WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ANNA SILVA, *Applicant*

vs.

DEPARTMENT OF TRANSPORTATION HEADQUARTERS OPERATIONS, legally uninsured and adjusted by STATE INSURANCE COMPENSATION FUND, *Defendant*

Adjudication Number: ADJ13014565
Sacramento District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact ("FoF") issued on February 25, 2025, wherein the workers' compensation administrative law judge ("WCJ") found applicant did not sustain compensable work injuries to her psyche or to her circulatory system. Applicant asserts the WCJ erred in not crediting her testimony, and in not considering the entirety of the evidence supporting applicant's version of events.

We received an Answer. We also received a Report and Recommendation on Petition for Reconsideration from the Presiding Judge of the District Office, recommending that reconsideration be denied.[1]

We have reviewed the Petition, the Answer and the Report, as well as the record. For the reasons discussed below, we will rescind the FoF and return the matter to the trial level for assignment to a new WCJ, because we conclude that the FoF does not clearly state what the actual events of employment were that contributed to applicant's psyche injury, such that the QME could usefully opine on whether the injury was predominantly caused by those events.

[1] The Report was prepared by the Presiding Judge because the WCJ no longer works in the Sacramento District Office.

FACTUAL BACKGROUND

Applicant filed an Application for Adjudication, alleging a cumulative trauma injury to the psyche and circulatory system sustained from August 23, 2018 to August 22, 2019 while employed by defendant as a staff services manager.

Two QMEs were appointed to consider applicant's alleged injury; Ann Allen, M.D., for the psyche injury, and Richard Levy, M.D., for the circulatory injury. On February 3, 2020, Dr. Allen, after interviewing applicant and performing psychological testing, opined that applicant suffered from anxiety disorder, and that "if her descriptions of her work situation and events are actual and true, the work stress CT 8/22/2019 predominated in causation of psychiatric injury and met the 51% threshold." (J. Ex. AA, at p. 18.) The Report went to break down the causation of psychiatric injury as follows:

- 25% if [*sic*] psychiatric injury was a discussion with the Office Chief, Marylee, about disparaging comments made by Janice Salais to her and other staff members constituted an event contributing to causation of psychiatric injury. This was of a temporal relevance to the filing of her work's compensation claim. This was not a personnel event.
- 35% of psychiatric injury was caused by the work event on the date of injury. This event precipitated a stress response after which she went to the ED for her episode of SVT. She filed her Worker's Compensation claim after this event. The precipitating work event for this contributor was a meeting on 8/22/2019 with Bill and her supervisor. She was distressed by the criticisms made by her supervisor that their work constituted "waste, fraud, and abuse." After the meeting, Ms. Silva's symptoms rose to the extent that she felt incapable of persisting under the supervision of Ms. Salais and formally requested a transfer. This was a substantial contributor to psychiatric injury and most temporal in relevance. This was a personnel act. As to whether this meeting constituted a good faith personnel action would be a determination ultimately left to the trier of fact.
- 10% of psychiatric injury was caused by the discussion she had with her manager after a meeting, July 23, 2019. She confronted her manager about the demeaning manner in which she treated her at the meeting. Ms. Salais offered that she could quit. She was surprised and upset, and this set the stage for her further psychological deterioration. This was not a personnel act.
- 10% of psychiatric injury was due to the cumulative effects of employees quitting with low office morale due to the hostile work environment. This was not a personnel act:

- 10% of psychiatric injury was due to the undermining comments and their cumulative effect from the supervisor, Ms. Salais. This was not a personnel act.
- 10% of psychiatric injury was due to Ms. Salais' decisions to remove staff and her assignment of work and expectations that Ms. Silva found unreasonable. This contribution could be considered a personnel act, and as to whether this was in good faith would be a determination ultimately left to the Trier of Fact.

(J. Ex. AA, at p. 19.)

