

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

FREDDI CALVA SUAREZ *Applicant*

vs.

**THIRD CANCUN JUICE,
AMGUARD INSURANCE COMPANY
as administered by GUARD INSURANCE COMPANIES, *Defendants***

**Adjudication Number: ADJ13898519
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of defendant's Petition for Reconsideration, lien claimant's Answer and the contents of the Report and Recommendation (Report) of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, we will deny reconsideration.

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 15, 2025 and 60 days from the date of transmission is Saturday June 14, 2025. The next business day that is 60 days from the date of transmission is June 16, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on June 16, 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 15, 2025 and the case was transmitted to the Appeals Board on April 15, 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 15, 2025.

¹ 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.

II.

For the reasons stated in the WCJ's Report, we agree that the opinions outlined in the report of primary treating physician Omar Haghighinia, D.C., dated February 16, 2021 (Exhibit 2) constitute substantial medical evidence. The WCJ properly relied on the reporting of Dr. Haghighinia over the reporting of the qualified medical evaluator (QME) David Kim, M.D., in finding that applicant sustained injury while working for defendant Third Cancun Juice. To constitute substantial medical evidence, a medical opinion must be predicated on reasonable medical probability. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416–17, 419 [33 Cal.Comp.Cases 660].) A physician's report must also be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions. (*Gatten, supra*, 145 Cal.App.4th at p. 922; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 612 (Appeals Board en banc).) A medical opinion is not substantial medical evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93, 97]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378–379 [35 Cal.Comp.Cases 525]; *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 798 [33 Cal.Comp.Cases 358].)

In this matter, Dr. Haghighinia's reports include a detailed history from the applicant, review of medical records, and a conclusion on compensability supported accordingly. Defendant argues that Dr. Haghighinia ignored relevant parts of the medical history. Based on the record, Dr. Haghighinia considered the same history as Dr. Kim. Further, the record does not include any prior non-industrial records to dispute the findings of either physician. Based on our review, the reports, particularly the report dated February 16, 2021, of Dr. Haghighinia are substantial evidence.

It is well established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions. (*Place, supra*, 3 Cal.3d at pp. 378-379.) Further, conflicts in the evidence must be resolved in favor of the findings of the WCAB and if there is any evidence in their support, findings will not be disturbed on appeal.

(*Jones v. Workers' Comp. Appeals Bd.* (1968) 68 Cal. 2d 476, 478-479 [33 Cal.Comp.Cases 221] citing (*Rogers Materials Co. v. Industrial Acc. Com.* (1965) 63 Cal.2d 717, 721 [30 Cal.Comp.Cases 421].) The function of the court on review is to determine whether the evidence, if believed, is substantial and supports the findings. (*Le Vesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal. 3d 627 [35 Cal.Comp.Cases 16]; *Foster v. Ind. Acci. Com.* (1955) 136 Cal. App. 2d 812, 816.) Having reviewed the trial record we see no evidence which is inconsistent with the WCJ's finding, and we see no reason to alter the WCJ's decision.

Accordingly, we deny defendant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 16, 2025

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

**FREDDI CALVA SUAREZ
MEDLAND MEDICAL
PACIFIC MRI
AM LIEN SOLUTIONS
AMGUARD INS
ROBERT OZERAN
THIRD CANCUN JUICE**

TF/pm

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I INTRODUCTION

- | | |
|---------------------------------------|--------------------|
| 1. Findings and Order | 03/20/2025 |
| 2. Identity of Petitioner | Defendant |
| 3. Verification | Yes |
| 4. Timeliness | Petition is timely |
| 5. Petition for Reconsideration Filed | 04/01/2025 |
| 6. Petitioner's Contentions: | |

1. By the order, decision or award, the WCJ acted without and/or in excess of his powers.
2. The evidence does not justify the Findings of Fact.
3. The Findings of Fact do not support the Order.

