WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ARTURO MADRID, *Applicant*

vs.

CHAMPION WINOWS, INC.; BERKSHIRE HATHAWAY HOMESTATE COMPANIES; BARRETT BUSINESS SERVICES, INC.; ACE AMERICAN INSURANCE COMPANY, administered by CORVEL CORPORATION, *Defendants*

Adjudication Number: ADJ17517114
Pomona District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant Barrett Business Services, Inc. (BBSI), insured by Ace American Insurance Company, administered by Corvel, seeks reconsideration of the Findings, Award and Order (FA&O) of September 18, 2025, wherein the workers' compensation judge (WCJ) found in relevant part that applicant sustained injury arising out of and in the course of employment (AOE/COE) while working for two employers and ordered that Ace American Insurance administer the claim pursuant to applicant's election against BBSI/ Ace American and that jurisdiction is reserved over any contribution/ liability rights against Champion/ Berkshire Hathaway in supplemental proceedings.

Defendant contends that the WCJ should not have allowed the election against BBSI/ Ace American Insurance Company and that new evidence from the panel qualified medical evaluator (PQME) absolves BBSI/Ace American Insurance Company from liability.

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 Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. Based on our review of the record, and for the reasons

stated in the WCJ's report, which we adopt and incorporate, except for the discussion of the stipulation in the second full paragraph on p. 7, and for the reasons discussed below, we will grant defendant's Petition for Reconsideration of the FA&O of September 18, 2025, we will amend the FA&O to find that the stipulation is not relevant to the issue of applicant's election, and we will otherwise affirm the FA&O.

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:

> (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.
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> (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 September 30, 2025, and 60 days from the date of transmission is Saturday, November 29, 2025. The next business day that is 60 days from the date of transmission Monday, December 1, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, December 1, 2025, so that we have timely acted on the petition as required by section 5909(a).

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

[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.

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 September 30, 2025, and the case was transmitted to the Appeals Board on September 30, 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 September 30, 2025.

II.

Applicant's election to proceed against defendant BBSI was appropriate. Section 5500.5(c) states:

> In any case involving a claim of occupational disease or cumulative injury occurring as a result of more than one employment within the appropriate time period set forth in subdivision (a), the employee making the claim, or his or her dependents, may elect to proceed against any one or more of the employers. Where such an election is made, the employee must successfully prove his or her claim against any one of the employers named, and any award which the appeals board shall issue awarding compensation benefits shall be a joint and several award as against any two or more employers who may be held liable for compensation benefits.

(Lab. Code § 5500.5(c).)

In other words, an employee may "obtain an award for the entire disability against any one or more of successive employers or successive insurance carriers if the disease and disability were contributed to by the employment furnished by the employer chosen or during the period covered by the insurance even though the particular employment is not the sole cause of the disability. (*Colonial Ins. Co. v. Industrial Acci. Com.* (1946) 29 Cal.2d 79, 82 [11 Cal.Comp.Cases 226].) If the applicant chooses to elect against one insurer, that insurer can seek contribution from the other insurers in subsequent supplemental proceedings. (Lab. Code § 5500.5(c), (e).) There is no

requirement that the defendant insurance company consent or stipulate to the election. Therefore, defendant's stipulation to the election by applicant in this case is irrelevant.

Accordingly, we grant defendant's Petition for Reconsideration of the FA&O of September 18, 2025, and we amend the FA&O to find that the stipulation is not relevant to the issue of applicant's election.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings, Award and Order of September 18, 2025, is **GRANTED**.

IT IS FURTHER ORDERED that the Findings, Award and Order of September 18, 2025, is **AFFIRMED** except it is **AMENDED** as follows:

6. The stipulation between BARRETT BUSINESS SERVICES INC. / ACE AMERICAN (administered by CORVEL) and applicant is not relevant to the issue of applicant's election.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 1, 2025

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

ARTURO MADRID
BLACK ROSE LAW FIRM
HALLETT EMERICK LAW FIRM
EMPLOYMENT DEVELOPMENT DEPARTMENT

JR/*pm*

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

1. Applicant's Occupation: window technician
   Applicant is Age: 62
   Date of Injury: cumulative to 10/9/23
   Parts of Body Injured: bilateral shoulders, knees, neck, elbows, wrists
   Manner in which injury occurred: repetitive work

2. Identity of Petitioner: Defendant Barrett Business Services Inc. (BBSI/ACE/CORVEL)
   Timeliness: timely
   Verification: verified

