employed by defendant on September 21, 2017, as a staff service analyst, claims to have sustained injury arising out of and in the course of employment to the psyche, sleep disorder, sexual dysfunction, skin, headaches, and dental.

The record before us is extensive. To provide our opinion and decision as concisely as possible, we provide limited highlights of the record here.

On October 24, 2017, Mary Jane Gozalez-Huss, Ph.D., issued Progress Notes that include: "Patient then began to feel that 3 managers were colluding against her. The male manager she had considered a friend, but as circumstances got difficult and she shared with her live-in boyfriend some of the behaviors she had experienced. It became clear to patient that she was experiencing sexual harassment." (Exhibit A24, Mary Jane Gozalez-Huss, Ph.D., October 24, 2017, PDF p. 3.)

On December 21, 2017, applicant filed an Application for Adjudication of Claim seeking workers' compensation benefits for a specific injury to the nervous system on September 21, 2017.

On February 22, 2018, QME Jess Ghannam, PhD., issued a report following his evaluation of applicant. "The predominant cause at this point has reached the above 50% threshold of primary industrial injury causation over non-industrial causes and preliminarily it is my opinion that [applicant] has sustained an industrial injury to her psyche." (Exhibit A14, Jess Ghannam, Ph.D., February 22, 2018, p. 16.)

On August 10, 2018, Dr. Ghannam issued a supplemental report in which it is stated: "There are key records dated 9/25/2017 and thereafter which tend to confirm the symptoms described by [applicant] that were work related and disabling." (Exhibit A13, Jess Ghannam, Ph.D., August 10, 2018, p. 7.)

On May 23, 2021, Dr. Ghannam issued another report in which it is stated in part: "It is my opinion with reasonable medical certainty that my medical findings are consistent with the industrial injury as alleged by [applicant] in that there is a mental disorder at this time and, in my opinion, this causes disability and there is need for treatment." And further: "The predominant cause at this point has reached the above 51% threshold of primary industrial injury causation over non-industrial causes. It is my opinion that [applicant] has sustained an industrial injury to her psyche and that the actual events of employment are predominant to all other causes." (Exhibit A11, Jess Ghannam, Ph.D., May 23, 2021, p. 8.)

Applicant then settled her case against the employer by Compromise and Release (C&R) for a claimed specific injury on September 21, 2017, to the psyche, stress, headaches, body aches, rash and for grinding teeth. The Order Approving Compromise and Release (OACR) issued January 31, 2022.

Thereafter on February 28, 2022, applicant filed a SIBTF application.

On July 21, 2022, Paul Kim, M.D., issued a report following his evaluation of applicant as an independent medical-legal evaluator. The report states that: "Pre-Existing Causation: The chronic neck and lower back pain with radiculopathy is likely secondary to degenerative disc disease with disc herniation. The plantar fibroma may be caused by cumulative trauma or idiopathic. Urinary incontinence may be caused by neurogenic or weakened pelvic floor muscle" and "[t]hese conditions did not arise out of the subsequent industrial injury of 09/21/2017." (Exhibit A3, Paul Kim, M.D., July 21, 2022, p. 13.)

On July 22, 2022, Nhung Phan, Psy.D., evaluated applicant as an independent medical-legal evaluator. He stated that: "[I]t is the undersigned's professional opinion that [applicant] is a candid and generally credible historian who is not exaggerating her symptoms for secondary gain. I have factored in her self-reporting style of both over and under reporting of symptoms into my conceptualization of her diagnoses and level of impairment." And further, "[applicant]'s account of her injury corroborated with the narrative of the injury outlined in the medical records." (Exhibit A7, Nhung Phan, Psy.D., July 22, 2022, p. 39.) "There is no scientific basis to suggest that the examinee is consciously feigning malingering symptoms. She self- disclosed appropriately during the evaluation process and I did not sense that she was minimizing personal problems existing before or after the discussed industrial injury." (Exhibit A7, Nhung Phan, Psy.D., July 22, 2022, p. 40.)

