

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

ANDRES APODACA, *Applicant*

vs.

**BOBCAT CENTRAL, INC.;
INSURANCE COMPANY OF THE WEST, *Defendants***

**Adjudication Number: ADJ12491336
Fresno District Office**

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

Defendant seeks reconsideration of the Findings, Award, and Order (F, A & O) as well as the Notice of Intention (NIT) to Impose Sanctions¹ issued by a workers' compensation judge (WCJ) on February 14, 2025. In that decision, the WCJ found, in pertinent part, that applicant, while employed by defendant on June 8, 2019, sustained injury arising out of and in the course of his employment (AOE/COE) to his sacrum, and low back, as well as left thigh, leg, foot, circulatory system and psyche; applicant is entitled to retroactive temporary disability benefits (TD) from November 15, 2019 to October 10, 2023, along with a \$10,000 penalty; the non-industrial apportionment opinion of the qualified medical evaluator (QME) for the lower left extremity does not amount to substantial medical evidence; and applicant is entitled to a permanent disability award of 73%.

Defendant contends that Labor Code sections 5813 and 5814² should not apply as the QME's reporting was based upon speculation and therefore defendant did not act unreasonably. Defendant further asserts that the award of temporary disability benefits was not supported by the stipulations of the parties.

¹ We do not consider or discuss the NIT, as that issue must be determined by the WCJ in the first instance.

² All further references are to the Labor Code unless otherwise stated.

We have not received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated herein, we will grant reconsideration, amend the WCJ's decision to strike the finding and award of a \$10,000.00 penalty under section 5814, and otherwise affirm the Findings of Fact and Award of February 14, 2025.

FACTS

The Report of the WCJ summarizes the case history as follows:

HISTORY OF INJURY

Applicant was injured on 6/8/19 while loading a Bobcat into a truck. He lost his grip and fell onto the sweeper attachment, striking his tailbone, low back and left leg. Applicant experienced immediate pain to his low back and left leg. Applicant called his boss and left a message since it was a Saturday. Applicant reported the injury to his employer on the following Monday and was referred to an industrial clinic. He was examined, x-ray studies were obtained, and medication was prescribed. Applicant was released to modified work duties and was assigned to drive for only two hours and perform his regular job duties.

Applicant continued to treat at the industrial clinic and reported numbness to his left foot and toes, but the doctor did not examine his foot. He continued to work for a little over two months with ongoing pain. On 8/10/19 Applicant's boss took him to the industrial clinic. Applicant's boss asked the doctor to examine Applicant's left foot.

The industrial doctor examined Applicant's left foot and told him to go to the emergency [room] if Applicant was having an emergency. Applicant went to the Mercy Medical emergency room, was then sent to a hospital in Modesto and then transferred to a hospital in Sacramento. Applicant remained hospitalized and underwent amputation of his left leg, below the level of the knee on September 12, 2019. The AOE/COE trial was on 1/14/25.

APPLICATION FOR ADJUDICATION OF CLAIM/AMENDMENTS

The Application for Adjudication of Claim was received in EAMS on 8/27/19 (EAMS DOC ID # 30147798). The pled body parts are: back, leg, thigh, foot and circulatory system. The Application was amended. The amendment was received in EAMS on 11/19/19 (EAMS Doc ID # 71659961). The amendment added the left leg.

The Application was amended a second time. The amended application was received in EAMS on 11/27/19 (EAMS Doc ID # 30989539). The second amendment added psych as a direct result of the amputation of left leg because of a sudden and extraordinary event.

A third Amended Application was received in EAMS on 4/25/22 (EAMS Doc [ID] # 41217796). The listed body parts are: back, thigh femur, leg, foot not ankle or toe, and circulatory system. This was the last Amended Application.

QUALIFIED MEDICAL EVALUATIONS

On 12/17/19 Applicant was examined by QME Joseph L. Vanderlinden, M.D (Joint Exhibit CC, EAMS Doc ID # 54509690). Dr. Vanderlinden is a vascular surgeon. He opined Applicant had not reached a level of maximum medical improvement. Dr. Vanderlinden stated with reasonable medical probability that Applicant's injury occurred in the course and scope of his employment and found industrial causation to the left lower extremity because of the specific injury date on 6/8/19.

QME Dr. Vanderlinden's next report is dated 12/20/22 (Joint Exhibit BB, EAMS Doc ID # 36542899). Dr. Vanderlinden was sent additional records and asked to answer the following question: Whether there can be progressive development of symptoms from the dissection of the femoral popliteal artery as opposed to irreversible muscle damage that is generally found in 8 to 24 hours when the dissection is presumably caused from acute external trauma? Dr. Vanderlinden provided an analysis of this issue without reaching any conclusion.

QME Dr. Vanderlinden's following report is dated 3/22/22 (Joint Exhibit AA, EAMS Doc ID # 54509691). Dr. Vanderlinden re-evaluated Applicant to prepare this report. In the Discussion Section of his report, Dr. Vanderlinden states as follows: "Although there is evidence of pre-existing vascular disease, it is clear to me that the date of injury in question promoted his vascular disease to vascular dissection with arterial occlusion, which eventually resulted in the aforementioned amputation".

