WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FRANCISCO MARTINEZ, *Applicant*

vs.

WEST COAST PRIME MEATS, LLC; OLD REPUBLIC INSURANCE COMPANY, administered by GALLAGHER BASSETT SERVICES, INC., *Defendants*

Adjudication Number: ADJ11351201
Los Angeles District Office

OPINION AND DECISION
AFTER RECONSIDERATION

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O) issued on February 27, 2023, by the workers' compensation administrative law judge (WCJ). The WCJ found in pertinent part that applicant did not sustain industrial injury to his eyes, neck, shoulders, arms, hands, fingers, legs, ankles, circulatory and excretory system, and psyche and ordered that applicant take nothing on his claims.

Applicant contends that the WCJ erred in relying on the opinion of Panel Qualified Medical Evaluator (PQME) Leslie Shokes, M.D. Applicant asserts the opinion of PQME Dr. Shokes is not substantial medical evidence because it is speculative and fails to consider foundational medical facts, including cervical X-rays and improperly attributes the left shoulder pathology to prior nonindustrial events despite documentation in the medical records showing only a prior right shoulder injury. Furthermore, Dr. Shokes never performed a physical examination of the neck and failed to consider applicant's strenuous repetitive job duties.

We have received an Answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending we deny reconsideration.

We have considered the allegations in applicant's Petition, defendant's Answer and the contents of the WCJ's Report. Based on our review of the record and the reasons discussed below,

as our Decision After Reconsideration, we rescind the WCJ's F&O and return the case to the trial level for further proceedings consistent with this opinion.

BACKGROUND

Applicant, while employed during the period from September 12, 2015, to September 5, 2017, as a meat cutter, claims to have sustained industrial injury to his eyes, neck, shoulders, arms, hands, fingers, legs, ankles, circulatory and excretory system, and psyche.

The parties jointly submitted into evidence the PQME reports of Romualdo Rodriguez, M.D., (Joint Exs. 1-2), Dr. Shokes (Joint Exs. 3-5), David Sami, M.D., (Joint Exs. 6-8), Sameer Gupta, M.D. (Joint Exs. 9-11), and Clarke Espy, M.D., (Joint Exs. 12-13.) Applicant submitted into evidence the primary treating physician's reports of Archie Mays, M.D., (App. Ex. 6-7), and the subpoenaed records of Shammas Eye Medical Center, Prentice Mitri Hijazin Neurological Associates, Brea Urgent Care and Martin Luther King Junior Community Hospital, and Harbor UCLA Medical Center. (App. Exs. 2-4, 7.)

In his report dated June 20, 2018, Dr. Mays, after performing an orthopedic evaluation of applicant, stated that applicant sustained a cumulative injury from September 12, 2015, to September 5, 2017, while working as a meat cutter. He attributed applicant's pain and symptoms in his eyes, shoulders, hands, fingers, legs, and ankles to prolonged standing, walking, bending, stooping, gripping, grasping, lifting and carrying in a cold environment along with repetitive bilateral upper extremity use. (App. Ex. 5, p. 1.) Dr. Mays documented tenderness and limited ranges of motion in the bilateral shoulders, wrists and ankles with a positive Phalen's test and mildly positive Finkelstein's signs. (*Id.* at p. 3.)

In his permanent and stationary report from March 11, 2020, Dr. Mays diagnosed overuse syndrome featuring bilateral shoulder sprains, right shoulder bursitis, and a left shoulder labrum tear with tendinosis. He also identified bilateral cubital tunnel syndrome, left elbow ligament sprains, and bilateral wrist and ankle sprains. The findings included ganglion cysts and tendinosis in the wrists, mild osteoarthritis in the ankles, toxic eye exposure worse on the left, and myasthenia gravis. Dr. Mays concluded that causation of applicant's orthopedic claims was primarily work-related due to cumulative trauma sustained while performing customary butcher duties for two years. (*Id.* at pp. 7-8.)