However, the QME's March 14, 2020 supplemental report changed the breakdown of these factors, instead opining after review of further medical records:

- 25% of psychiatric injury was due to the undermining comments and their cumulative effects from the supervisor, Ms. Salais. This was discussed as a significant factor causing her anxiety and need for treatment.
- 10% of psychiatric injury was due to the cumulative effects of the employees quitting and a low morale due to the work environment. This was not a personnel act.
- 25% of psychiatric injury due to the discussion with the Office Chief, Marylee, about disparaging comments made by Janice Salais. This resulted in a worsening of her psychiatric condition and was of temporal relevance in filing of her workers' compensation claim. This was not personnel event.
- 10% of psychiatric injury was due to Ms. Salais' decision to remove staff and reassign her work. Ms. Silva's contention was that the expectations were unreasonable. This is a personnel event and as to whether it constitutes a good faith personnel act would be a determination ultimately left to the Trier of Fact in the case.
- 20% of psychiatric injury was caused by the work event on 8/22/2019, which precipitated a stress response after which she went to the ED and was diagnosed with SVT. The work event was a meeting with her manager and coworker Bill, during which her supervisor made comments suggesting that Ms. Silva was mismanaging her department with accusations of fraud. This was a personnel act, and as to whether this meeting constituted a good faith personnel action would be determined ultimately by the Trier of Fact.
- 10% of psychiatric injury was caused by the discussion she had with the manager after meeting on July 23, 2019. She confronted Ms. Salais about her demeaning manner, after which the supervisor offered that she could quit. This set the stage for further psychological deterioration and was not a personnel act.

(J. Ex. BB, at p. 4.) This modified breakdown was affirmed by the QME's February 2, 2022 supplemental report, although that report inexplicably and presumably mistakenly left off the third bullet point, relating to the interaction with Office Chief Marylee. (See J. Ex. DD, at p. 5.) The QME also noted in this report that she had reviewed investigative interviews with applicant, some of her work colleagues, and Ms. Salais, and that review of these records supported her prior findings. (*Ibid.*)

Regarding the circulatory system injury, QME Levy ultimately opined:

> I do not believe that this patient had an aggravation or an increase in the severity of her pre-existing condition. I do not believe her underlying pathology has permanently moved to a higher level.
>
> Rather, I believe that she had a temporary increase in the symptoms of her pre-existing condition. Her arrhythmogenic condition moved back to the same place it was after the temporary exacerbation.

(J. Ex. II, at pp. 2–3.)

The matter proceeded to trial on January 9, 2025. The issues for trial were listed as: (1) injury arising out of and in the course of employment ("AOE/COE"); and (2) defendant's assertion of the good faith personnel action defense, with all other issues deferred. (Minutes of Hearing / Summary of Evidence ("MOH/SOE") 1/9/2025, at p. 2.) Exhibits were admitted, except for the investigative interviews of Willard McClure and Antoinnette Wood, defense witnesses listed on the pre-trial conference statement but who were not present at trial for cross-examination. A ruling on the admissibility of these exhibits was deferred, and they were ultimately found inadmissible. (*Id.* at p. 4; FoF, at p. 5.) Applicant testified at length; there was no other witness testimony. (MOH/SOE 1/9/2025 at pp. 4–9.) The matter was taken under submission as of January 17, 2025. (*Id.* at p. 1.)

The FoF was issued on February 25, 2025, finding that applicant did not sustain either a compensable psyche injury, or a compensable circulatory system injury. (FoF, at p. 1., ¶¶ 6–7.) The appended Opinion on Decision makes clear that the WCJ's decision as to the psyche injury rested on a judgement that applicant was not a credible witness with regard to the majority of events that the QME had judged had contributed to the injury. (Opinion on Decision, at pp. 3–5.) Specifically, the WCJ wrote:

> Per Dr. Allen, apportionment of psychiatric injury is as follows:

1. Event 1 (25%) is applicant's discussion with Marylee about disparaging comments made by Janice Salais about her.
2. Event 2 (35%) on August 22, 2019, at a meeting with Janice Salais and Bill, at which applicant felt unfairly accused of passively allowing fraud and misuse of funds.
3. Event 3 (10%) on July 23, 2019, applicant was treated in a demeaning manner after a meeting.
4. Event 4 (10%) is due to cumulative effects of employees quitting with low office morale due to hostile work environment.
5. Event 5 (10%) is due to undermining comments and the cumulative effect from the supervisor, Janice Salais.
6. Event 6 (10%) is due to Janice Salais' decision to remove staff and assignment of work in expectations that applicant found unreasonable. (*Id.* at pp. 3-4.)