Dr. Vanderlinden states Applicant complained of a recurrent dream of awakening under anesthesia, seeing his amputated leg and being told that he needed to be put back to sleep. Dr. Vanderlinden opined that a psychiatric evaluation should be considered as a compensatory consequence of the date of injury. Dr. Vanderlinden also states Applicant's lumbar spine complaints should be deferred to a specialist in the field of orthopedics. Lastly, from the standpoint of a general vascular surgeon, Dr. Vanderlinden found Applicant permanent and stationary.

QME Dr. Vanderlinden found a 28% WPI for the left lower extremity. He opined that Almaraz/Guzman did not apply to this impairment because Chapter 17 of the AMA Guides provided the most accurate reflection of Applicant's whole person impairment. Dr. Vanderlinden found industrial causation, and 30% nonindustrial apportionment pursuant to pre-existing vascular disease.

Applicant's next QME was with psychiatrist Miguel Alvarelllos, M.D. The evaluation was on 8/21/23 (Joint Exhibit DD, EAMS Doc ID #54509692). Applicant informed Dr. Alvarelllos he could perform the following activities: go places alone, drive short distances, and get along with family. Dr. Alvarelllos found an industrial psychiatric injury. He assigned a 20% WPI and 15% nonindustrial causation.

Applicant's last QME was on 10/10/23. Applicant was evaluated by orthopedic surgeon Charles M. Sonu, M.D (Joint Exhibit EE, EAMS Doc ID # 54509693). Dr. Sonu opined Applicant reached maximum medical improvement on 10/10/23. With regard to causation, Dr. Sonu opined to a reasonable degree of medical probability that:

- a. Applicant's specific industrial injury caused low back pain radiating into the left lower extremity, and
- b. Applicant developed a left knee flexion contracture and limp as a compensable consequence of his specific industrial injury on 6/8/19 as a result of his left below knee amputation.

Dr. Sonu assigned a DRE II 6% WPI to Applicant's lumbar spine. Dr. Sonu states that an Almaraz Guzman analysis was considered but not indicated. Applicant's spine and lower extremity impairments are accurately addressed in the AMA Guides. Lastly, Dr. Sonu found 100% industrial causation.

(Report, pp. 2-4.)

DISCUSSION

I.

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.

(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 March 17, 2025, and 60 days from the date of transmission is Friday, May 16, 2025. This decision is issued by or on May 16, 2025, 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 March 17, 2025, and the case was transmitted to the Appeals Board on March 17, 2025. 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 March 17, 2025.

II.

Although we agree with the WCJ that the QME reports of vascular surgeon Joseph Vanderlinden, M.D., support a finding of injury to applicant’s lower extremity, and that his apportionment opinion does not constitute substantial medical evidence, we agree with the petitioner that the finding of a \$10,000.00 penalty is not justified by the evidence.

Section 5814 provides that “[w]hen payment of compensation has been unreasonably delayed or refused, either prior to or subsequent to the issuance of an award, the amount of the

payment unreasonably delayed or refused shall be increased up to 25 percent or up to ten thousand dollars (\$10,000), whichever is less. In any proceeding under this section, the appeals board shall use its discretion to accomplish a fair balance and substantial justice between the parties.”

Because defendant withheld payment of benefits based on the existence of a treating physician’s opinion that applicant’s vascular opinion was nonindustrial, its actions were not unreasonable. (Joint DD, Report of Miguel Alvarelllos, M.D. dated 8/21/2023, page 53, lines 3-13; Joint EE, Report of Charles Sonu, M.D. dated 10/10/2023, page 26, lines 1-4, reviewing report of Stefan Elazier, M.D. dated 9/24/2019.)

The WCJ correctly concluded that the opinions of Dr. Vanderlinden were substantial with respect to causation of a vascular injury to the left lower extremity, but not substantial with respect to apportionment of related disability. Substantial medical evidence is that evidence “which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion It must be reasonable in nature, credible, and of solid value” (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 159, 164 [48 Cal. Comp. Cases 566].)

With respect to causation of injury, Dr. Vanderlinden provides more than a mere scintilla of relevant and reasonable evidence to support a finding that applicant’s specific trauma of June 8, 2019 contributed to his left lower extremity injury:

“It is my opinion that this injury appears to have occurred in the course and scope of [applicant’s] employment. Based on review of the submitted medical records, the history of injury as related by the patient and my physical examination, I believe there is reasonable medical probability to support industrial causation to the left lower extremity as a result of the specific date [of] injury, which occurred on June 8, 2019, while performing his usual and customary work duties for the above noted employer (AOE/COE).”

(Defendant’s AA, Report of Dr. Vanderlinden dated 3/22/2022, page 5, last paragraph.)

In support of this conclusion, Dr. Vanderlinden explains elsewhere in his report:

“Although there is evidence of preexisting vascular disease, it is clear to me that the date of injury in question promoted his vascular disease to vascular dissection with arterial occlusion, which eventually resulted in the aforementioned amputation.”

(*Id.*, page 4, paragraph 5.)