In his report dated May 23, 2019, PQME Dr. Shokes, after performing an orthopedic evaluation of applicant, took a history that, as a meat trimmer, his daily job duties included

trimming meat, packing, and lifting boxes weighing up to 70 pounds. These tasks required frequent lifting, overhead reaching, stooping, and repetitive grasping. He stopped working on September 5, 2017, due to a neurological eye injury rather than orthopedic complaints, and he reported that his orthopedic pain began in 2018. (Joint Ex. 5, pp. 2-3.) During the physical evaluation, PQME Dr. Shokes documented several discrepancies including that applicant was a poor historian who gave random answers to direct anatomical questions. Grip strength testing showed significantly low results measuring 5/4/3 kg on the right and 3/2/1 kg on the left. The examination revealed gross Waddell's signs as he reported elbow pain during shoulder impingement testing and shoulder pain during testing for lateral epicondylitis of the elbow. PQME Dr. Shokes noted that applicant actively resisted shoulder motion during all attempts at testing, even with distraction. PQME Dr. Shokes concluded that applicant's active resistance and inconsistent responses prevented a complete and accurate objective physical examination of the shoulders and elbows. (*Id.* at p. 4.)

PQME Dr. Shokes diagnosed a nonindustrial cervical spine strain, nonindustrial degenerative joint disease in the bilateral shoulders and left ankle, and a right ankle tibial fracture related to a previous industrial claim. He noted that applicant initially sought treatment for an eye injury involving water and meat product splash on June 15, 2017. While he underwent treatment for diabetes, hypertension, and nerve palsies, his neurologist eventually removed him from the workplace on September 5, 2017. He did not report any orthopedic injuries to his supervisors prior to his departure. He first complained of orthopedic pain in June 2018 after seeking legal representation. Applicant resisted joint motion and reported non-anatomical pain during various testing modalities. Radiographic evidence confirmed degenerative changes and a prior fracture, but PQME Dr. Shokes found no evidence of a new industrial injury. He emphasized that applicant performed his regular duties without complaint or medical treatment for these areas until several months after he stopped working. Consequently, PQME Dr. Shokes concluded that all current bodily complaints fall outside of the workers' compensation system. (*Id.* at pp. 29-30.)

The medical evidence separately addressed the claimed specific injury to the left eye and its sequelae to the neurological system, the circulatory and endocrine systems, and the psyche. In his report dated September 21, 2020, PQME Dr. Sami, after performing an ophthalmological evaluation of applicant, took a history that animal blood products splashed onto his face and eyes.

He specifically identified an exposure date of June 15, 2017[1], which he claimed caused double vision and a drooping eyelid. (Joint Ex. 8, p. 8.) During the physical evaluation, PQME Dr. Sami recorded a best-corrected visual acuity of 20/25 in both eyes. The clinical exam noted pupils were equal, round, and reactive, with ocular motility demonstrating full ductions and versions. He observed symmetric eyelid heights and good levator function without any clinically significant ptosis. Furthermore, sustained upward gaze testing failed to produce any symptomatic vertical diplopia or clinically significant ptosis. (*Id.* at p. 11.) He also noted mild, age-related background nonproliferative diabetic retinopathy. (*Id.* at pp. 12-13.) He reviewed neurological records confirming a diagnosis of myasthenia gravis through laboratory testing. He explained that this disease is an autoimmune condition completely unrelated to employment. Consequently, he found that the exposure to animal blood products did not cause the myasthenia gravis or the visual complaints. (*Id.* at p. 14.)

In his report dated October 6, 2020, PQME Dr. Espy, after performing a neurological evaluation of applicant, documented a history that animal blood splashed into the left eye of the applicant on June 15, 2017, while he worked as a butcher. Applicant also claimed cumulative injuries to multiple body parts including his eyes, shoulders, hands, fingers, legs, arms and ankles along with internal and psychiatric conditions. (Joint Ex. 13, p. 2.) PQME Dr. Espy noted a very slight narrowing of the left palpebral fissure and a slight contracture of the left fingers and normal cranial nerve responses, equal and reactive pupils, and full eye movements. He also recorded normal coordination, normal gait, normal sensation, and normal motor function. Based on these physical findings, he diagnosed applicant with nonindustrial myasthenia gravis. PQME Dr. Espy concluded that applicant suffered no neurologic injury related to his claim and suspected the eye inflammation from the blood splash simply called attention to the underlying myasthenia gravis. (*Id.* at p. 32.)

PQME Dr. Espy issued a supplemental report on January 11, 2022, after reviewing 766 additional pages of medical records. The updated history indicated that Harbor-UCLA Medical Center treated applicant on August 6, 2019, for severe dysphagia and dysarthria after he was without myasthenia gravis medications for one month. (Joint Ex. 12, p. 2.) He underwent a thymectomy on November 13, 2020. (*Id.* at p. 6.) PQME Dr. Espy concluded, in contrast to his

[1] The medical report erroneously stated the exposure date was June 15, 2016.

prior opinion, that the trauma to the left eye caused an exacerbation of the underlying myasthenia gravis but later came under control and remission following the thymectomy. (*Id.* at p. 9.)