Event 1, there is no credible evidence that Janice Salais made disparaging comments about applicant to her coworker, Marylee. Applicant herself never heard Janice Salais say such comments about any employee/and no employee ever told applicant that Janice Salais ever made such comments about them. (MOH/SOE at p. 8:15-19.)

Event 2, there is no credible evidence that Janice Salais accused applicant of passively allowing fraud and misuse of funds. Dr. Allen reported that the investigative interview suggested that Janice Salais was not directly accusing applicant of waste, fraud and system abuse. (Exhibit DD at p. 4.) Applicant's testimony confirmed that Janice Salais did not accuse her of waste, fraud and system abuse. Initially, on direct examination, applicant testified that Janice Salais indicated her work on the iron workers' contract "could be considered" waste, fraud and abuse. (MOH/SOE at p. 7:2-5.) Subsequently, on cross-examination, applicant testified that Janice Salais indicated that the invoices were "potentially" waste, fraud, abuse. (*Id.* at p. 8:20-23.) There was a shift in applicant's demeanor and tone between direct examination and cross-examination on this issue. Specifically, on cross-examination, applicant testified less stridently about the alleged accusation of waste, fraud, and abuse by Janice Salais. There is no credible evidence that Janice Salais made any accusation of waste, fraud and abuse against applicant.

Event 3, on July 23, 2019, applicant's testimony was credible that after she complained about events at meeting, Janice Salais told her to quit if she did not like it. (MOH/SOE at p. 6:18-22.)

Event 4, there is no credible evidence that employees quit with low office morale due to a hostile work environment created by Janice Salais. Applicant testified that employees separated from defendant employer in multiple ways because of how Janice Salais treated them; made extra work; and caused stress. (*Id.* at p. 5:20-23.) Her testimony is not credible.

> Event 5, there is no credible evidence of undermining comments and their cumulative effect from supervisor, Janice Salais. Applicant testified that at meetings with internal/external entities, Janice Salais cut her off and once made a rude hand gesture. (Id. at p. 5:9-11.) This testimony, even when considered with Event 3, is not credible evidence of undermining, cumulative comments by Janice Salais to applicant.
>
> Event 6, there is no credible evidence that Janice Salais made the decision to remove staff/make an unreasonable workload for applicant. Applicant testified that Janice Salais removed her staff because she wanted applicant out. (Id. at p. 6:3-12.) Applicant testified that Janice Salais, at her sole discretion, decided to transfer three of her supervisees away from her. (Id. at p. 8:3.) Subsequently, applicant testified that she did not know if there was any increased demand in other units; her three supervisee positions were not completely deleted; and, in 2018, the vacancies were filled. (Id. at p. 8:6-12.) There is no credible evidence that Janice Salais decided to remove applicant's staff and thereby created an unreasonable workload.
>
> Hence, only Event 3 as described by Dr. Allen is found to be actual and true. Applicant has not proved predominant causation of 51%.

(Opinion on Decision, at pp. 4–5.)

With regard to the alleged injury to the circulatory system, the WCJ found no compensable injury based on QME Levy's finding of no permanent aggravation to applicant's pre-existing condition. (*Id.* at p. 5.)

This Petition for Reconsideration followed.

DISCUSSION

I.

Former Labor Code 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, Labor Code 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 Labor Code 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 7, 2025, and 60 days from the date of transmission is June 6, 2025. This decision is issued by or on June 6, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 7, 2025 and the case was transmitted to the Appeals Board on April 7, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 7, 2025.

II.

Labor Code section 3208.3 provides, in relevant part:

> In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.

(Lab. Code, § 3208.3(b)(1).)

"Predominant as to all causes" means that "the work-related cause has greater than a 50 percent share of the entire set of causal factors." (*Dept. of Corrections v. Workers' Comp. Appeals Bd. (Garcia)* (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356, 1360]; *Watts v. Workers' Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 684, 688 (writ den.).) If the threshold for a compensable psychiatric injury has been met under section 3208.3(b), and the employer has asserted that some of the actual events of employment were good faith personnel actions, the WCJ must determine whether section 3208.3(h) bars applicant's claim. Section 3208.3(h) provides as follows:

> No compensation under this division shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue.

