**WORKERS' COMPENSATION APPEALS BOARD**
**STATE OF CALIFORNIA**

**RAQUEL VILLALOBOZ, *Applicant***

**vs.**

**DCD ELECTRIC, INC.; CHUBB, administered by ESIS, *Defendants***

**Adjudication Number: ADJ12221422**
**Los Angeles District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Lien claimant Dental Trauma Center (lien claimant) seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Orders (F&O) of April 15, 2026, wherein the WCJ found in pertinent part that: 1) applicant while employed on March 9, 2019 as a journeyman electrician sustained injury arising out of and in the course of employment (AOE/COE) to the cervical spine, lumbar spine, head, psyche, right knee, bilateral shoulders, left elbow, right knee, and right ankle; and that 2) applicant did not sustain a dental injury.

Lien claimant contends that the WCJ erred in finding that applicant did not sustain a dental injury because: 1) the WCJ failed to address substantial medical evidence by failing to analyze, discuss or mention Dr. Schames' and Dr. Pietruszka's reporting and, "[i]nstead, the WCJ denied the claim solely because 'no testimony' was elicited"; 2) the decision should be based on medical evidence and not lay testimony; 3) if the WCJ thought the evidence was insufficient, then the record should have been developed; and 4) the finding regarding substantial evidence requires medical reasoning of solid value.

No party filed an answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

In response to the WCJ's Report and Recommendation, lien claimant filed a supplemental pleading but did not request permission from the Appeals Board. We do not accept or consider the supplemental petition. (Cal. Code Regs., tit. 8, § 10964(b).)

We have considered the allegations in the Petition and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will grant lien claimant's Petition, and we will affirm the F&O, except that we will amend it to find that applicant's injury was in the "course" of employment and that applicant sustained dental injury. (Findings of Fact, 1 and 2.)

## BACKGROUND

Applicant sustained injury AOE/COE while employed by defendant on March 29, 2019 and claimed injury to various body parts, including dental. As alleged by lien claimant in its Petition:

> The evidentiary record contains multiple admitted dental reports, including:
>
> 1. Report of Mayer Schames, DDS dated October 1, 2020, diagnosing TMJ dysfunction, bruxism, facial pain, gum inflammation, and functional impairment.
>
> 2. Report of Marvin Pietruszka, MD dated December 16, 2019, documenting ongoing craniofacial symptomatology including headaches and facial complaints consistent with dental/TMJ pathology.
>
> These reports were admitted into evidence and constitute the only medical evidence addressing the dental system.
>
> Despite this, the WCJ concluded there was no dental injury based solely on lack of testimony.

(Petition, pp. 1-2.)

## DISCUSSION
## I.

Former Labor Code[1] section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

[1] All further references are to the Labor code, unless otherwise stated.

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected 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 May 6, 2026, and 60 days from the date of transmission is Sunday, July 5, 2026. The next business day that is 60 days from the date of transmission is Monday, July 6, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, July 6, 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 May 6, 2026, and the case was transmitted to the Appeals Board on May 6, 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

[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

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 May 6, 2026.

**II.**

Pursuant to section 5705, "The burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.) Section 3202.5 states that, "All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence." (Lab. Code, § 3202.5; *Boehm & Associates v. Workers' Comp. Appeals Bd.* (*Brower*) (2003) 108 Cal.App.4th 137, 150 [68 Cal.Comp.Cases 548, 557.) Where a lien claimant, rather than the injured worker, litigates the issue of entitlement to injury, the lien claimant stands in the shoes of the injured worker and the lien claimant must establish injury by preponderance of evidence. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Martin*) (1985) 39 Cal.3d 57, 67 [50 Cal.Comp.Cases 411]; *Kunz v. Patterson Floor Coverings, Inc.*, (2002) 67 Cal.Comp.Cases 1588, 1592 (Appeals Board en banc.)

An employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a) & 3202.5.) The Supreme Court of California has long held that an employee need only show that the "proof of industrial causation is reasonably probable, although not certain or 'convincing.'" (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].) However, "Where an issue is exclusively a matter of scientific medical knowledge, expert evidence is essential to sustain a [WCAB] finding; lay testimony or opinion in support of such a finding does not measure up to the standard of substantial evidence. [citations] Expert testimony is necessary 'where the truth is occult and can be found only by resorting to the sciences.' [citation]." (*Peter Kiewit Sons v. I.A.C.* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].)

Here, the WCJ found that applicant did not sustain a dental injury. The Report states, "[t]here was, however, no testimony elicited [from applicant] to support a claim for a dental injury." The WCJ further states in his report that,

> [p]etitioner did not participate in the Trial, but the Applicant was examined by her attorney at trial about her various complaints [MOH/SOE 07/15/2025 at pp.2-3]. The question here is whether Applicant met her burden of proof on the issue of injury to the dental system. . . . Defendant presented evidence which better aligned with Applicant's trial testimony describing Applicant's symptoms. . . .

(Report, 5/6/2026, p. 3.)

We disagree. There is no requirement in workers' compensation law that the injured worker provide testimony regarding her injuries when there is substantial medical evidence in the record of proceedings substantiating the injury. Thus, we consider the question of whether Dr. Schames' reporting is substantial evidence to support a finding of injury.

It is well established that decisions by the Appeals Board must be based 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]; *Le Vesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620 [Appeals Bd. en banc].) Substantial evidence has been described as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and must be more than a mere scintilla. (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566].) As the Court of Appeal wrote in *E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687], "In order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. [Citation.] Also, 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. [Citation.] Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. [Citation.]"

Here, on December 16, 2019, applicant was evaluated by Marvin Pietruszka, M.D., for an occupational/internal medicine consultation. Dr. Pietruszka's report states that applicant was referred to him for evaluation and treatment of various musculoskeletal and other injuries that she sustained over the course of her employment with defendant. (Exhibit 5, 12/16/2019, p. 1.) Notably, applicant sustained a traumatic brain injury with a loss of consciousness. Under objective findings, bilateral TMJ pain is listed and under subjective complaints headaches and jaw clenching are listed. (Exhibit 5, 12/16/2019, p. 9.)

At the mandatory settlement conference on April 23, 2022, applicant only identified reporting from October 1, 2020, by David Schames, D.D.S., one of lien claimant's providers, and at trial on June 3, 2025, applicant only submitted the October 1, 2020 report (Exhibit 4).

However, according to the reporting of QME Ronald B. Perelman, M.D. (Exhibit 1, 9/15/2021), applicant was evaluated by Dr. Schames on June 22, 2020. In the "ADDENDUM"-MEDICAL RECORD REVIEW section of the report under DENTAL RECORDS it lists a June 22, 2020 record from The Dental Trauma Center, Initial Report in the Field of Dentistry, by Mayer Schames, DDS/David Schames, DDS. The summary states that:

