

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

ELIANA SANCHEZ, *Applicant*

vs.

**THE KROGER COMPANY; SEDGWICK CLAIMS MANAGEMENT SERVICES,
*Defendants***

**Adjudication Numbers: ADJ11409682 (MF); ADJ13102769
Santa Barbara District Office**

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

Applicant seeks reconsideration of the Joint Findings and Award (JF&A) dated August 22, 2025, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that while employed by defendant as a cashier checker on May 18, 2018 (ADJ11409682), applicant sustained injury arising out of and in the course of employment (AOE/COE) to the right foot, but did not sustain injury to the left foot, knee, or hip as a compensable consequence, or permanent disability to any of the alleged body parts. The WCJ awarded applicant future medical for the right foot "to cure or relieve from the effects of the specific injury." (JF&A, p. 2.) With respect to applicant's cumulative injury claim, the WCJ found, in relevant part, that applicant did not sustain injury AOE/COE during the period from May 18, 2018 through December 12, 2019 (ADJ13102769), to the right foot, left foot, left knee, or left hip, and that all "issues of permanent disability and apportionment are [thus] moot." (*Ibid.*)

Applicant contends that the reports of orthopedic panel Qualified Medical Evaluator (PQME), Dr. Alexis Dixon, which were relied upon the WCJ, failed to describe applicant's activities of daily living (ADLs) or provide sufficient reasoning in support of Dr. Dixon's conclusions, and are therefore not substantial medical evidence. (Petition, pp. 4-5.)

We have received an Answer from defendant, and the WCJ prepared a Joint Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition for Reconsideration (Petition) be denied.

We have considered the Petition, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will rescind and substitute the JF&A to reflect that applicant sustained injury AOE/COE to the bilateral feet, left knee, and left hip relative to the May 18, 2018 specific injury (ADJ11409682), and return this matter to the trial level for further proceedings consistent with this opinion.

FACTS

Applicant filed an Application for Adjudication of Claim alleging that on May 18, 2018 (ADJ11409682), she sustained injury AOE/COE to the right foot while employed by defendant as cashier checker. Subsequently, applicant added the left foot, knee, and hip as compensable consequence injuries.

In addition to the specific injury, applicant alleged a cumulative injury from May 18, 2018, through December 12, 2019 (ADJ13102769) to the bilateral feet, left knee, and left hip.

The parties proceeded with discovery and retained orthopedic PQME, Dr. Alexis Dixon, and podiatry PQME, Dr. Arthur Fass, to serve as their medical-legal experts in the respective claims.

Dr. Dixon evaluated applicant October 28, 2019, and January 24, 2024, with corresponding reports issuing on November 19, 2019, and February 8, 2024. She also issued supplemental reports dated May 20, 2020, May 27, 2020, and May 21, 2024, and was deposed by the parties on April 11, 2023.

In her November 19, 2019 report, Dr. Dixon opined that applicant sustained injury AOE/COE to the right foot as a result of the May 18, 2018 specific injury with a resulting 2% whole person impairment (WPI) using *Almaraz Guzman*. (Exhibit A, p. 38.) She did not find injury AOE/COE to the left hip or knee. (*Ibid.*) In a supplemental report dated May 27, 2020, Dr. Dixon reiterated that she “performed a thorough history and physical examination [during applicant’s initial evaluation] and did not find injury to the left hip, left knee, or left foot.” (Exhibit C, p. 3.) As such, “[w]ithout significant change to [applicant’s] provided history of physical examination[,]” her opinions remained unchanged. (*Ibid.*) She suggested a reevaluation and

requested “further medical records and appropriate imaging.” (*Id.* at p. 4.) Applicant was then reevaluated, and in a report dated February 8, 2024, Dr. Dixon once again found no medical evidence to “substantiate compensatory injury to the left hip or knee.” (Exhibit D, p. 37.) She outlined a diagnosis of left hip trochanteric bursitis but found it unrelated to the May 18, 2018 specific injury. (*Id.* at p. 34.) Despite being provided with copies of Dr. Fass’s reports, Dr. Dixon failed to address his conflicting findings on the compensable consequence injuries. Dr. Dixon also did not address applicant’s cumulative injury claim.