(Lab. Code, § 3208.3(h).) Section 3208.3(b)(3) defines substantial cause as "at least 35 to 40 percent of the causation from all sources combined." (§ 3208.3(b)(3).)

A multilevel analysis is accordingly required when an industrial psychiatric injury is alleged and the employer raises the affirmative defense of a lawful, nondiscriminatory, good faith personnel action. (*Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc).) The required multilevel analysis is as follows:

> The WCJ, after considering all the medical evidence, and the other documentary and testimonial evidence of record, must determine: (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 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" of the psychiatric injury, a determination which requires medical evidence. Of course, the WCJ must then articulate the basis for his or her findings in a decision which addresses all the relevant issues raised by the criteria set forth in Labor Code section 3208.3.

(*Rolda, supra,* at p. 247.)

More generally, the WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66

Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision "must be based on admitted evidence in the record" (*Hamilton, supra,* at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton, supra,* at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] … For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476 (citing *Evans, supra,* 68 Cal. 2d at p. 755.)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal. App. 4th 1117, 1121–1122 [63 Cal. Comp. Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal. App. 4th 396, 403 [65 Cal. Comp. Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

The division of labor between the WCJ and QME in *Rolda* cases is complex, with some elements of the analysis being medical-legal questions primarily reliant on the medical evidence provided by the QME, while other elements are legal questions purely within the ambit of the WCJ. As specifically relevant here, it is the WCJ's role to determine the actual events of employment; it is then the QME's role to provide the necessary medical evidence for the WCJ to be able to determine whether those actual events of employment were predominantly – i.e., more than 50% - responsible for applicant's injury. (See *Rolda, supra,* at p. 247.) Importantly, this question of general causation is assessed "as to all causes combined," and therefore does not call for or require a detailed breakdown of the role that each individual event of employment played in causing the injury. (Lab. Code, § 3208.3(b)(1); *Rolda, supra,* at p. 246.)

Here, it is apparent that the WCJ, after hearing applicant's testimony, disagreed with the accuracy of the version of events that had been presented to the QME, and therefore with the factual predicates that served as a foundation for the QME's medical reporting. Because it is the WCJ's role to determine the actual events of employment that contributed to the injury, a WCJ is certainly entitled to find different facts than those relied upon by the QME in forming the QME's medical opinions, and, to the extent that those differing facts are based upon the WCJ's credibility determinations, those determinations should be afforded great weight because the WCJ had the opportunity to observe the witnesses. (See generally *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500].)

However, as in any other case, any such determinations must be based on substantial evidence, and the resulting decision must clearly and concisely set forth the WCJ's findings to the extent that they disagree with the assumptions of the QME. (*Hamilton, supra,* at p. 475.) This is doubly true in the case of a *Rolda* analysis, because if the WCJ disagrees with the factual predicates underlying the QME's medical judgements, it will be necessary to further develop the record by having the QME reconsider the matter in light of the actual events of employment as determined by the WCJ. If the actual events of employment as determined by the WCJ are not clearly articulated, the QME will have no way to determine what those actual events of employment were, and therefore no way to intelligently opine as to whether the injury was predominant caused by those events.

Here, we find the WCJ's decision to be insufficiently clear as to what the actual events of employment were that contributed to applicant's injury. First, we note that the WCJ did not make any formal findings of fact as to the actual events of employment, instead relegating the discussion to the Opinion on Decision. Perhaps more critical, however, is that the Opinion on Decision, while making clear what the WCJ did *not* find credible, does not make clear what *did* occur. For example, in discussing the first event that the QME opined contributed to the injury, the WCJ stated:

> Event 1, there is no credible evidence that Janice Salais made disparaging comments about applicant to her coworker, Marylee. Applicant herself never heard Janice Salais say such comments about any employee/and no employee ever told applicant that Janice Salais ever made such comments about them. (MOH/SOE at p. 8:15-19.)

(Opinion on Decision, at p. 4.)