While Dr. Vanderlinden's opinion regarding cause of injury is clearly explained, his opinion regarding cause of disability states only that he would apportion 30 percent of current impairment to pre-existing vascular disease (*Ibid.*, page 6, first paragraph). He does not explain how and why the pre-existing vascular disease is causing approximately 30 percent of present disability. This does not meet the standards for substantial medical evidence of apportionment explained in *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc):

...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.

(*Escobedo, supra*, 70 Cal. Comp. Cases 604, 621.)

Because Dr. Vanderlinden did not explain how and why pre-existing vascular disease is causing approximately 30 percent of applicant's present disability related to amputation of his left leg, the opinion on apportionment does not constitute substantial medical evidence.

With respect to the contention of the Petition that the evidence did not justify the finding and award of retroactive temporary disability for the period from November 15, 2019 to October 10, 2023, we conclude that the October 10, 2023 report of orthopedic QME Charles M. Sonu, M.D., admitted as Joint EE, justifies the WCJ's finding that applicant did not reach maximal medical improvement (MMI) until October 10, 2023, notwithstanding the parties' stipulation to an earlier MMI date based on the opinions of Dr. Vanderlinden, the QME in general surgery. Stipulations are not binding upon the Appeals Board or WCJ, and the Appeals Board or WCJ may reject a stipulation and base the decision on evidence presented at the hearing. (Lab. Code § 5702; *Turner Gas Co. v. Workmen's Comp. Appeals Bd. (Kinney)* (1975) 47 Cal.App.3d 286, 290 [40 Cal.Comp.Cases 253]; *State of California v. Workers' Comp. Appeals Bd. (Butterworth)* (1980) 101 Cal.App.3d 673, 677 [45 Cal.Comp.Cases 166]; Hanna, 2 CA Law of Employee Injuries & Workers' Comp § 26.06[2] (2025).) Accordingly, the WCJ was not bound by the parties' stipulated MMI date and was free to rely upon substantial medical evidence to the contrary in a different medical specialty, justifying a later MMI date.

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings, Award, and Order issued by the WCJ on February 14, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of February 14, 2025 is **AFFIRMED, EXCEPT** that Finding of Fact #2 is **AMENDED** to read as follows:

2. Applicant is entitled to retroactive TD benefits from 11/15/19 to 10/10/23.
This amount is to be adjusted by the parties with jurisdiction reserved to the WCJ should a dispute arise.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I DISSENT (see attached dissenting opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 15, 2025

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

**ANDRES APODACA
KLEINMAN & ASSOCIATES
KCNS LAW GROUP
LAW OFFICES OF GUY ALLEN MEDFORD
LAW OFFICES OF ROBERT A. CRAIG III
DUNCAN CASSIO LUCCHESI BINKLEY & VAN DOREN**

CWF/cs

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

DISSENTING OPINION OF COMMISSIONER RAZO

While I concur with the majority decision to grant defendant's Petition for Reconsideration with respect to penalties, I respectfully dissent with respect to the majority's conclusion that Dr. Vanderlinden's apportionment opinion does not constitute substantial medical evidence.

Dr. Vanderlinden's opinion that "the pre-existing vascular disease promoted the vascular disease to vascular dissection with arterial occlusion which eventually resulted in aforementioned amputation" explains how and why pre-existing vascular disease played a role in the causation of applicant's permanent disability, and it should be deemed adequate to support his conclusion that 30 percent of applicant's permanent disability related to the amputation is attributed to applicant's pre-existing vascular disease as a matter of reasonable medical probability. (Joint AA, Report of Dr. Vanderlinden dated 3/22/2022, page 4, paragraph 5.)

As explained in *Escobedo, supra*, the legislature intended that apportionment be assigned to a pre-existing condition if it was a causal factor in the disability, even if asymptomatic at the time of the injury, regardless of whether the asymptomatic condition would have developed absent the injury. If the preexisting asymptomatic condition was a causal factor in the disability, then apportionment is valid. (*Escobedo, supra*, 70 Cal. Comp. Cases 604, 617.) Multiple recent Court of Appeal cases have affirmed the principle that the cause of injury and the cause of disability can be both the causation of injury and the cause of disability, even if the cause is of different percentages. (*Brodie v. Workers' Comp. Appeals Bd.* (2013) 40 Cal.4th 1313, 1327 [72 Cal.Comp.Cases 565]; *E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 926–927 [71 Cal.Comp.Cases 1687]; *City of Petaluma v. Workers' Comp. Appeals Bd.* (2018) 29 Cal.App.5th 1175, 1191 [83 Cal.Comp.Cases 1869].)

I join the majority in its decision to grant reconsideration and rescind the findings and award with respect to penalties, but I would also amend the Findings of Fact and Award of February 14, 2025 to apply 30 percent nonindustrial apportionment to permanent disability of the left leg based on the medical opinions of Dr. Vanderlinden. Therefore, I both concur and dissent.



WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 15, 2025

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

**ANDRES APODACA
KLEINMAN & ASSOCIATES
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LAW OFFICES OF GUY ALLEN MEDFORD
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DUNCAN CASSIO LUCCHESI BINKLEY & VAN DOREN**

CWF/cs

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