Dr. Phan goes on to state:

> [Applicant] injured herself at California Department of Parks & Recreation from SI: September 21, 2017 while employed as a Staff Systems Analyst. Specifically, she stated it was not a single incident. She was continually sexually harassed and retaliated against while at work from approximately 2014-2017. Her manager made inappropriate comments to her that were sexually implied. He would ask what was wrong with her neck, meaning red spots, as if they were hickeys, which she never had. She felt ashamed.

(Exhibit A7, Nhung Phan, Psy.D., July 22, 2022, p. 57.)

Dr. Phan concluded:

> It is my opinion that [applicant]'s subsequent psychiatric injury was predominantly caused by the actual events of employment. I reason that, given the longitudinal nature of [applicant]'s emotional difficulties, they are more than a mere "lighting-up" of her previous depressive and chronic pain symptoms typically seen during an exacerbation. Rather, they have been permanent and are more accurately described as an "aggravation."

(Exhibit A7, Nhung Phan, Psy.D., July 22, 2022, p. 58.)

Then on August 20, 2022, Raye Bellinger, M.D., issued a report as an independent medical-legal evaluator, stating in part: "The examinee's industrial injury was caused by trauma as a result of her work-related activities over time with substantial orthopedic injuries, as described above." (Exhibit A10, Raye Bellinger, M.D., August 20, 2022, p. 58.)

On September 9, 2022, Jeffrey Light, D.D.S., issued a report as an independent medical-legal evaluator. "After [applicant]'s industrial injury of September 21, 2017, she suffered harassment at work, which greatly increased her bruxism, her myofascial pain symptoms as well as her masticatory dysfunction. The mechanism of injury would be worsening of her pre-existing condition by the stressful work environment at work." (Exhibit A4, Jeffrey Light, D.D.S., September 9, 2022, p. 11.)

In the November 7, 2022, report from Dr. Bellinger, he states: "Clearly, stress on the job in the form of harassment and retaliation would promote the severity of tension headaches." And, if applicant "had retaliation/harassment at work, part of her urticaria would have been aggravated by her work-related injury." (Exhibit A9, Raye Bellinger, M.D., November 7, 2022, pp. 2, 3.)

On November 15, 2023, the parties proceeded to trial. (Minutes of Hearing and Summary of Evidence (FIRST MOH).) Issues included: "1. Injury AOE/COE to psyche, sleep disorder, sexual dysfunction, skin, headaches, and dental," and "4. Whether the applicant is eligible for

SIBTF benefits." (FIRST MOH, November 15, 2023, p. 2, lns 10-12; 16-17.) Applicant attorney objected to defense exhibits and noted that:

> With respect to the personnel action, Defendant did not provide any of these exhibits to any of the QMEs. They did not provide them to us until very late in the game. State Fund, by the way, did the same thing in the claim for regular benefits with Dr. Ghannam. None of the QMEs have seen these defense exhibits in order to weigh causation.
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> Essentially, what SIF is doing, Your Honor, is asking the Board to weigh those documents as evidence in a causation analysis. And, as Your Honor knows, under the Rolda case, that is an issue for the medical evaluator, as to causation, not for the Board to weigh.

(FIRST MOH, November 15, 2023, p. 3, lns 18-23.)

Applicant testified in part that in 2017, she stopped working for the State of California Parks and Recreation. She started working there in August of 2010. (FIRST MOH, November 15, 2023, p. 8, lns 12-15.) "For purposes of contracts, Mr. Jauregui was in her direct chain of command." "Felipe Jauregui said sexually charged and inappropriate things to her. He stuck his hand on her thigh under her pants; she brushed him away. He sat too close and brushed up against her. When working with him alone, his sense of humor made her uncomfortable." And also:

> The sexual harassment started in 2013 and began in relation to a loan of $500 that he offered so that she could buy her first house. She repaid the loan. He asked for collateral, so she put an iPod watch, wedding set, and gold jewelry in a shoebox. When she repaid the loan, he returned all the items except for a gold chain that he wanted.

(FIRST MOH, November 15, 2023, p. 10, lns 4-7; 9-12.)