> History: Patient was involved in an industrial accident while working for defendant as an electrician. On the date of injury, she was standing on a truck, about 5 feet off the ground, when she fell, landing in a crevice on a subway track. She struck the back and right side of her head against a steel railroad track and the hard hat she was wearing was knocked off her head. Patient further reports that she injured [her] neck, shoulders, arms, elbows, hands, wrists, fingers, tower [*sic*] back, legs, knees and feet as a result of the traumatic injury. She was admitted to the hospital for 3 days following this traumatic accident, and was subsequently diagnosed with a traumatic brain injury. She reported having residual symptoms of headaches, blurry vision, memory loss, and sensitivity to light. Patient reported that due to the industrial injuries she had pain and weakness in [her] shoulders, arms, elbows, wrists, hands and fingers, which are compromising and impairing her ability to maintain proper and adequate oral hygiene procedures of brushing and flossing of her teeth and gums. Complaints: Constant severe headaches: Constant severe 7-10/10 headaches; intermittent moderate dull facial pain on both sides; intermittent, frequent, moderate and severe 7-8/10 right TMJ pain; clenching and musculature response to orthopedic pain and resultant emotional stressors; facial pain upon smiling; facial pain upon yawning; teeth are sore upon waking in the morning; dry mouth requiring liquids to aid in swallowing dry food; bleeding gums. Additionally, she reported neck pain; bilateral shoulder pain; lower back pain; bilateral arm pain; bilateral elbow pain; bilateral wrist pain; bilateral hand pain; bilateral finger pain; bilateral leg pain; bilateral knee pain; bilateral ankle, feet and toe pain; ringing pain, pressure, loss of hearing and itching in bilateral ears; sleep disturbance and fatigue; snoring. **Diagnoses**: Traumatic injury to the head and mandible; Bruxism/clenching/grinding of the teeth and bracing of the facial muscles of mastication; Myalgia of the facial muscles of mastication; Trigeminal nerve pain central sensitization; Capsulitis; Inflammation of the right and left TMJ; Aggravated inflammation of the gums. Treatment Plan: Full mouth radiographs; recommend treatment of inflammation of the gums, treatment with an orofacial pain occlusal orthotic device, and treatment with a nocturnal orthopedic repositioning device for nighttime bruxism; dental treatments; craniofacial exercises; physical medicine modalities as needed; internal/occupational medicine consultation; pulmonologist evaluation psychiatric/psychological examination; neurology examination; request prior records. Work Status: TTD.

(Exhibit 1, 9/15/2021, pp. 43-44.)

On September 17, 2020, Dr. Schames reexamined applicant and issued a report on October 1, 2020. (Exhibit 4, 10/01/2021.) Dr. Schames discusses industrial causation and applicant's dental complaints.

> Ms. Villaloboz was re-evaluated in my office on September 17, 2020 where Ms. Villaloboz states she received an overall 60% subjective improvement in my area of expertise, with our treatment with regard to Ms. Villaloboz's facial and jaw complaint.
>
> Ms. Villaloboz has a maximum interincisal opening of 44 mm.
>
> Ms. Villaloboz finds that she continues to experience bruxism in response to her orthopedic pain and also in response to her industrial related stressors, where she is clenching/grinding her teeth and bracing her facial musculature during the day and night.
>
> This was clinically objectively confirmed with findings of teeth indentations/scalloping of the lateral borders of the tongue bilaterally. There is also wear on the surfaces of Ms. Villaloboz teeth.
>
> Ms. Villaloboz finds that she has intermittent, slight to moderate pain in her right and left facial areas,
>
> There is a Capsulitis found in her right and left temporomandibular joints.
>
> Ultrasonic Doppler Analysis verifies and confirms no_ dislocations of the discs in the joints causing internal derangements or crepitus of the right and left temporomandibular joints upon translational and lateral movements of the mandible.
>
> As indicated above, there are objectively palpated taut bands in Ms. Villaloboz's facial, neck, and shoulder musculature.
>
> A sEMG, which is approved by the American Dental Association to be used as an aid in the diagnosis of Temporomandibular Disorders, revealed elevated muscular activity with incoordination and aberrant function of her facial musculature.
>
> Temperature Gradient Studies performed reveal abnormal temperature readings comparing. one side of her facial musculature to the other side.
>
> Diagnostic a-Amylase Analysis, consisting of laboratory spectrophotometric analysis of the amount of a-amylase enzyme present, was performed, and an a-amylase enzyme concentration of 141 KIU *l* Liter was objectively measured. The

spectrophotometric testing is calibrated where normal concentrations of a--amylase enzyme should be less than 45 KrU / Liter.

Ms. Villaloboz presents with objective findings of inflammation of her gums, where there are objectively documented bacterial Biofilm deposits on her teeth, as well as around her gums.

Inflammation of the gums is due to bacteria producing inflammation and toxins under the gums which inflame and infect the gum tissues.

Even if Ms. Villaloboz had prior inflammation of the gums due to pre-existent dental neglect there are numerous industrially related factors that with reasonable medical probability, at the very least would be contributing to, aggravating, accelerating and/or lighting up of any prior inflammation of the gums.