In his report dated November 7, 2020, PQME Dr. Gupta, after performing an internal evaluation of applicant, took a history that he reported that animal blood splattered into his left eye on June 15, 2017, causing him to seek treatment at Martin Luther King Emergency Room. (Joint Ex. 11, p. 2.) He claimed the subsequent work stress from ridicule from his co-workers due to his eye injury aggravated his preexisting diabetes. (*Id.* at p. 3.) During the physical examination, PQME Dr. Gupta recorded a significantly elevated blood pressure of 188 over 112. He diagnosed applicant with preexisting hypertension and diabetes. (*Id.* at p. 9.) PQME Dr. Gupta noted that applicant takes prednisone to treat his myasthenia gravis. PQME Dr. Gupta deferred his causation determination pending a neurological evaluation. He explained that, if the neurologist found the myasthenia gravis industrial, the resulting prednisone use and subsequent aggravation of hypertension and diabetes would also be industrial. (*Id.* at p. 10.)

PQME Dr. Gupta issued a supplemental report on March 22, 2021, having reviewed PQME Dr. Espy's neurological evaluation report dated October 6, 2020, concluding that applicant's myasthenia gravis was nonindustrial, but he did not review PQME Dr. Espy's supplemental January 11, 2022, report finding that the alleged toxic exposure exacerbated it. (Joint Ex. 10, p. 2.) Relying entirely on the wrong neurological opinion, PQME Dr. Gupta concluded that the prednisone treatment lacked industrial causation. Therefore, he determined that any alleged work injuries did not cause or aggravate applicant's hypertension and diabetes. (*Id.* at p. 3.)

In his report dated January 29, 2019, PQME Dr. Rodriguez, after performing a psychiatric evaluation of applicant, took a history of his employment as a butcher and described physical injuries including a June 15, 2017, incident where meat blood splashed into his left eye. (Joint Ex. 2, p. 8.) He reported experiencing workplace harassment following this injury and noted that co-workers teased him about his eye and called him offensive names. (*Id.* at p. 10.) Despite these allegations, he denied experiencing any significant depression or anxiety and explicitly stated he did not feel discouraged or irritable. (*Id.* at pp. 10, 15.) PQME Dr. Rodriguez conducted a mental status examination and recorded normal findings across all objective categories including appearance, behavior, speech, mood, and thought processes. (*Id.* at pp. 14-15.) Psychological testing via the MMPI showed an exaggeration pattern regarding medical complaints while the

Beck inventories showed minimal to no anxiety or depression. (*Id.* at p. 17.) He concluded that applicant did not suffer from a compensable psychiatric injury and diagnosed no psychiatric condition. (*Id.* at p. 6.)

PQME Dr. Rodriguez issued a supplemental report dated December 28, 2021, after reviewing an additional 770 pages of medical and personnel records. (Joint Ex. 1, p. 2.) These extensive records primarily detailed neurological and surgical treatments for physical conditions including myasthenia gravis and diabetes. (*Id.* at pp. 4-38.) The supplemental review confirmed that the medical record focused on the physical treatment of applicant rather than any psychiatric impairment. (*Id.* at p. 3.) PQME Dr. Rodriguez maintained his previous conclusion that applicant did not suffer from a compensable psychiatric injury. (*Id.* at p. 4.) PQME Dr. Rodriguez tied this conclusion to the continued absence of psychiatric findings and the lack of endorsed mental health symptoms during the evaluation process. He reiterated that applicant required no psychiatric treatment and that his distress stemmed from his physical medical diagnoses. (*Id.* at pp. 3-4.)

The subpoenaed records further document the ocular and neurological findings. The Shammas Eye Medical Center records detail optical examinations for applicant between April 7, 2016, and June 21, 2017. On August 26, 2016, when evaluated by Joseph Peters, M.D., applicant complained of distance and near vision blur, irritation, swelling, and a sand sensation leading to diagnoses of allergic conjunctivitis vitreous floaters and a mild cortical cataract. (App. Ex. 2, pp. 16-17.) On June 20, 2017, when evaluated by Maya Shammas, M.D., applicant presented with severe blurred vision and his left eye closing for eight days. (*Id.* at p. 12.) Dr. Shammas indicated applicant experienced periorbital edema five days prior after getting meat juice in his left eye, which he treated with cephalexin at the Martin Luther King Junior Community Hospital emergency room. Dr. Shammas diagnosed left eye ptosis and type two diabetes without complications noting a possible mechanical cause from recent cellulitis while being unable to rule out a third cranial nerve palsy. (*Id.* at p. 15.)