"By 2017, she was acting as a full-fledged assistant for him. She kept him on task. For the annual paving contracts, she would sometimes ride with him when he went into the field for site visits. They would go together in his state vehicle." (FIRST MOH, November 15, 2023, p. 10, lns 14-16.) Testimony also included:

> On 9/21/17, she reported Jauregui's behavior to Chris Spohrer and Lynn Anderson at a meeting in Mr. Spohrer's office. She took her job steward with her; another union member was present on the phone via a conference call. Although the problems started in 2013, she reported the behavior in 2017. It seems counterintuitive to her now, but she thinks that she did not report Jauregui earlier, because she was in survival mode—she was trying to diminish it, telling herself that maybe it was just her and not that big of a deal. Now she is in a women's group and is working on herself.

(FIRST MOH, November 15, 2023, p. 11, lns 12-17.)

Two subsequent trial dates were continued and on February 28, 2024, applicant's further testimony was summarized in the Minutes of Hearing, Summary of Evidence (SECOND MOH, February 28, 2024). This testimony included: "Prior WC claims: Then at Wright Motors in 2005, she was sexually harassed by a female manager." (SECOND MOH, February 28, 2024, p. 4, lns 12-13.) Applicant underwent cross-examination. (SECOND MOH, February 28, 2024, beginning at p. 11.)

On May 22, 2024, a third day of testimony was taken as reflected in the Minutes of Hearing and Summary of Evidence. (THIRD MOH, May 22, 2024). Applicant's testimony continued under cross examination, and she returned later for rebuttal. Defense witnesses Lynn Anderson, Elly Howard, Timothy Highland, and Cristopher Spohrer all testified. Cristopher Spohrer testified in part: "He believes Mr. Jauregui retired in 2021." (THIRD MOH, May 22, 2024, p. 19, lns 13-24.)

On June 14, 2024, applicant petitioned to reopen discovery to address "the WCAB [having] issued an en banc decision in *Sammy Vigil v. County of Kern*" and on September 13, 2024, an Order Vacating Submission issued. The following December 11, 2024, the minutes include comments of: "Def. objects to further discovery re *Vigil* case. App. is allowed to obtain discovery from her evaluators to address overlap of disability per *Vigil*."

Applicant obtained additional reporting which included a December 11, 2024 Dr. Bellinger report (Exhibit 56), a December 30, 2024 Dr. Kim report (Exhibit 57), a March 13, 2025 Dr. Light report (Exhibit A58) and an April 25, 2025 Dr. Phan report (Exhibit A59).[2]

In his report, Dr. Phan states that: "It is my medical opinion that the examinee needs the following specialist evaluations to more specifically address possible impairment and disabilities which are outside my scope of expertise: 1. **Ophthalmologist:** As noted above, there are also headache issues which require an evaluation with an Ophthalmologist specialist to determine issues relative to the applicant's SIBTF claim." (Exhibit A59, Nhung Phan, Psy.D., April 25, 2025, p. 51, emphasis in the original.) Dr. Phan then again concludes:

> It is my opinion that [applicant]'s subsequent psychiatric injury was predominantly caused by the actual events of employment. I reason that, given the longitudinal nature of [applicant]'s emotional difficulties, they are more than a mere "lighting-

[2] Exhibits A56 – A59, as identified and admitted in the November 5, 2025, minutes, *are all listed as the same exhibit A5* in the Electronic Adjudication Management System (EAMS). This exhibit identification error should be corrected on return by the District Office. (See Cal. Code Regs., tit. 8, § 10759(c).)

up" of her previous depressive and chronic pain symptoms typically seen during an exacerbation. Rather, they have been permanent and are more accurately described as an "aggravation."

(Exhibit A59, Nhung Phan, Psy.D., April 25, 2025, p. 55.)

On November 5, 2025, the parties appeared, and the minutes reflect that Exhibits A56-59 were admitted, and the case was ordered "submitted as of 11/21."