Dr. Fass evaluated applicant October 12, 2021, June 14, 2022, February 7, 2023, and August 6, 2024, with corresponding reports issuing thereafter, in addition to supplemental reports dated August 25, 2022, and December 1, 2022. He was deposed by the parties on March 18, 2025.

In his report dated October 12, 2021, Dr. Fass underscored that a “loss of balance and stability on the right foot can reasonably cause increased weight bearing on the left limb and lead to a painful syndrome.” (Exhibit 8, p. 7.) Applicant was diagnosed with a right foot crush injury, right toe fractures, entrapment neuropathy of the right great toe, right hallux nail onychia, left knee chondromalacia, and left hip trochanteric bursitis. (*Ibid.*) Dr. Fass indicated that causation was due to “the injuries [that] occurred during the course of [applicant’s] employment[.]” (*Ibid.*) In a subsequent report dated June 14, 2022, Dr. Fass opined that applicant reached permanent and stationary status/maximum medical improvement (P&S/MMI) and that in addition to the 2% WPI from Dr. Dixon, using “table 17-5 on page 529 of the AMA Guides[.]” applicant also sustained 7% WPI due to “gait disorder and pain in the contralateral limb” resulting from “numbness and weakness of the right great toe” as a result of the work injuries. (Exhibit 7, p. 7.) In a follow up report dated August 6, 2024, Dr. Fass included an additional 1% WPI for right toenail disfigurement. (Exhibit 2, p. 14.) He reiterated that applicant had “gait abnormality due to a loss of weight-bearing pressure on the toes of the right foot as well as neuropraxia to the deep peroneal nerve causing limping leading to a gait disorder.” (Exhibit 2, pp. 12-13.) He enlisted Dr. Dixon’s assistance on the issue of apportionment and contended that “pain in the left hip and knee as well as the bilateral heels and left ankle were associated with the abnormal gait and the reliance on increased weight bearing on the left side to avoid pressure on the right.” (*Ibid.*) Lastly, during Dr. Fass’s March 18, 2025 deposition, he testified that if there was indeed a cumulative injury, it could be argued that the two injuries were inextricably intertwined. (Exhibit 1, pp. 28:18 - 31:25.) A definitive answer regarding the existence of a cumulative injury, however, was not provided.

On February 10, 2025, applicant filed a Declaration of Readiness to Proceed to a mandatory settlement conference on all issues. A mandatory settlement conference was set for February 26, 2025, and continued to April 16, 2025, before being set for trial, to be held on May 28, 2025.

On May 28, 2025, the claims were ordered consolidated, and the issues of injury AOE/COE permanent disability, apportionment, and attorney's fees for both claims were adjudicated. The Minutes of Hearing (MOH) indicated that parties had stipulated to injury AOE/COE to the bilateral feet, left knee, and left hip for the May 18, 2018 specific injury (ADJ1409682). (MOH, May 28, 2025, p. 2; Pretrial Conference Statement (PTCS) for ADJ1409682.) Applicant submitted as evidence, the PQME reports of Dr. Fass as well as a transcript of his deposition. Defendant submitted as evidence, the PQME reports of Dr. Dixon as well as a transcript of her deposition, primary treating physician (PTP) reports from Drs. Steven Pearson and Michael Bahk, a benefit printout, and a denial notice for the cumulative injury. Thereafter, the matter stood submitted.

On August 22, 2025, the WCJ issued a JF&A wherein he found, in relevant part, that while employed on May 18, 2018 (ADJ11409682) by defendant as a cashier checker, applicant sustained injury AOE/COE to the right foot, but did not sustain injury to the left foot, knee, or hip as a compensable consequence, or permanent disability to any of the alleged body parts. The WCJ awarded applicant future medical for the right foot "to cure or relieve from the effects of the specific injury." (JF&A, p. 2.) With respect to applicant's cumulative injury claim, the WCJ found, in relevant part, that applicant did not sustain injury AOE/COE to the right foot, left foot, left knee, or left hip during the period from May 18, 2018 through December 12, 2019 (ADJ13102769), and that all "issues of permanent disability and apportionment are [thus] moot." (*Ibid.*)

It is from these findings that applicant seeks reconsideration.