What is missing from this finding is a statement of what *did* happen in the WCJ's view – for example, did the coworker, Marylee, falsely relay disparaging comments to applicant that had never actually been made by Salais? Did the WCJ believe that applicant had fabricated the entire story? Without a clear statement from the WCJ as to what actually occurred, we do not see how the QME could know what facts to base their reconsidered opinion *upon*.[2]

Furthermore, here the WCJ utilized the percentage breakdown of each individual event, as provided by the QME for later steps in the *Rolda* analysis, to assess predominant cause. (See Opinion on Decision, at pp. 4–5.) However, the question at this stage of the analysis is whether the actual events of employment *as a whole* were the predominant cause of the injury; this determination is separate from the later determination of the degree to which each individual event contributed to the injury. (Lab. Code, § 3208.3(b)(1); *Rolda, supra,* at p. 246.) Moreover, to the extent that the QME's conclusions were based on an inaccurate understanding of the actual events of employment, that would naturally call into question the validity of the QME's apportionment to each factor as well. Accordingly, utilization of these individual factor percentages to determine predominant cause was legal error; just as remand is required to allow the QME to reconsider the question of predominant cause, so too remand would be required in these circumstances to allow the QME to reconsider the apportionment of causation to each individual event.

Finally, we make a few observations on other issues that will need to be revisited in light of our decision to rescind the FoF. First, although the FoF finds no injury to applicant's circulatory system based on the QME's conclusion that the injury was a temporary exacerbation of applicant's pre-existing condition resulting in no permanent disability, we note that the question of whether an injury constitutes an aggravation or an exacerbation is one of law, and neither the QME's choice of wording nor the absence of permanent disability are dispositive factors. (See *City of Los Angeles v. Workers' Comp. Appeals Bd. (Clark)* (2017) 82 Cal. Comp. Cases 1404, 1406 (writ den.).) An aggravation is an increase in the severity of a pre-existing condition where the underlying pathology is permanently moved to a higher level. An exacerbation is a temporary increase in the symptoms of a pre-existing condition that returns to its prior level within a reasonable period of time. The industrial aggravation of a pre-existing condition constitutes an

[2] A similar lack of clarity applies to the WCJ's discussions of some of the other events relied upon by the QME; given the disposition, and having illustrated the general point with reference to a single factor, we see no need to belabor the issue with an extended discussion of all six events.

injury for workers' compensation purposes. (*Tanenbaum v. Industrial Acc. Com.* (1935) 4 Cal.2d 615, 617 [1935 Cal. LEXIS 590; *Zemke v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358]; *Reynolds Electrical & Engineering Co. v. Workers' Comp. Appeals Bd. (Buckner)* (1966) 65 Cal.2d 438 [31 Cal.Comp.Cases 421].) The Appeals Board has previously held that the aggravation of a prior condition constitutes an injury when the aggravation causes a need for medical treatment and a period of temporary disability. (*Clark, supra*, 82 Cal.Comp.Cases at p. 1406; *Johnson v. Cadlac, Inc* (2021) 2021 Cal. Wrk. Comp. P.D. LEXIS 194.)

Second, on the issue of the admissibility of the investigative interviews with applicant's colleagues, we note that these reports were reviewed and considered by the QME, and that they contain important information relevant to the credibility of applicant's allegations. Strong consideration should therefore be given as to whether these reports should be admitted, with the interviewees made available for cross-examination.

Accordingly, we will rescind the WCJ's FoF, and return the matter to the trial level for assignment to a new WCJ. With that in mind, in practice we see little way to avoid the need for the new WCJ to make credibility determinations of their own; just as the QME cannot divine the actual events of employment as found by the WCJ, we do not think a new WCJ can be expected to intuit and then apply the prior WCJ's credibility findings. We leave to the sound discretion of the new WCJ the best way to proceed in light of all of the above considerations.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the February 25, 2025 Findings of Fact is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the February 25, 2025 Findings of Fact is **RESCINDED**, and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ **ANNE SCHMITZ, DEPUTY COMMISSIONER**

I CONCUR,

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

/s/ **JOSÉ H. RAZO, COMMISSIONER**

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 6, 2025

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

ANNA SILVA
EASON & TAMBORINI
STATE COMPENSATION INSURANCE FUND
PAUL SALTZEN LAW OFFICE

AW/*kl*

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