On February 19, 2026, the F&O issued finding that applicant "did not sustain injury AOE/COE," applicant is not eligible for SIBTF benefits, and that "[a]ll other issues are moot." The WCJ ordered that applicant "take nothing by virtue of her Application for SIBTF benefits." In the Opinion on Decision the WCJ explains that although there is a C&R of the claim against the employer, for the SIBT claim the issue of injury AOE/COE must be addressed de novo. (Opinion on Decision, p. 3.) And further:

> Almost all of the testimony about these stressors came from the applicant herself. Applicant's feelings of being harassed and treated poorly are subjective beliefs, uncorroborated by objective evidence. The witnesses called by the defense were credible in their testimonies that they never observed any mistreatment of her by Mr. Jauregui. Likewise, there was no corroborating testimony that she was being harassed for her union activities. [citation] The applicant did not provide any corroborating witnesses or medical documentation, other than the evaluation reports, to support her claim that work stressors were the predominant cause of her psychological disorder. It is the court's opinion that the harassment did not occur as alleged by the applicant. The applicant was not credible in her testimony. The applicant's beliefs were unsubstantiated.
>
> Furthermore, the evaluating reports did not support the applicant's claims.
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> Dr. Jess Ghannam evaluated the applicant for the workers' compensation claim against the employer. Dr. Ghannam's opinion is not substantial evidence as to the issue of injury AOE/COE. His history of the applicant's pre-existing psychological history was sparse and his record review was incomplete. His opinions lack analysis and are conclusory.
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> Dr. Nhung Phan's evaluation reports obtained by Applicant for the SIBTF claim are also not substantial evidence. There was at least one glaring omission in the applicant's history—she told Dr. Phan that she had "communication problems" that led to her divorce from her third husband, [husband]. She also said that she was happy in that relationship. However, at trial, she testified that all of her husbands, including [husband], were emotionally, sexually, and physically abusive.
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> That she was in such a relationship during much of the time Felipe Jauregui allegedly sexually harassed and belittled her but failed to mention the issues in the

> relationship to the evaluators leads the court to question Applicant's credibility and Dr. Phan's opinions.

(Opinion on Decision, p. 4.)

"The other body parts alleged were either non-industrial or did not cause enough permanent partial disability to meet the 35% threshold." (Opinion on Decision, p. 5.)

It is from this F&O that applicant seeks reconsideration.

III.

We observe that a grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. I.A.C.* (*Savercool*) (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. I.A.C.* (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it.

1.

"It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Board en banc).) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Id.* at p. 475.)[3]

A simplified statement of the WCJ's findings is that the applicant did not meet her burden as she was not credible in her testimony, did not provide any corroborating witnesses or corroborating medical documentation, and that the witnesses called by the defense were credible. (Opinion on Decision, p. 4; Report, pp. 3-4.)

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[3] Volumes I and II of applicant's deposition were offered as exhibits by defendant and marked by the WCJ for identification as Exhibits D12 and D13. (FIRST MOH, November 15, 2023, p. 7, lns 21-24; p. 8, lns 7-9.) It appears there is no ruling on admission of exhibits D12 and D13. Such depositions are typically only admitted by page and line for impeachment of trial witnesses. In the absence of a ruling, Exhibits D12 and D13 have not been considered in reaching our opinion. Evidentiary rulings should be made on all exhibits to create a clear record.

We acknowledge that the WCJ's findings on credibility are generally entitled to great weight because the WCJ had the opportunity to observe the witnesses and to weigh their statements in connection with their manner on the stand. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500].)

We conclude, however, that the limited analysis and citation to this extensive evidentiary record in the Opinion on Decision and in the WCJ's Report effectively abrogates the parties' rights to due process and falls short of the minimum standards set forth in *Hamilton*, *supra*. While we accord to the WCJ's credibility determination the weight to which it is entitled, the WCJ may not enter a credibility determination in lieu of the statutorily required analysis of the issues presented as supported by citation to the evidentiary record. (Lab. Code, § 5313.) Here, while finding the applicant not credible the WCJ failed to discuss significant factors evident in the record.

For example, it appears the applicant worked successfully almost seven years with the defendant before stopping in 2017. (FIRST MOH, November 15, 2023, p. 8, lns 12-15.) In addition, defense witnesses were uniformly positive about the applicant.

