WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

LINDA TREJO, *Applicant*

vs.

PACIFIC CAPITAL BANK; TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA; UNION BANK, acquired by U.S. BANK TOKIO MARINE INSURANCE, administered by CCMSI, *Defendants*

Adjudication Numbers: ADJ11183397; ADJ11183422; ADJ8313173
Santa Barbara District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Joint Findings and Award issued by the workers' compensation administrative law judge (WCJ) on February 18, 2026. Therein, the WCJ found that, in Case No. ADJ18313173 (MF), applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to her internal system in the form of sleep, right elbow, right wrist, right shoulder, left shoulder, neck, hypertension, and injury to her stomach in the form of GERD, while employed as a data entry clerk, during the period March 15, 2002 through January 24, 2011, causing 76% permanent disability. In Case No. ADJ11183397, the WCJ found that applicant sustained injury AOE/COE to her internal system in the form of sleep, right elbow, right wrist, right shoulder, left shoulder (left upper extremity), neck, hypertension, and injury to her stomach in the form of GERD, while employed during the period June 3, 2015 through April 7, 2016, causing 76% permanent disability. In Case No. ADJ11183422, the WCJ found that applicant sustained injury AOE/COE to her internal system in the form of sleep, right elbow, right wrist, right shoulder, left shoulder (left upper extremity), neck, hypertension, and injury to her stomach in the form of GERD, while employed during the period June 3, 2015 through April 7, 2016, causing 76% permanent disability. The Joint Findings of Fact include three separate findings of 76% permanent disability, one under each separate Case Number, each denoted as

Findings of Fact "8." In all three cases, the WCJ found that "for permanent disability purposes the three continuous traumas are inextricably intertwined and there is no basis for legal apportionment." Based on these findings, the WCJ issued a Joint Award for "[p]ermanent disability as provided in Finding number 8."

Defendant contends that the WCJ erred in finding one continuous trauma period, in failing to rely on regular physician Jeffrey Hirsch, M.D., to find apportionment, and that permanent disability for hypertension should be combined and not added.

Applicant filed an Answer. The WCJ issued a Joint Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant the Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code[1] section 5950 et seq.

I.

Preliminarily, we note that former 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.

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

> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on April 8, 2026 and 60 days from the date of transmission is Sunday, June 7, 2026. The next business day that is 60 days from the date of transmission is Monday, June 8, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] . This decision is issued by or on Monday, June 8, 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 be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on April 8, 2026, and the case was transmitted to the Appeals Board on April 8, 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 8, 2026.

II.

The WCJ provided the following discussion in the Report:

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

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

FACTS

Applicant was employed as a data entry clerk and filed three (3) claims for injuries sustained.

A continuous trauma claim was filed for the period of March 15, 2002, through January 24, 2011, to her right elbow, right wrist, right shoulder, left shoulder, neck, and internal in the form of sleep.

A second continuous trauma claim was filed stating the period of exposure to have been from September 1, 2011, through June 3, 2015. This claim alleged injuries to the right shoulder, left shoulder, right upper extremity, left wrist, and left fingers and was later amended to add internal in the form of hypertension and internal in the form of GERD.

The third claim alleged a continuous trauma to the neck, left shoulder, left wrist, and left finger. This claim was also subsequently amended to include internal in the form of hypertension and internal in the form of GERD.

The first two claims resolved by way of a 7% Stipulated Findings and Award based on the medical reporting of Asher Kupperman, M.D.

A timely petition to reopen was filed as to the first two claims hereinabove, and a third continuous trauma claim was also filed.

Trial was initially held on September 29, 2022. Following trial, pursuant to L.C. § 5701, two physicians were appointed by the WCJ.

Peter Newton, M.D., to address the orthopedic body parts and/or complaints and Jeffrey Hirsch, M.D., to evaluate any internal systems and/or complaints.

Peter Newton, M.D., authored three narrative medical reports and was deposed on one occasion. Jefffrey Hirsch, M.D., authored four reports and was deposed on one occasion. Following the completion of this discovery, the matter proceeded to trial again on November 18, 2025.

Following this trial, a Findings & Award issued holding inter alia, the three claims are inextricably intertwined so as to result in one long continuous trauma period, finding Defendant's has failed in their burden on L.C. § 4663 apportionment, and the adding of the disabilities rather than combining them, pursuant to the doctor's recommendation, Defendant filed this petition for reconsideration.

(Report, at pp. 1-2.)

III.

We highlight the following legal principles that may be relevant to our review of this matter:

Section 4663 provides that "[a]pportionment of permanent disability shall be based on causation." (Lab. Code, § 4663(a).) A doctor who prepares a report addressing the issue of permanent disability due to a claimed industrial injury must address the issue of causation of the permanent disability. (Lab. Code, § 4663(b).) Section 4663 requires that the doctor "make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries." (Lab. Code, § 4663(c).) Pursuant to section 4663(c) and section 5705, defendant has the burden of establishing the approximate percentage of permanent disability caused by factors other than the industrial injury. (*Benson v. Workers' Comp. Appeals Bd*. (2009) 170 Cal.App.4th 1535, 1560 [74 Cal.Comp.Cases 113]; *Kopping v. Workers' Comp. Appeals Bd*. (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 607 (Appeals Board en banc).)