The records from Brea Urgent Care and Martin Luther King Junior Community Hospital contain emergency and urgent care evaluations from June 16, 2017, to October 10, 2017. On June 16, 2017, applicant presented to the Martin Luther King Junior Community Hospital emergency department complaining of left eye blurry vision and mild orbital swelling for one week and denied any trauma. (App. Ex. 4, p. 39.) Christopher Bowns, M.D., diagnosed an acute headache and left eyelid ptosis after a CT scan of the brain and face showed no acute intracranial

hemorrhage but, per the radiology report by Juan Villablanca, M.D., revealed scattered mucosal thickening in the maxillary sinuses and ethmoid air cells. (*Id.* at pp. 42, 45.) The hospital discharged applicant with a prescription for cephalexin. (*Id.* at p. 38.) On October 10, 2017, applicant visited Brea Urgent Care reporting a constant foreign body sensation and ptosis stating blood splashed into his left eye while cutting meat on June 15, 2017. (*Id.* at p. 11.) Brittney Blanchard, PA-C, noted right upper eyelid ptosis and concluded the right eye symptoms were not the result of a work related injury releasing applicant to return to work without restrictions. (*Id.* at pp. 12-13.)

The records from Prentice Mitri Hijazin Neurological Associates document applicant receiving treatment for eye ptosis and nerve palsy from August 8, 2017, to October 23, 2017. On August 8, 2017, Antoine Mitri, M.D., evaluated applicant who presented with right eye ptosis and reported that a drop of blood went into his left eye while cutting meat at work several months prior causing complete closure of the left eye and subsequent eye nerve paralysis. (App. Ex. 3, p. 12.) The physical examination revealed left eye ptosis with an inward deviation and Dr. Mitri diagnosed partial third nerve palsy and sixth nerve palsy of the left eye. He ordered an MRI scan of the head and noted the nerve palsy may be secondary to diabetes and hypertension. (*Id.* at p. 13.) During a follow up visit on September 6, 2017, applicant complained of headache, dizziness, and double vision with the physical exam again showing left eye ptosis and inward deviation. (*Id.* at pp. 10-11.) An MRI of the orbits by David P. Reiner, M.D., conducted on October 16, 2017, demonstrated normal results for the orbits and brain with findings of mild to moderate scattered mucosal thickening of the paranasal sinuses. (*Id.* at pp. 15-16.)

The Harbor UCLA Medical Center records span from August 6, 2019, to April 6, 2020, and document ongoing treatment for myasthenia gravis. On August 6, 2019, Dallas De La Vara, M.D., evaluated applicant at the neurology clinic following a hospital discharge for a myasthenia gravis flare reporting dysphagia, dysarthria, and a history of left eye vision loss that led to his initial diagnosis in October 2017. The physical examination demonstrated bilateral ptosis, mild facial droop, and dysarthria prompting Dr. De La Vara to prescribe prednisone and mycophenolate mofetil. (App. Ex. 7, p. 763.) During follow up visits on September 3, 2019, and October 1, 2019, applicant showed clinical improvement but continued to exhibit mild left ptosis and facial weakness. (*Id.* at pp. 723, 739.) On November 5, 2019, Christina Yuen, M.D., noted applicant had

clinically much improved and recommended a slow wean of prednisone while approving an electronic consultation for a possible thymectomy. (*Id.* at pp. 709-710.)

The parties proceeded to trial on December 13, 2022. The sole issue for trial was whether applicant's claimed injury was industrial.

Applicant testified in pertinent part as follows:

He began working for defendant as a butcher and trimmer in September 2015. (Minutes of Hearing / Summary of Evidence (MOH/SOE), 12/13/2022, 2:22-23.) His typical workday started at 1:30 p.m. and lasted 10 to 12 hours. (MOH/SOE, 12/13/2022, 2:25, 3:15-16.) He regularly packed dollies containing meat orders weighing up to 200 pounds. (MOH/SOE, 12/13/2022, 3:2-3.) He lifted bags of meat weighing 30 to 35 pounds. (MOH/SOE, 12/13/2022, 3:4-5.) He also passed meat through a machine containing chemicals and water. (MOH/SOE, 12/13/2022, 3:9-10.) He spent significant time trimming pieces of meat weighing 10 to 50 pounds with a knife. (MOH/SOE, 12/13/2022, 3:11-14.) This task required him to stand in a fixed position and repeatedly bend his elbows and shoulders. (MOH/SOE, 12/13/2022, 3:12-14.) He prepared approximately 2,000 packages of meat daily. (MOH/SOE, 12/13/2022, 3:14-15.)