3. Date of Issuance of Order: September 18, 2025

4. **Date Transmitted to WCAB per LC 5909:** September 30, 2025

5. Petitioner's Contentions:
   1. THE EVIDENCE DOES NOT JUSTIFY THE FINDINGS OF FACT
   2. NEW EVIDENCE PQME DR. MICHAEL SHIFFMAN SUPPLEMENTAL REPORT DATED SEPTEMBER 2, 2025 ABSOLVES BBSI AND ACE AMERICAN INSURANCE COMPANY FROM LIABLITY

II
FACTS

The applicant worked as a window technician from January 1, 2010, to October 9, 2023. He first worked under the name Champion Windows from January 1, 2010, until December 30, 2022, which was insured by Berkshire Hathway from September 1, 2021, to December 30, 2022. Thereafter, he worked under the name Barrett Business Solutions, Incorporated (BBSI) until his last date of work on October 9, 2023. BBSI was insured by Ace American administered by Corvel (BBSI/Ace/Corvel) from December 31, 2022, through October 9, 2023. Applicant filed for cumulative trauma injuries to the shoulders, knees, neck, elbows, and wrists using an end date of April 1, 2023, on April 3, 2023. Berkshire denied the claim on June 2, 2023.[1] (Def. Ex. L denial letter Berkshire Hathway 6/2/23) BBSI/Ace/Corvel also denied the claim on October 2, 2023, based on "we have no evidence to support your claim of industrial injury." (App. Ex. 15 Corvel Denial 10/2/23) Applicant's counsel amended the end-date to October 9, 2023, the last date of work. (Def. Ex. R Amended App 10.9.23)

Qualified Medical Evaluator (QME) Dr. Michael Shiffman issued reports in February and August of 2024. (App. Ex. 19, 18) Thereafter, BBSI/ACE/Corvel accepted the claim with regard to the shoulders on May 14, 2025.[2] (Court Ex. Y Corvel Acceptance letter 5/14/25) On June 2, 2025, the applicant filed for an expedited hearing on the issue of total temporary disability and treatment. (DOR CSP law 5/31/25) The treatment issue became moot as Defendant BBSI/Ace/Corvel accepted the bilateral shoulders claim and authorized treatment with Dr. Ronny Ghazal. (Def. Ex T acceptance letter 6/5/25, Court Ex. Y)

Temporary disability remained at issue as applicant was relying on the treating physician and QME Dr. Shiffman's reporting to claim temporary disability benefits as the applicant had already exhausted one year of EDD benefits. (MOH 6/30/25, pg. 3:6) The expedited hearing finally began at 11:43a.m.[3] as reflected in the Minutes of Hearing. One of the stipulations listed on the

[1] Although the denial letter heading refers to a 12/30/22 date of injury; the body of the letter refers to a 4/1/23 neck and shoulder claim which is at issue for the cumulative claim in this case.
[2] It appears Corvel's letter still used the date of injury 4/1/23 in spite of the amendment that occurred and in spite of Dr. Shiffman's reports using the October 9, 2023 end date.
[3] The delay in starting the expedited was due to the completion of the pre-trial conference statement. Earnings were initially listed as a dispute. However, defense counsel had not calculated her claimed earnings for the applicant even though parties had placed earnings in dispute. In addition, the defendant attempted to obtain authority for a permanent disability advance to resolve the issue pending the deposition of Dr. Michael Shiffman which at that time was

pre-trial conference statement was that "Applicant elects against Corvel and BBSI (Ace American)." (pre-trial conference statement dated 6.30.25, Other Stipulations, paragraph 7) As a result of the stipulated election, counsel for Berkshire Hathaway was excused. (MOH 6/30/25 p. 2:21-22) The court read the stipulations into the record including the stipulation to the election and both applicant's counsel and defense counsel for BBSI/Ace/Corvel responded in the affirmative on the record that the stipulations were correct as reflected in the court reporter's notes.[4] (MOH/SOE 8/27/25 pg.3:9-11.5)

However, defense counsel for BBSI/Ace/Corvel later requested to unilaterally withdraw from the stipulation. Applicant's counsel did not agree to withdraw from the election as BBSI/Ace/Corvel had accepted the shoulder claim and he had filed for an expedited hearing. As the unelected-against defendant (Berkshire Hathaway) denied the claim in its entirety, applicant would not have been able to proceed to an expedited hearing against Berkshire. (MOH/SOE 6/30/25 pg.13:6-17) The progress reports from the treating physician spanning from October 12, 2023, to January 10, 2025, and QME Shiffman indicated that the applicant was totally temporarily disabled and had not reached permanent and stationary status and that the body parts in dispute were industrial. (App Ex. 1-13, Ex.18 and 19) QME. Shiffman noted that the applicant was a potential candidate for arthroscopic surgery for the shoulders and knees. (QME Dr. Shiffman report 8/1/24 pg. 9) QME Dr. Steven Brourman also indicated that the applicant's knees and shoulders were industrial. (Def Ex. S Dr. Brourman, 3/26/24 report pg. 26, 1st paragraph)

The court found the disputed body parts to be industrial and awarded total temporary disability. The defendant filed a Petition for Reconsideration on the basis of newly discovered evidence. (a supplemental report from QME Shiffman which purportedly finds that the cumulative trauma extended only until October 14, 2021.)