Defense witness Anderson testified, "she is very smart, very organized, and very directed," and further explained: "She never had to discipline the applicant. The applicant was very competent and diligent. She was the best contract analyst with whom she had worked. She was dedicated to making the contracts perfect. The applicant did an excellent job." (THIRD MOH, May 22, 2024, witness Lynn Anderson, p. 9. lns 22-23; p. 11, lns 9-11.)

Defense witness Howard testified she considered applicant "her friend." (THIRD MOH, May 22, 2024, witness Marie Howard, p. 12. lns 22-24.) Witness Hyland testified he "worked with the applicant," and "considered her a friend but not a close friend." (THIRD MOH, May 22, 2024, witness Marie Howard, p. 12. lns 22-24.) Defense witness Spohrer testified that he "and the applicant were friendly," and the "women on the admin team, Kelley, Gillian, and Terri, were all friendly with the applicant." (THIRD MOH, May 22, 2024, witness Christopher Spohrer, p. 17. lns 1-2; 5-6.)

When making a credibility determination it is important for the WCJ to consider and discuss the effect of the length of applicant's employment, her friendly relationships with co-workers, and that she did an excellent job.

The WCJ finding defense witnesses credible is important, but, without more, is not dispositive. Here the WCJ used witness testimony that they were not present to see events happen

as proof the events did not happen. To claim that their testimony of seeing no harassment unequivocally rebutted the applicant's testimony would be to indulge in a form of the logical fallacy, an argumentum ad ignorantiam. Basically, the trier of fact says it never happened because this witness did not see it, though there were many times when the witness was not present and therefore could not have seen it even if it did happen. While such testimony may be indicative of absence, it does not absolutely establish absence. Indeed, such testimony could be seen to corroborate the fact that applicant spent significant time alone with her accused harasser.

In addition, it seems reasonable that witness testimony provided years removed from the events should be compared by the trier of fact to the observations in the more contemporaneous investigation report when assessing credibility. This does not appear to have been done. Indeed, it is concerning that in reviewing the evidence the WCJ did not even mention the 46 PDF page Investigation report (Exhibit D11), nor the 298 page August 3, 2018 Grievance (Exhibit D4) in the Opinion on Decision or the Report.

Perhaps most troubling is the WCJ's failure to analyze the lack of testimony. For illustration we provide the following.

In simplistic terms, applicant's claim of psyche injury is the result of two allegations of contemporaneous injurious work exposures that both ended in 2017: work stress and sexual harassment. It appears the work stress is further divided between job demands and a perceived significant change in management attitudes toward applicant after a union communication was opened by Maintenance Chief II, Rachel Arias.

As part of the confidential investigation performed by the Shaw Law Group, the investigator determined that despite Arias denying opening an envelope, "Kamau stated that [applicant] contemporaneously complained to him about Arias opening the envelope. Neither [applicant] nor Kamau complained to anyone about this 'breach of confidence.'" The investigator determined that "[b]ased on the available evidence, it is more likely than not that Arias opened the envelope and spoke to [applicant] about the contents." (Exhibit D11, Investigation, PDF p. 8.) In essence, the investigator found that Arias was not credible on this critical point, but that applicant was.

Arias did not testify at trial here and there is no transcript presented of the investigator's interview with Arias beyond the summary contained in the confidential investigation. Credibility is the province of the WCJ and may not be delegated to others. Nor, however, may the WCJ ignore

probative evidence without discussion. The WCJ must at least discuss such evidence when it may be interpreted as being positive toward applicant's credibility.

Similarly, significant to applicant's claim of sexual harassment are three loans made to applicant by the alleged harasser, Maintenance Chief III, Felipe Jauregui. Defendant's witness Spohrer, the District Superintendent for the Santa Cruz District State Parks, testified that he agreed "that a loan between a superior and a subordinate could possibly create a power dynamic. A superior could conceivably take advantage of the situation." (THIRD MOH, May 22, 2024, witness Christopher Spohrer, p. 16, lns 18-20; p. 18. lns 19-22.) During the investigation the investigator noted "that Jauregui recalls making two loans to [applicant]. However, when shown documents provided by [applicant] supporting that he made three loans to her, Jauregui agreed his wife or he may have made a total of three loans." (Exhibit D11, Investigation, PDF p. 6.) Although the investigator twice noted that Jauregui "credibly denies" the allegations presented, the determination of credibility is for the WCJ to determine, not an investigator. In making any credibility determinations it is important for the trier of fact to consider the alleged harassers' credibility as well.