Approximately one year after starting his employment, applicant experienced pain in his neck, shoulders, elbows, hands and feet. (MOH/SOE, 12/13/2022, 3:18-19.) He initially believed the cold work environment caused these physical complaints. (MOH/SOE, 12/13/2022, 4:2-3.) He sought medical treatment for these body parts from his primary care physician in September 2016. (MOH/SOE, 12/13/2022, 4:4-6.)

On June 15, 2017, a co-worker threw meat haphazardly and splashed blood into the left eye of applicant. (MOH/SOE, 12/13/2022, 3:20-21.) He subsequently developed a drooping eyelid and blurry vision. (MOH/SOE, 12/13/2022, 3:23-25.) He completely stopped working on September 4, 2017. (MOH/SOE, 12/13/2022, 4:23.) Following his departure from work, Pouya Lavian, M.D., diagnosed him with myasthenia gravis based on blood test results. (MOH/SOE, 12/13/2022, 5:5-6.) Dr. Lavian advised applicant that workplace stress likely triggered the condition. (MOH/SOE, 12/13/2022, 5:6-7.) He also took prednisone to treat his closed left eyelid. (MOH/SOE, 12/13/2022, 6:8-10.) This specific medication temporarily aggravated his preexisting diabetes. (MOH/SOE, 12/13/2022, 6:6-7).

Applicant also experienced bullying from co-workers regarding his drooping eyelid. (MOH/SOE, 12/13/2022, 4:9-10). Co-workers called him a "floozy" and made offensive

comments about his mother. (MOH/SOE, 12/13/2022, 4:10-12.) Another co-worker struck him in the back with a metal glove. (MOH/SOE, 12/13/2022, 4:8-9.) He reported these incidents and his resulting emotional distress to Human Resources and management. (MOH/SOE, 12/13/2022, 4:12-14.) The bullying made him feel desperate. (MOH/SOE, 12/13/2022, 4:15.)

He suffered prior workplace injuries at La Mejor Market in October 2014 and at Mill Oak and Pine in 2002. (MOH/SOE, 12/13/2022, 6:10-13.) He disclosed those prior injuries to Dr. Mays. (MOH/SOE, 12/13/2022, 6:12-15.)

In March 2020, Dr. Mays released applicant to return to modified work, but his employer only offered him a cleaning position. (MOH/SOE, 12/13/2022, 5:11-12, 14.) He declined this job due to his ongoing hand and shoulder pain and currently performs lighter duties at a retail butcher shop. (MOH/SOE, 12/13/2022, 5:14-17.)

On February 27, 2023, the WCJ issued her F&O, ordering that applicant take nothing on the claims filed herein.

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

DISCUSSION

Labor Code section 3600[2] imposes liability on an employer for workers' compensation benefits only if its employee sustains an injury "arising out of and in the course of employment." (Lab. Code, § 3600.) An employee seeking workers' compensation benefits has the burden of proving industrial causation. (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.App.4th 644, 650 [63 Cal.Comp.Cases 253] citing *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) However, in order to prove industrial causation, the employee need only show that industrial factors were a contributing cause of the injury, requiring only that industrial causation was "not zero" and with all reasonable doubts to be resolved in their favor. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 299 [80 Cal.Comp.Cases 489]; *Ruiz v. Carter & Carter, APLC* [2026 Cal. Wrk. Comp. P.D. LEXIS 7, *9]; *Serrano v. Big Idea Holdings, LLC* [2025 Cal. Wrk. Comp. P.D. LEXIS 384, *12]; *Fishel v. Rick's Lube and Complete Auto* [2025 Cal. Wrk. Comp. P.D. LEXIS 255, *19]; *De*

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

Bartolo v. S. Cal. Pizza Co. [2023 Cal. Wrk. Comp. P.D. LEXIS 85, *10]; *Cervantes v. Reycon Construction* [2022 Cal. Wrk. Comp. P.D. LEXIS 378, *9].) [3]

Pursuant to section 3208.1:

> An injury may be either: (a) 'specific' occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) 'cumulative' 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. The date of a cumulative trauma injury shall be the date determined under section 5412.

(Lab. Code, § 3208.1.)