This matter proceeded to trial on the issue of AOE/COE only, with all other issues bifurcated and deferred by Order of the Court. The matter was submitted on the documentary record - no testimony was received. Lien claimants relied on the reporting¹ of Dr. Omid Haghighinia, D.C to establish injury AOE/COE. Defendant instead relied on the PQME reports² of Dr. David Kim, M.D., which found no injury. The Court found the reporting of Dr. Haghighinia to be more persuasive and issued findings of injury AOE/COE on March 20, 2025. These were served by mail on March 25, 2025.

Defendant has filed a timely verified petition for reconsideration of the Findings and Order. Petitioner alleges that the decision somehow insufficiently explains the Court's reasoning, and that the Court should have instead relied upon Dr. Kim's reporting which found no injury.

II FACTS

This is a denied cumulative trauma claim wherein applicant claimed that from February 1, 2014 to July 1, 2019, his Job duties caused injurious exposure to his right upper extremity, right knee, back, and bilateral feet (plantar fasciitis). Specifically, applicant informed Dr. Haghighinia that he worked as a food preparer. His job duties involved preparation of cooking ingredients by

¹ Exhibits 2-7

² Exhibits B-C

washing and chopping vegetables, cutting meat, and other meal prep, measuring ingredients and seasonings, preparing dishes such as salads and entrees, maintaining a clean kitchen by washing dishes, sanitizing surfaces, and performing other kitchen duties. He allegedly worked 8 hours per day, 6 days a week. The job physically required the applicant to walk, stand, lift and carry up to 120 pounds. The job also required repetitive bending, squatting, walking on uneven ground, reaching at, above and below shoulder level, repetitive neck motion, fine hand manipulation, simple grasping, and pushing/pulling.³

Applicant provided a similar description⁴ of his work duties to Dr. Kim.

Applicant described⁵ the gradual onset of symptoms to both doctors, as well as the allegation that despite multiple reports of injury, management allegedly ignored him and made light of his complaints.

Following a clinical examination demonstrating objective findings, as well as review of records, Dr. Haghighinia found that "[b]ased on the physical examination performed today, review of the history of the injury with the patient, the patient's description of their job duties, and the length of time that this patient has been employed by the above-referenced employer, it is my opinion with a reasonable degree of medical probability that the patient has suffered a continuous trauma injury in the course and scope of his employment with Third Cancun Juice, Inc. resulting in the above listed diagnoses." (Exhibit 2 at page 11).

Dr. Kim, having done the same, opined that "based on the information I have reviewed thus far, there is nothing to support the patient's complaints are related to his job duties at Third Cancun Juice where he last worked in July 2019. The reports I have received are dated beginning in February 2021, almost 2 years after his last day of work for Third Cancun Juice, and subsequent to working for two subsequent employers." (Exhibit Cat pg 4).

³ Exhibit 2 at pg 2.

⁴ Exhibit B at pg 2.

⁵ Exhibit 2 at pg 3; Exhibit B at pg 2

III DISCUSSION

Dr. Haghighinia considered applicant's history and findings and found that within reasonable medical probability, the complaints were related to applicant's employment at Third Cancun Juice. The Court found this opinion persuasive and found injury AOEICOE based upon that reporting.

In contrast, based upon the review of Dr. Kim's reporting, it was clear to the Court that Dr. Kim seemed to have discounted the applicant's history of injury, primarily because applicant had subsequent employment following his departure from Third Cancun Juice. Despite that applicant worked under physically laborious conditions for more than 5 years and claimed to have been ignored by management despite multiple attempted reports of injury, these allegations are completely absent from Dr. Kim's analysis. Instead, despite objective findings on exam, Dr. Kim claimed not to see any potential connection between those findings and applicant's work for Third Cancun Juice.

This opinion is not credible. Other than unspoken hints at speculation that applicant may have become injured through some other means, Dr. Kim simply dismissed applicant's history and complaints. Applicant's kidney stones in no way purport to explain the findings on exam. Based on its lack of credibility, the Court rejected this opinion. Defendant offers no persuasive argument on Reconsideration as to why the Court's rejection of this opinion was incorrect.

IV RECOMMENDATION

For the reasons stated above, it is respectfully recommended that defendant's Petition for Reconsideration be DENIED.

DATE: 4/11/2025

Adam D. Graff
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

TRANSMITTED TO RECON: April 15, 2025