There is no information in the record as to why the central figure in the case, Jaregui, did not testify at trial. Witness Spohrer testified he "believes Mr. Jauregui retired in 2021." (THIRD MOH, May 22, 2024, witness Christopher Spohrer, p. 18. lns 13-14.) There is no transcript of the investigator's interview with Jauregui. In any credibility determination of the applicant, it is incumbent on the WCJ to discuss the available information, including information from or about the alleged harasser Jauregui.

Applicant's assertions of three loans by Jauregui was uncontested by testimony or documentary evidence and should also be discussed as part of a credibility determination.

Further, the investigator interviewed <u>nine people exclusive of the applicant</u> and noted:

> *Every witness described [applicant] as an excellent employee*. Alford and Anderson stated they "miss [her]" because she is on leave. However, Anderson stated that [applicant] often performs work on the Public Works and Services contracts outside the scope of her role. This yields positive results on the contracts she completes, but interferes with her ability to perform her other essential job functions.

(Exhibit D11, Investigation, PDF p. 46, emphasis added.)

Again, any credibility determination about applicant by the WCJ must also consider and discuss applicant's almost seven-year employment history with defendant and that she was considered by others to be "an excellent employee." The trier of fact should also consider witness Anderson's statement to the investigator that: "[Applicant] often performs work on the Public Works and Services contracts outside the scope of her role. This yields positive results on the contracts she completes, but interferes with her ability to perform her other essential job functions." (Exhibit D11, Investigation, PDF p. 46.) The WCJ's credibility determination should include consideration of applicant's work outside her role yielding positive results and the resulting interference from such work with her other essential job functions.

Further, there appears to be no consideration of the expert medical opinions on credibility including, for example, "that [applicant] is a candid and generally credible historian who is not exaggerating her symptoms for secondary gain." (Exhibit A7, Nhung Phan, Psy.D., July 22, 2022, p. 39.)

The facts here of an "excellent employee" are distinguished from the *Verga* case as cited by the WCJ in the Report. Applicant's claim in *Verga* was denied because "the disdainful reactions of coworkers to [applicant]'s abusive conduct were neither 'actual events of employment' nor the 'predominant cause' of her psychological injuries within the meaning of the statute." (*Verga v. Workers' Comp. Appeals Bd.*, (2008) 159Cal.App.4th 174, 189, [73 Cal.Comp.Cases 63.) There is no evidence here that applicant's claim is the result of her coworkers reacting to her.

In summary, we conclude that the WCJ's decision does not contain an appropriate analysis of the evidence presented and is not properly supported by citation to the evidentiary record. We further conclude that while the WCJ's credibility determinations are entitled to great weight, the due process rights of the parties are paramount and require that the decision of the WCJ fully analyze credibility and the issues presented, and clearly designate the evidence that forms the basis of the decision. (*Hamilton*, *supra*, 66 Cal.Comp.Cases 473, 475.) Accordingly, we will grant reconsideration, rescind the F&O, and return this matter to the trial level.

2.

The parties and WCJ have treated this case, at least in the pleadings, as a specific injury. This is despite the testimony to injurious events occurring over time and medical reporting that refers to cumulative injury.

A cumulative injury is defined as one "occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment," and the date of a cumulative injury shall be the date determined under section 5412. (Lab. Code, § 3208.1.)

Section 5412 states: "The date of injury in cases of occupational diseases or cumulative injuries is the date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment." (Lab. Code, § 5412.) Thus, the date of injury per section 5412 is a specific day and may or may not be the same day as the end date of industrial exposure and the end date of the one year liability period established by section 5500.5.

"The number and nature of the injuries suffered are questions of fact for the WCJ or the WCAB." (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (*Austin*) (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323].) While the Appeals Board decides the issue of whether a cumulative injury exists, substantial medical evidence, however, must support the finding of industrial injury. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620 (Appeals Board en banc).)