III
DISCUSSION

Any alleged deficiencies in the Opinion on Decision are corrected by this Report on Reconsideration. *Smales v. WCAB* 45 Cal. Comp. Cases 1026.

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scheduled on August 21, 2025. Defendant was not able to secure enough authority. (MOH/SOE 6.30.25; issue 5, pg.4:19-21)

[4] Due to technical difficulties, the court reporter's machine was not able to upload the proceedings from the morning session on June 30, 2025, but the court reporter was able to pull up the notes on August 27, 2025.

NEWLY DISCOVERED EVIDENCE STANDARD NOT MET UNDER CCR 10974

Before addressing the merits of the petition, this court is of the opinion that the petition should be denied as it does not comply with CCR 10974. CCR 10974 provides in relevant part that where reconsideration is sought on the ground of newly discovered evidence that could not with reasonable diligence have been produced before submission of the case….. the petition must contain an offer of proof, specific, and detailed, providing:

> (d) The effect that the evidence will have on the record and on the prior decision and
>
> (e) *As to newly discovered evidence*, a full and accurate statement of the reasons *why the testimony or exhibits could not reasonably have been discovered or produced before submission of the case.* (emphasis by court)

The rule concludes with "A petition for reconsideration sought upon these grounds may be denied if it fails to meet the requirements of this rule or if it is based on cumulative evidence."

Here, the petitioner offers the September 2, 2025, medical report of QME Michael Shiffman. However, petitioner does not provide any statement of the reasons why this supplemental report could not have reasonably been produced before the submission of the case. Therefore, the petition should be denied. Moreover, petitioner has not acted with reasonable diligence in obtaining this report. The court highlights that the medical reports of QME Shiffman are dated February **2024** and August **2024** respectively. These reports are well over a year old. Petitioner has not shown *reasonable* diligence by waiting over a year to request a supplemental report. Accordingly, the Petition should be denied.

Next, even assuming *arguendo* the report should be admitted, the medical report has no effect on the decision. This report does not change the applicant's total temporary disability status. QME Shiffman has made no indication that applicant is no longer totally temporarily disabled nor changed in his opinion with regard to which body parts were injured on a cumulative trauma basis as a result of his duties as a window technician. Therefore, this report is of no consequence in those regards.

Petitioner appears to offer this report as an attempt to determine liability between the defendants which this court has not determined. This court made no finding of date of injury nor finding of percentages of liability. The court issued a joint and several award with regard to total

temporary disability and body parts injured. The liability will be determined in supplemental proceedings between the respective employers and carriers.

Lastly, even assuming that this report did have an effect on the decision, it is not clear if it even contains an accurate history to be substantial evidence on liability. The report states,

> The records I previously reviewed indicated that the patient had been evaluated and provided treatment for a specific date of injury, September 22, 2021. This claim had eventually settled on November 14, 2022. According to the settlement, there had been a period of disability from October 15, 2021 to April 14, 2022.
>
> According to the records I reviewed the patient had been placed on modified work by multiple physicians. *It is unclear what periods of time the patient had actually been working at modified duties as a report from Dr. Darakjian dated February 16, 2022 merely stated there was no work.* A February 28, 2022, report from Dr. Rafla stated the patient was off work per the PTP. A report from Dr. Yaghoubian dated March 21, 2022, stated the patient was on modified duties, however the restrictions were not being accommodated. Dr. Yaghoubian had stated in his July 25, 2022 report that the patient was being returned to full duty work and Dr. Yaghoubian had determined the patient to be permanent and stationary on October 3, 2022 again returning the patient to full duty work. However, the patient was then seen by Dr. Kim in May 2023, who provided work restrictions. Dr. Mojabe also provided work restrictions beginning November 22, 2023 and continuing to May 1, 2024.
>
> It would appear from this information that the period of continuous trauma extended only until October 12, 2021 as thereafter the patient had either been placed on modified duty work or was off work altogether. (Dr. Shiffman 9.2.25 report at pg.2 paragraph 5 & 6)

On the one hand, Dr. Shiffman indicated that the applicant was on modified duties but that he was not being accommodated. It is undisputed that the applicant worked until October 2023. (MOH/SOE pg. 11:10; App. Ex. 13, Dr. Guevara 10/12/23 TD slip) No evidence was provided on whether the restrictions were actually accommodated. Therefore, applicant might have been working outside his restrictions. However, even if the applicant was working modified duties, the report of Dr. Brourman[5] offered by BBSI/Ace/Corvel in this case still found the modified duties to be a contributory cause,

> In contrast, while working modified duties, the patient did not continue to perform repetitive reaching activities and persistent ambulation, and he has degenerative tears in the medical menisci of both knees. It is reasonable to conclude that the knees would have been symptomatic with the meniscal tears. There I also evidence of clinical impingement

[5] Minutes of Hearing August 27, 2025 pg.3:20-21.5

syndrome of both shoulders and this would likely have been painful during the course and scope of work activities.