In any given situation, there can be more than one injury, either specific or cumulative or a combination of both, arising from the same event or from separate events. (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd*. (*Austin*) (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323].) The number and nature of the injuries suffered are questions of fact for the WCJ or the Appeals Board. (*Aetna Cas. & Surety Co. v. Workmen's Comp. Appeals Bd*. (*Coltharp*) (1973) 35 Cal.App.3d 329, 341 [38 Cal.Comp.Cases 720]; *LeVesque v. Workmen's Comp. App. Bd*. (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16].)

An occupational disease is one where the symptoms are latent after exposure to a disease-causing agent in the workplace. (*General Dynamics Corp. v. Workers' Comp. Appeals Bd.* (1999) 71 Cal.App.4th 624, 629 [64 Cal.Comp.Cases 515]. Given its latency, it may not be possible to pinpoint with certainty the date of exposure. (*Dieball v. State of California* [2022 Cal. Wrk. Comp. P.D. LEXIS 15, *7]; see *Leggette v. CPS Security* [2020 Cal. Wrk. Comp. P.D. LEXIS 3, *8-9] ("[r]equiring an injured worker to know the exact date of exposure in a case like this one would be nearly impossible, and would be counter to the Constitutional mandate that the workers' compensation system 'accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.'")

> [T]he "date of injury" in latent disease cases "must refer to a period of time rather than to a point in time." (Citation.) The employee is, in fact, being injured prior to

[3] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

> the manifestation of disability...[T]he purpose of section 5412 was to prevent a premature commencement of the statute of limitations, so that it would not expire before the employee was reasonably aware of his or her injury.

(*J. T. Thorp v. Workers' Comp. Appeals Bd.* (*Butler*) (1984) 153 Cal.App.3d 327, 340-341 [49 Cal.Comp.Cases 224].)

Thus, where a specific date of injurious exposure is unknown, an applicant may allege a cumulative trauma over the approximate employment period to preserve the claim, with the "date of injury" determined under section 5412. (See *County of Los Angeles v. Workers' Comp. Appeals Bd.* (*Gleason*) (2002) 67 Cal.Comp.Cases 1049 (writ denied) [applicant suffered dirty needle sticks on three to four occasions, but could not recall specific date except that it was sometime between July 1987 to May 1989, and was not precluded from pleading cumulative injury]; see also *Los Angeles County Office of Educ. v. Workers' Comp. Appeals Bd.* (*Guajardo*) (2003) 68 Cal.Comp.Cases 1505 (writ denied) [decedent's death from Hepatitis C virus when history of child with Hepatitis C virus biting her and other children scratching her deemed properly pled as cumulative injury, found industrially related and not barred by statute of limitations].)

Furthermore, to constitute an industrial psychological injury, an employee must have sustained a compensable mental disorder, either directly or as a compensable consequence, "which cause[d] disability or [the] need for medical treatment." (Lab. Code, § 3208.3(a).) Disability is evidence that there is either compensable "temporary disability" or "permanent disability." (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Rodarte*) (2004) 119 Cal.App.4th 998, 1005 [69 Cal.Comp.Cases 579].) Therefore, a physician, in determining compensability, must analyze all the causal factors that contributed to the employee's first need for psychiatric temporary disability and/or the need for medical treatment.

Pursuant to section 3208.3(b)(1), to establish that a psychiatric injury is compensable, an employee must show by a preponderance of the evidence that actual events of employment predominantly caused the psychiatric injury.

The multilevel analysis to establish compensability for claims of injury based on personnel actions, in accordance with *Rolda v. Pitney Bowes. Inc.* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc) (*Rolda*), is as follows:

(1) whether the alleged psychiatric injury involves actual events of employment, a factual/legal determination;

(2) if so, whether such actual events were the predominant cause (more than 50%) of the psychiatric injury, a determination which requires medical evidence;
(3) if so, whether any of the actual employment events were personnel actions that were lawful, nondiscriminatory and in good faith, a factual/legal determination; and
(4) if so, whether the lawful, nondiscriminatory, good faith personnel actions were a 'substantial cause' (i.e., accounting for at least 35 to 40%) of the psychiatric injury, a determination which requires medical evidence.

(*Id.* at p. 247.)