Before any final analysis of the evidence may be made, it is important to establish the type of injury claimed as established by the evidence. This is because "[p]leadings may be amended by the Workers' Compensation Appeals Board to conform to proof." (Cal. Code Reg., tit. 8, § 10517.)

Here the parties stipulated, and the WCJ found, that applicant claimed injury "while employed on 9/21/17," a specific date of injury. (FIRST MOH, November 15, 2023, p. 2, lns 3-6; F&O, p. 1, finding 1.) The record, however, tells a different story.

Applicant testified that the "sexual harassment started in 2013" and "[a]lthough the problems started in 2013, she reported the behavior in 2017." (FIRST MOH, November 15, 2023, p. 10, lns 9-10; p. 11, lns 13-14.) In the August 3, 2018, SEIU Grievance, it was alleged that from "around 2013 to September 21, 2017; Felipe Jauregui, Maintenance Chief III, subjected [applicant] to verbal and physical sexual harassment" and that "sexual harassment turned into reprisal, discrimination and retaliation when three District Chiefs and the District Superintendent, Chris Spohrer, Felipe Jauregui, Rachel Arias, and Lynn Anderson acted in concert against [applicant] when she began acting as a union representative on 3/20/2017." (Exhibit D4, Grievance, PDF p. 23.)

In an August 20, 2022, report, Dr. Bellinger states: "The examinee's industrial injury was caused by *trauma as a result of her work-related activities over time* with substantial orthopedic injuries, as described above." (Exhibit A10, Raye Bellinger, M.D., August 20, 2022, p. 58, emphasis added.)

In his September 9, 2022 report, Dr. Light states "After Ms. Kensinger's industrial injury of September 21, 2017, she suffered harassment at work, which greatly increased her bruxism, her myofascial pain symptoms as well as her masticatory dysfunction. The mechanism of injury would be *worsening of her pre-existing condition by the stressful work environment at work*." (Exhibit A4, Jeffrey Light, D.D.S., September 9, 2022, p. 11, emphasis added.)

On November 7, 2022, Dr. Bellinger provided: "Clearly, *stress on the job in the form of harassment and retaliation* would promote the severity of tension headaches. Therefore, tension headaches would be in part related to the subsequent injury." (Exhibit A9, Raye Bellinger, M.D., November 7, 2022, p. 2, emphasis added.) And further that "if Ms. Kensinger had retaliation/harassment at work, part of her urticaria would have been aggravated by her work-related injury." (Exhibit A9, Raye Bellinger, M.D., November 7, 2022, p. 3.)

We do note the psychological opinions on causation have been vague or even contrary as to causation of injury. For example, "[i]t is my opinion with reasonable medical certainty that my medical findings are consistent with the industrial injury as alleged by Ms. Kensinger in that there is a mental disorder at this time and, in my opinion, this causes disability and there is need for treatment." (Exhibit A11, Jess Ghannam, Ph.D., May 23, 2021, p. 8.), And see, "Ms. Kensinger *injured herself* at California Department of Parks & Recreation *from SI: September 21, 2017* while employed as a Staff Systems Analyst. Specifically, she stated it was not a single incident. She was continually sexually *harassed and retaliated against while at work from approximately 2014-2017*." (Exhibit A7, Nhung Phan, Psy.D., July 22, 2022, p. 57, emphasis added.)

Typically, we defer to the parties' stipulations to further the public policies of settling disputes and expediting trials. (Lab. Code §5702; *County of Sacramento v. Workers' Comp. Appeals Bd.* (*Weatherall*) (2000) 77 Cal.App.4th 1114, 1119, [65 Cal.Comp.Cases 1].)

Here, however, the WCJ did not explain or analyze why the injury claimed is a specific when the bulk of the evidence supports a cumulative claim. We note that evaluating an injury typically requires expert medical opinion. This is especially true if the injury claimed is possibly a cumulative trauma.