(Def Ex. S Dr. Brourman 3.26.24 report pg. 26 1st paragraph)

Therefore, even if arguably the applicant worked modified duties, based on Dr. Brourman's reporting, it appears those duties were sufficient to cause cumulative trauma to the knees and shoulders. Dr. Shiffman has not provided an explanation as to how and why the modified duties would not have contributed to the applicant's injury assuming applicant was being accommodated in the first place.

Again, this report potentially goes to the liability between the defendants, and the award of total temporary disability and body parts are not affected. Accordingly, the newly discovered evidence has no effect on the decision and should not be admitted.

Contention 1. THE EVIDENCE DOES NOT JUSTIFY THE FINDINGS OF FACT. ELECTION

The petitioner contends that the WCJ's opinion did not set forth the arguments advanced by the parties or the evidence relied upon by the WCJ in determining to accept applicant's election pursuant to L.C. 5500.5. In addressing the election issue, the court provides overview of the case law regarding stipulations and an election.

Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall) (2000)* 77 Cal.App.4th 1114, 1121 [92 Cal. Rptr. 2d 290, 65 Cal.Comp.Cases 1].) As defined in *Weatherall*, "A stipulation is 'An agreement between opposing counsel ... ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,' (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves 'to obviate need for proof or to narrow range of litigable issues' (Black's Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding." (*Weatherall, supra,* 77 Cal.App.4th at p. 1119.)

With regard to an election against a defendant, *Select Personnel Services v. Workers' Comp. Appeals Bd. (Ibarra)* 78 Cal. Comp. Cases 804, the Appeals Board panel found that an election against the last employer is proper under Labor Code Section [5500.5(c)] and noted that when an against the last employer is proper under Labor Code Section 5500.5(c) and noted that when an award is made against an elected-against employer under Labor Code § 5500.5(c),

An election against a defendant has been allowed even when only having 2.5 percent of coverage. *Mendez v. Koos Mfg.* 2017 Cal. Wrk. Comp. P.D. LEXIS 41.

[…]

Even so, as evidenced by *Mendez* majority of coverage is not controlling. There has been no determination as to the liability between the defendants on the claim. As the panel decision *Select Personnel* provides that an election can be made against the last employer and as BBSI/Ace/Corvel was the last employer, the applicant's election was proper, regardless of whether the defendant had stipulated to the election or not, and regardless of whether the other defendant allegedly had majority coverage.

Moreover, petitioner neglects to state that BBSI/Ace/Corvel ***accepted*** liability to the shoulders, which is what prompted the applicant's attorney to elect against them in the first place in order to be able to proceed to an expedited hearing, as the other defendant Champion/Berkshire had denied the claim. (Court Ex. Y, MOH/SOE) Accordingly, even disregarding the stipulation on election, there was good cause for applicant's election against BBSI/Ace/Corvel as 1) the applicant wished to proceed to expedited hearing, 2) was not receiving temporary disability benefits, 3) had exhausted EDD benefits, and 4) had been found totally temporary disabled by the treating physicians and QME Michael Shiffman. Accordingly, the court was justified in accepting the parties; stipulation and even assuming *arguendo* that BBSI/Ace/Corvel had been let out of the stipulation, the court would have still been justified in accepting the applicant's election under L.C. 5500.5(c) over BBSI/Ace/Corvel's objection.

Contention 2. NEW EVIDENCE PQME DR. MICHAEL SHIFFMAN SUPPLEMENTAL REPORT DATED SEPTEMBER 2, 2025 ABSOLVES BBSI AND ACE AMERICAN INSURANCE COMPANY FROM LIABLITY

As previously discussed above, this court has made no determination of liability. It issued a joint and several award as required with BBSI/Ace/Corvel to administer it based on the applicant's election against the last employer BBSI/Ace/Corvel. Any arguments with regards to BBSI/Ace/Corvel's percentage of liability, or lack thereof, can be resolved in supplemental contribution proceedings.

IV
RECOMMENDATION

It is recommended that the petition be denied.

DATE: September 26, 2025

Monika Reyes
WORKERS' COMPENSATION JUDGE