Finally, the law requires the Appeals Board to base its decisions on substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) To constitute substantial evidence, a medical opinion must state its conclusions in terms of reasonable probability, avoid speculation, rely on pertinent facts and an adequate examination and history, and explain the reasoning supporting its conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) Medical reports and opinions do not constitute substantial evidence when they contain known errors or rely on facts that are no longer germane, inadequate medical histories or examinations, or incorrect legal theories. Likewise, a medical opinion cannot support the Appeals Board's findings if it rests on surmise, speculation, conjecture, or guesswork. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].) Accordingly, the Appeals Board may reweigh the evidence and reach a decision different from the WCJ's determination when other evidence of substantial probative value supports a contrary conclusion. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.2d 312, 318-319 [35 Cal.Comp.Cases 500].)

Here, applicant filed only a cumulative injury claim from September 12, 2015, to September 5, 2017, to multiple body systems yet the record reveals an apparent specific injury involving a blood splash into his left eye on or about June 15, 2017, raising a section 5412 issue. While the parties have submitted extensive PQME reporting across ophthalmologic, orthopedic, internal medicine, neurological and psychiatric specialties, the medical evidence remains

materially inconsistent, internally conflicted and, in several respects, dependent upon incomplete factual assumptions or unresolved foundational issues.

The treating records establish a materially inconsistent clinical history regarding the timing of the alleged splash exposure, as well as the onset and progression of ocular and neurological symptoms. These records span several facilities, including Shammas Eye Medical Center, Brea Urgent Care, Martin Luther King Junior Community Hospital, Prentice Mitri Hijazin Neurological Associates, and Harbor UCLA Medical Center. Ultimately, these inconsistent histories formed the flawed foundation for the industrial causation opinions offered by the PQMEs.

The earliest contemporaneous record from June 16, 2017, at Martin Luther King Junior Community Hospital reflects complaints of left eye blurry vision for one week with no reported history of trauma, which directly conflicts with later accounts of an acute industrial exposure on June 15, 2017. Four days later, on June 20, 2017, Shammas Eye Medical Center documents a different history in which applicant reported periorbital edema occurring several days after meat juice entered the left eye, with findings of left eye ptosis and a possible third cranial nerve palsy. Subsequent records continue to shift both the mechanism and laterality of symptoms. The August 8, 2017 neurological evaluation by Dr. Mitri records right eye ptosis on presentation while attributing the condition to a prior left eye exposure that allegedly caused complete closure and nerve paralysis, yet still results in a diagnosis involving left-sided cranial nerve palsies. The October 10, 2017 Brea Urgent Care record again alters the clinical picture by documenting a history of blood exposure to the left eye while identifying right upper eyelid ptosis and concluding the condition was not work related. By 2019, Harbor UCLA Medical Center records reflect an evolved diagnosis of myasthenia gravis with bilateral ptosis and a retrospective history of left eye vision loss, further expanding the scope of symptom involvement beyond the initially reported unilateral presentation.

Similarly, the ophthalmological and neurological evidence fails to align. PQME Dr. Sami concludes that applicant's visual complaints are not industrial and attributes the condition to nonindustrial myasthenia gravis supported by largely normal ocular findings and stable extraocular movements. In contrast, PQME Dr. Espy acknowledges initially that it was nonindustrial but later opined that there was a temporal relationship between the alleged ocular exposure and subsequent symptom amplification, describing it as an exacerbation of the underlying myasthenia gravis. An exacerbation is a temporary increase in the symptoms of a preexisting condition that returns to

its prior level within a reasonable period. However, an aggravation is an increase in the severity of a preexisting condition where the underlying pathology moves permanently to a higher level. The industrial aggravation of a preexisting condition constitutes an injury for workers' compensation purposes. (*Tanenbaum v. I.A.C.* (1935) 4 Cal.2d 615, 617; *Zemke v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 796-197 [33 Cal.Comp.Cases 358]; *Reynolds Electrical & Engineering Co. v. Workers' Comp. Appeals Bd.* (*Buckner*) (1966) 65 Cal.2d 438, 442-443 [31 Cal.Comp.Cases 421].) These internally inconsistent causation opinions fail to resolve whether the alleged incident was merely a coincidental exposure, a triggering event, or a temporary exacerbation of the myasthenia gravis.

The neurological and internal medicine evidence further compounds the evidentiary uncertainty. PQME Dr. Gupta expressly defers his causation determination pending a neurological evaluation. He subsequently adopts a derivative conclusion based entirely on the initial, though later vacated, opinion of PQME Dr. Espy. This cascading reliance underscores the absence of an independent causation analysis regarding secondary systemic effects, specifically the prednisone-related metabolic aggravation. Consequently, the record lacks a standalone determination as to whether the claimed hypertension and diabetes conditions constitute compensable consequences of the alleged industrial neurological pathology.