As the Court of Appeal explained in *Peter Kiewit Sons v. I.A.C.* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188], "[e]xpert testimony is necessary where the truth is occult and can be found only by resorting to the sciences." Evaluating whether repetitive traumatic activities extending over time combined to cause injury is not subject to lay interpretation.

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].) "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].)

Here, as a precursor to any further findings, the parties and WCJ should clarify and confirm the nature of the injury claimed before proceeding and thereafter the WCJ may amend the pleadings to conform to proof if appropriate.

3.

After discussing expert medical opinion that uniformly appears to support an industrial injury the WCJ concludes: "As the undersigned found that the alleged harassment did not occur industrially, likewise, any alleged worsening of the applicant's pre-existing conditions would be non-industrial and could not be attributed to the [subsequent injury]." (Report, p. 8.) In reaching this conclusion, the WCJ improperly substitutes lay opinion for the necessary expert medical opinion.

This is because the record includes evidence of industrial injury that requires development: "*The plantar fibroma may be caused by cumulative trauma or idiopathic*." (Exhibit A3, Paul Kim, M.D., July 21, 2022, p. 13, emphasis added); and "It is my medical opinion that *the examinee needs the following specialist evaluations* to more specifically address possible impairment and disabilities which are outside my scope of expertise: 1. *Ophthalmologist*" as "there are also headache issues which require an evaluation." (Exhibit A59, Nhung Phan, Psy.D., April 25, 2025, p. 51, emphasis added).

These are just two examples of issues that require medical development. In addition, it is concerning that it appears none of the evaluating psychologists meaningfully reviewed the

Investigation Report (Exhibit D11, Investigation), the Grievance (Exhibit D4, Grievance), or the associated documents.[4] That there was an issue was apparent on the first day of trial when applicant attorney noted that "[n]one of the QMEs have seen these defense exhibits in order to weigh causation." (FIRST MOH, November 15, 2023, p. 3, lns 20-21.) It is imperative that an expert medical evaluator have and discuss the correct history and relevant documents on which to provide substantial medical opinion. That did not happen here.

The WCJ may well be correct that there is no worsening of applicant's pre-existing conditions that could be attributed to the subsequent injury or even that there is no injury, however such lay opinion is categorically not substantial without an expert medical opinion as foundation.

Under the constitutional mandate for the workers' compensation system the Legislature is "expressly vested with plenary power" . . . "to create and enforce a liability on the part of any or all persons *to compensate any or all of their workers for injury or disability*" and to "accomplish substantial justice in all cases *expeditiously, inexpensively, and without incumbrance of any character*." (Cal Const, Art. XIV § 4, emphasis added.)

SIBTF benefits fall under this constitutional mandate and where such benefits may be due the WCJ and the Appeals Board have a duty to further develop the record when there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board must "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) If the supplemental opinions of the previously reporting physicians do not or cannot cure the need for development of the medical record, the selection of an agreed medical evaluator (AME) by the parties should be considered. If none of the procedures outlined above is possible, the WCJ may resort to the appointment of a regular physician, as authorized by section 5701. (*McDuffie*, *supra*, at pp. 142-143.)

We will therefore also rescind the F&O to allow the record to be developed.

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[4] Dr. Ghannam does appear to list grievance documents under medical record review but without explanation or discussion. (Exhibit A13, Jess Ghannam, Ph.D., August 10, 2018, p. 5.)

4.

Here it is clear the case must be returned to the trial level to determine if the injury claimed is a specific or cumulative injury based on the facts presented, so that applicant's credibility may be considered on the entire record as to the event(s) asserted, as well as which necessary facts are established by the record. Additional medical opinions may be obtained, if necessary, to provide expert opinion based on the facts established at trial or on alternate hypothetical fact patterns which may be later tested at trial.

IV.

Following our independent review of the record, and for the reasons stated above, we grant applicant's March 10, 2026 Petition for Reconsideration, rescind the February 19, 2026 Findings and Order, and return the matter to the WCJ for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's March 10, 2026 Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the February 19, 2026 Findings and Order issued by the WCJ is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 9, 2026

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

ELIZABETH KENSINGER
ERIC HESTER
OFFICE OF THE DIRECTOR – LEGAL UNIT

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