The report by the physician addressing the issue of apportionment must be supported by substantial evidence. (*Escobedo, supra*, 70 Cal.Comp.Cases at p. 620, citing Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) 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. (*Hegglin, supra*, 4 Cal.3d at p. 169; *Place v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 372, 378–379 [35 Cal.Comp.Cases 525].)

In order to comply with section 4663, a physician's report in which permanent disability is addressed must also address apportionment of that permanent disability. However, the mere fact that a physician's report addresses the issue of causation of permanent disability and makes an apportionment determination by finding the approximate respective percentages of industrial and

non-industrial causation does not necessarily render the report substantial evidence upon which we may rely.

In the context of apportionment determinations, the medical opinion must disclose familiarity with the concepts of apportionment, describe in detail the exact nature of the apportionable disability, and set forth the basis for the opinion, so that the Appeals Board can determine whether the physician is properly apportioning under correct legal principles. (*Escobedo, supra*, 70 Cal.Comp.Cases at p. 621.) Our decision in *Escobedo* summed up the minimum requirements for an apportionment analysis as follows:

> [T]o be substantial evidence on the issue of the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors, a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions.
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> For example, if a physician opines that approximately 50% of an employee's back disability is directly caused by the industrial injury, the physician must explain **how** and **why** the disability is causally related to the industrial injury (e.g., the industrial injury resulted in surgery which caused vulnerability that necessitates certain restrictions) and **how** and **why** the injury is responsible for approximately 50% of the disability. And, if a physician opines that 50% of an employee's back disability is caused by degenerative disc disease, the physician must explain the nature of the degenerative disc disease, how and why it is causing permanent disability at the time of the evaluation, and how and why it is responsible for approximately 50% of the disability.

(*Ibid.*, emphasis added.)

The issue of how many cumulative injuries an employee sustained is a question of fact for the Workers' Compensation Appeals Board. (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 234-235 [58 Cal.Comp.Cases 323]; *Aetna Casualty & Surety Co. v. Workmen's Comp. Appeals Bd. (Coltharp)* (1973) 35 Cal.App.3d 329, 341 [38 Cal.Comp.Cases 720].) In *Coltharp*, the applicant's initial work duties, which he described as "heavy labor," caused cumulative trauma resulting in disability and a need for medical treatment, including back surgery. After the applicant returned to work, he was assigned "lighter work," but he still had to do some lifting as well as crawling through pipe. He said of his post-return work duties, "regardless of everything I did, it was aggravating on my back." A physician stated that applicant's post-return cumulative work activities were "the immediate precipitating

factor that necessitated" another back surgery. Based on these facts, the *Coltharp* Court found that the applicant had sustained two separate cumulative injuries, i.e., one before and one after the initial period of disability and need for treatment, and that to conclude, otherwise would violate the anti-merger provisions of sections 3208.2 and 5303.

In *Austin*, the applicant's increasing work responsibilities precipitated a major depression, resulting in temporary disability and a need for treatment, including psychiatric hospitalization. After receiving psychiatric treatment and being off work for a period of time, the applicant returned to work. However, when the applicant returned to work, he had not fully recovered from his depressive episode, he remained under a doctor's care and on medication, and he became progressively worse. It was the same stress that resulted in the initial hospitalization that further exacerbated applicant's problem after he returned to work. Based on these facts, the *Austin* Court concluded the applicant had only one continuous compensable injury because, unlike Coltharp, his two periods of temporary disability were linked by the continued need for medical treatment and the two periods were not "distinct."

When the holdings of *Austin* and *Coltharp* are harmonized and read in conjunction with the section 3208.1 definition of "cumulative injury" and the anti-merger provisions of sections 3208.2 and 5303, the following principles are revealed:

(1) if, after returning to work from a period of industrially-caused disability and a need for medical treatment, the employee's repetitive work activities again result in injurious trauma—i.e., if the employee's occupational activities after returning to work from a period of temporary disability cause or contribute to a new period of temporary disability, to a new or an increased level of permanent disability, or to a new or increased need for medical treatment—then there are two separate and distinct cumulative injuries that cannot be merged into a single injury (Lab. Code, §§ 3208.1, 3208.2, 5303; *Coltharp, supra*, 35 Cal.App.3d at p. 342); and

(2) if, however, the employee's occupational activities after returning to work from a period of industrially-caused disability are not injurious—i.e., if any new period of temporary disability, new or increased level of permanent disability, or new or increased need for medical treatment result solely from an exacerbation of the original injury—then there is only a single cumulative injury and no impermissible merger occurs. (Lab. Code, [3] §§ 3208.1, 3208.2, 5303; *Austin, supra*, 16 Cal.App.4th at p. 235.)

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

Here, it appears from our preliminary review that the record may not be complete regarding the issues of the number of cumulative injuries and apportionment. We also note a lack of clarity in the drafting of the Joint Findings and Award regarding permanent disability. Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

IV.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

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. Industrial Acc. Com*. (*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. Industrial Acc. Com*. (*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. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com*. (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.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd*. (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd*. (1967) 67 Cal.2d 483,

491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra,* at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

V.

Accordingly, we grant defendant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. ***While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to*** WCABmediation@dir.ca.gov.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 8, 2026

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

LINDA TREJO
STOUT, KAUFMAN, HOLZMAN & SPRAGUE, APC
LLARENA MURDOCK LOPEZ & AZIZAD, APC
WOOLFORD & ASSOCIATES

PAG/cm

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