DISCUSSION

I.

Preliminarily, former Labor Code¹ 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 statutory references will be to the Labor Code unless otherwise indicated.

- (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 under the Events tab 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 24, 2025, and 60 days from the date of transmission is November 23, 2025, which is a Sunday.² (See Cal. Code Regs., tit. 8, § 10600(b).) The next business day is November 24, 2025, which is a Monday. This decision was issued by or on November 24, 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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on September 24, 2025, and the case was transmitted to the Appeals Board on September 24, 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)

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.

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 24, 2025.

II.

Turning now to the merits of the Petition, applicant contends that the reports of orthopedic PQME, Dr. Alexis Dixon, which were relied upon by the WCJ, are not substantial medical evidence as they fail to describe applicant's ADLs or provide sufficient reasoning in support of Dr. Dixon's conclusions. (Petition, pp. 4-5.)

In our review of the record, it is clear the parties agreed to stipulate to injury AOE/COE to the bilateral feet, left knee, and left hip for the May 18, 2018 specific injury (ADJ1409682). This stipulation was initially outlined in the Pretrial Conference Statement, which was signed by both parties. (PTCS for ADJ1409682, p. 2.) It was also listed under the section titled "Stipulations and Issues" in the May 28, 2025 Minutes of Hearing and confirmed by the WCJ as being "accurately and completely stated into the record." (MOH, May 28, 2025, pp. 2-3.)

Section 5702 provides that:

The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

(Lab. Code, § 5702, italics added.)

The general rule is that 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 [65 Cal.Comp.Cases 1].) Pursuant to *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,' and serves 'to obviate need for proof or to narrow range of litigable issues' in a legal proceeding." (*Id.* at p. 1119.) "Good cause" to set aside an order or stipulations depends upon the facts and circumstances of each case. "Good cause" includes mutual mistake of fact, duress, fraud, undue influence, and procedural irregularities. (*Johnson v. Workmen's Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 975 [35 Cal.Comp.Cases 362]; *Santa Maria Bonita School District v. Workers' Comp. Appeals Bd.* (2002) 67 Cal.Comp.Cases 848, 850 (writ den.); *City of Beverly Hills v. Workers'*

Comp. Appeals Bd. (1997) 62 Cal.Comp.Cases 1691, 1692 (writ den.); *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1170 [50 Cal.Comp.Cases 311] (writ den.).)

Here, the parties voluntarily stipulated to injury AOE/COE to the bilateral feet, left knee, and left hip for the May 18, 2018 specific injury claim (ADJ1409682). Neither party has sought to withdraw from this stipulation. The WCJ's JF&A, however, disregards the parties' prior stipulation and fails to provide good cause for doing so. As such, we accept the original stipulation between the parties with respect to injury AOE/COE to the above body parts and will rescind and substitute the WCJ's findings to reflect the parties' agreement.

III.

Given the aforementioned stipulation, and the new findings of injury AOE/COE for the specific injury (ADJ1409682), we believe that further development of the record is necessary with respect to issues of permanent disability, apportionment, and need for future medical treatment for the left foot, hip, and knee. Further, based upon our review of the evidentiary record, the issue of injury AOE/COE for the cumulative injury (ADJ13102769) has not been sufficiently addressed. As noted above, Dr. Dixon did not address the cumulative trauma in her reporting, and although Dr. Fass was retained as a medical-legal expert for the cumulative injury claim, he has yet to provide a definitive opinion on the issue.

It is well established that the Appeals Board has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) evidence on an issue. As explained in *Tyler*, "The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims." (*Ibid.*) Further, sections 5701 and 5906 authorize the WCJ and the Appeals Board to obtain additional evidence, including medical evidence when necessary. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141-143 (Appeals Bd. en banc).)