The psychiatric evidence similarly fails to resolve the claimed injury. PQME Dr. Rodriguez diagnoses no psychiatric disorder, instead attributing all the emotional distress directly to the physical medical conditions despite explicitly acknowledging the workplace harassment allegations. Consequently, the record lacks an integrated analysis determining whether the cumulative workplace stressors constitute a compensable psychiatric injury under section 3208.3 and *Rolda*. His reporting failed to address whether applicant's reported teasing, bullying, and physical altercations, which allegedly stemmed from his drooping left eyelid, resulted in a psychiatric injury as a compensable consequence of the alleged specific injury. In addition, PQME Dr. Rodriguez failed to opine on whether the physiological results of the September 12, 2015, to September 5, 2017, injury independently produced a compensable psychiatric consequence injury.

Finally, the orthopedic record suffers from serious deficiencies. PQME Dr. Shokes documents significant examination inconsistencies, gross Waddell's findings, and non-organic pain behaviors that prevent a reliable musculoskeletal assessment. At the same time, Dr. Mays reports extensive structural pathology including multi-joint sprains, tendinopathies, nerve

entrapments, and internal derangements, yet does so without reconciling the absence of contemporaneous orthopedic complaints while employed or addressing the significant discrepancy between reported functional capacity and observed clinical behavior during PQME Dr. Shokes' evaluation. Dr. Mays also took an incorrect history that applicant suffered a direct toxic exposure injury to both eyes rather than just the left eye and failed to review any of his prior medical records. The competing interpretations of the same claim require clarification that cannot be resolved on the existing record.

"[I]n order to ensure reliance on substantial evidence, and a complete adjudication of the issues consistent with due process," the WCJ and the Appeals Board both have a duty to further develop the record where there is an absence of, or insufficient evidence to determine the issues raised for trial. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal. App.4th 389, 393-395 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; see Lab. Code, §§ 5701 and 5906; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 139 (Appeals Board en banc).) Indeed, the Appeals Board has a constitutional mandate to "ensure substantial justice in all cases," and is therefore "clearly permitted" to admit evidence even after the discovery cut-off under section 5502(d)(3). (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-405 [65 Cal.Comp.Cases 264].) "[A]llowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims" and militates in favor of our presuming the continued vitality of sections 5701 and 5906, absent a clear legislative intention to the contrary. (*Tyler*, *supra*, 56 Cal.App.4th at p. 394.) An adequately developed record affords all parties due process of law and further provides for meaningful review by the Appeals Board of a WCJ's decision. (*Evans v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]; *Hernandez v. Staff Leasing* (2011) 76 Cal.Comp.Cases 343, 346-347 (Appeals Board significant panel decision).)

Pursuant to sections 5701 and 5906, a WCJ or the Appeals Board may not leave undeveloped issues that, through the exercise of its specialized knowledge, recognizes as requiring further evidentiary development. (*Kuykendall*, *supra*, 79 Cal.App.4th at p. 404.)

We further 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 having granted reconsideration, 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. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. I.A.C.* (1958) 50 Cal. 2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor."].)

For the reasons discussed, the parties must obtain clarifying medical-legal opinions that establish a coherent and consistent chronology of symptom onset across all claimed body systems. This development is necessary to determine whether the alleged toxic exposure to the left eye aggravated or exacerbated applicant's myasthenia gravis, thereby leading to prednisone treatment and the subsequent alleged aggravation of his hypertension and diabetes mellitus. In addition, given the unclear date of specific exposure, the parties may want to consider the applicability of the "date of injury" pursuant to section 5412. The record must also address whether any compensable psychiatric injury arose from the alleged workplace harassment or from the effects of the applicant's physical condition. In addition, the parties must clarify the alleged orthopedic cumulative injury claim and evaluate whether any internal, neurological, or psychiatric conditions constituted compensable consequences of that claimed injury.

Finally, we note that defendant raised the defenses barring applicant's claim pursuant to sections 3203.8(e), 3208.3(h) and 3600(a)(10), but the WCJ did not adjudicate them deeming them moot. We make no decision on those issues at this time.

Accordingly, as our Decision After Reconsideration, we rescind the F&O and return the case to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the February 27, 2023 Findings and Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 7, 2026

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

FRANCISCO MARTINEZ
LAW OFFICES OF TELLERIA, TELLERIA & LEVY, LLP
MICHAEL SULLIVAN & ASSOCIATES LLP
EMPLOYER DEFENSE GROUP, LLP

DLP/md

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