Ms. Villaloboz states that she had industrially related injuries to her shoulders, elbows, arms, wrists, hands, and fingers. Proper oral hygiene of brushing and flossing of the teeth and gums requires fine hand manipulation and manual dexterity using both hands raised up to the mouth. Given Ms. Villalobez's industrial injuries, coupled with her indication that she experiences difficulties brushing and flossing her teeth due to her facial pain in, it is with reasonable medical probability, that Ms. Villaloboz is not performing proper and adequate oral hygiene. Therefore, with reasonable medical probability, Ms. Villaloboz's inflammation of the gums has been contributed to by the industrial injury.

Evaluation of Ms. Villaloboz's saliva reveals objective evidence of qualitative changes of Ms. Villaloboz's saliva. Ms. Villaloboz is taking the medications of **Naproxen**, **Tramadol**, **Gabpentin** [*sic*] and **Quetiapine** which are each documented to have the major adverse side effect of causing qualitative changes of the salvia. Stress also causes qualitative changes of the salvia. These qualitative changes of the salvia have been documented in the scientific literature to contribute to dental decay and inflammation of the gums. (Position Paper of the American Dental Association's Council of Scientific Affairs. *Journal of the American Dental Association*, Vol. 134, May 2003)

The scientific literature has also documented that inflammation of the gums can be aggravated by stress, by a loss of sleep, and by the body's increased production of cortisol due to pain. The scientific literature has also documented that bruxism aggravates inflammation of the gums.

(Exhibit 4, 10/1/2020, pp. 1-3.)

Dr. Schames' report dated October 1, 2020 references his prior June 22, 2020 report, which details the history and initial physical findings, as well as the treatment program instituted. Dr. Schames' October 1, 2020 report explicitly sets forth his findings regarding applicant's dental

injuries and causation, and he concludes that applicant's dental injuries were industrial. Therefore, lien claimant proved by a preponderance of the evidence that applicant sustained dental injury based on the substantial evidence in Dr. Schames' reporting.

We also observe that the evidence in the record does not reflect that defendant objected to the reporting and thereafter sought a QME in the specialty of dental. (See Lab. Code, § 4062.)

Thus, we will amend Findings of Fact 1 and 2 to include that applicant sustained dental injury.

Finally, we note that the WCJ found in pertinent part that: "Applicant . . .while employed on 03/29/2019 as a journeyman electrician. . . sustained injury arising out of and in the ***scope*** of employment . . . ." (Finding of Fact, 1, emphasis added.) Section 3600 states that liability exists for "any injury sustained by. . .employees arising out of and in the ***course*** of employment. . . " (Lab. Code, § 3600(a), emphasis added.) Thus, we will amend Finding of Fact 1 to correct the term of art to "course."

Accordingly, we grant lien claimant's Petition, affirm the F&O, except that we amend it to find that applicant's injury was in the course of employment and that applicant sustained dental injury. (Findings of Fact, 1 and 2).

For the foregoing reasons,

**IT IS ORDERED** that lien claimant's Petition for Reconsideration of the April 15, 2026 Findings and Order is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the F&O issued by the WCJ on April 15, 2026 is **AFFIRMED** except that it is **AMENDED** as follows:

## FINDINGS OF FACT

1. Applicant, while employed on March 29, 2019 as a journeyman electrician, Occupational Group 380 at San Dimas, California by DCD Electric, Inc., sustained injury arising out of and in the course of employment (AOE/COE) to the cervical spine, lumbar spine, head, psyche, right knee, bilateral shoulders, left elbow, right knee, right ankle, and dental.

2. Based on the reporting of lien claimant, Dental Trauma Center, applicant also sustained injury AOE/COE in the form of dental.

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**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**July 6, 2026**

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

**HINDEN & BRESLAVSKY**
**HINSHAW & CULBERTSON**
**LAW OFFICE OF SAAM AHMADINIA**

**DLM/oo**

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