The WCAB also has a constitutional mandate to ensure "substantial justice in all cases" and any decision must be supported by substantial evidence. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264]; Lab. Code, § 5952(d);

Lamb v. Workmen's Comp. Appeals Bd. (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) It has long been established that, in order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416-417, 419 [33 Cal.Comp.Cases 660]; *Travelers Ins. Co. v. Industrial Acc. Com. (Odello)* (1949) 33 Cal.2d 685, 687-688 [14 Cal.Comp.Cases 54]; *Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700-1702, 1705 [58 Cal.Comp.Cases 313].) A medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (*Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, 407 (a mere legal conclusion does not furnish a basis for a finding); *Zemke v. Workmen's Comp. Appeals Bd.*, 68 Cal.2d 794, 799, 800-801 [33 Cal.Comp.Cases 358] (an opinion that fails to disclose its underlying basis and gives a bare legal conclusion does not constitute substantial evidence); see also *People v. Bassett* (1968) 69 Cal.2d 122, 141, 144 (the chief value of an expert's testimony rests upon the material from which his or her opinion is fashioned and the reasoning by which he or she progresses from the material to the conclusion, and it does not lie in the mere expression of the conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based); (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc).)

In the instant matter, it is clear that the existing record is insufficient on the issue of injury AOE/COE for the cumulative injury claim (ADJ13102769) as well as the issues of permanent disability, apportionment, and need for future medical treatment for the left foot, knee, and hip relative to the May 18, 2018 specific injury (ADJ11409682). We note that although Dr. Dixon found a lack of medical evidence to support injury to these body parts, the numerous medical reports by Dr. Fass conclude otherwise. (See Exhibit C, p. 3.; Exhibit D, p. 37; Exhibit 7, p. 7; Exhibit 2, pp. 12-13.) In her reporting and during her deposition, Dr. Dixon failed to address Dr. Fass's contradictory findings or provide sufficient reasoning to support her continued belief that there were no compensable consequence injuries to the left foot, knee, and hip. In light of the foregoing, further development of the record is necessary.

When the record requires further development, the preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case.

(*McDuffie, supra*, at p. 142.) If the supplemental opinions of the previously reporting physicians do not or cannot cure the need for development of the medical record, the selection of an agreed medical evaluator (AME) by the parties should be considered, or alternatively, the WCJ may appoint a regular physician. (*Ibid.*)

Accordingly, we grant applicant's Petition, rescind and substitute the JF&A to reflect that applicant sustained injury AOE/COE to the bilateral feet, left knee, and left hip relative to the May 18, 2018 specific injury (ADJ11409682), and return this matter to the trial level for further proceedings consistent with this opinion. We shall leave undisturbed the WCJ's relevant findings on all other issues not affected by the above changes.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Joint Findings and Award dated August 22, 2025, is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Joint Findings and Award dated August 22, 2025, is **RESCINDED** and the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. With respect to ADJ11409682, applicant, Eliana Sanchez, born [], while employed on May 18, 2018, as a cashier checker by The Kroger Company, sustained an injury arising out of and in the course of employment to her bilateral feet, left knee, and left hip.
2. With respect to ADJ13102769, while employed during the period from May 18, 2018 through December 12, 2019 as a cashier checker by The Kroger Company, applicant claims to have sustained injury arising out of and in the course of employment to the bilateral feet, left knee, and left hip.
3. At the time of the above injuries, the employer was permissibly self-insured.
4. At the time of the above injuries, applicant's earnings were \$1,022.86 per week, warranting indemnity rates of \$681.91 for temporary disability and \$290.00 for permanent disability.
5. The employer has paid compensation as follows: temporary disability at a weekly rate of \$681.91 for the period from May 19, 2018 through July 8, 2018.

ORDER

All other issues, including permanent disability, apportionment, and need for future medical treatment for the left foot, left knee, and left hip relative to the specific injury (ADJ11409682), and injury arising out of and in the course of employment for the cumulative injury (ADJ13102769) (as well as permanent disability, apportionment, and need for future medical should industrial injury be found), are hereby ordered deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 24, 2025

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

**ELIANA SANCHEZ
GHITTERMAN, GHITTERMAN & FELD
BRADFORD & BARTHEL, LLP**

RL/cs

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