

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

GABRIEL BARRERA, *Applicant*

vs.

**MATTHEWS INTERNATIONAL CORPORATION;
TRAVELERS INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ19324168
Pomona District Office**

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

Applicant seeks reconsideration of the August 27, 2025 Findings of Fact (FOF) wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that based upon the sole October 14, 2024 report of panel Qualified Medical Evaluator (PQME), Gail Hopkins, M.D., applicant failed to meet his burden in proving injury arising out of and in the course of employment (AOE/COE) to the back, neck, shoulders, wrists, knees, hips, teeth/jaw, psyche, anxiety, and insomnia for the period from August 1, 2022, through March 11, 2024 during which time applicant was employed by defendant as a forklift driver.

Applicant contends that the report of Dr. Hopkins is not substantial medical evidence and that further development of the record is necessary with respect to his non-orthopedic claims. (Petition, p. 7.)

We have received an Answer from defendant. The WCJ prepared a 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 grant the Petition, rescind the FOF, substitute it with a new Findings and Order which reflects that the issues of injury

AOE/COE, permanent disability, apportionment, further medical treatment, attorney's fees, and any other relevant issues, are deferred, and return this matter to the trial level for further proceedings consistent with this opinion.

FACTS

Applicant filed an Application for Adjudication wherein he claimed that while employed by defendant as a forklift driver during the period from August 1, 2022, through March 11, 2024, he sustained injury AOE/COE to his neck, back, shoulders, wrists, hips, knees, teeth/jaw, psyche, anxiety, and insomnia. The claim was denied by defendant via a written notice dated August 23, 2024.

Thereafter, the parties proceeded with discovery and retained Dr. Hopkins as the PQME. Dr. Hopkins evaluated applicant on October 14, 2024, and issued a corresponding report on November 6, 2024, wherein she documented complaints of pain in the neck, back, hips, and knees as well as intermittent "discomfort in the shoulder and wrists[.]" (Exhibit B, pp. 14-15.) She did not find industrial causation for the orthopedic body parts claimed. She also did not address applicant's non-orthopedic claims.

In a letter dated December 4, 2024, applicant objected to the report of Dr. Hopkins and reserved his right to depose her. (Exhibit 1.)

On February 10, 2025, defendant filed a Declaration of Readiness to Proceed to a mandatory settlement conference on all issues.

On February 25, 2025, applicant filed an objection to the Declaration of Readiness to Proceed indicating that he was in the process of scheduling a deposition of Dr. Hopkins.

Thereafter, the matter was set for a mandatory settlement conference on March 12, 2025, and continued to a further hearing before ultimately being set for trial.

Prior to trial, applicant provided defendant notice of a deposition of Dr. Hopkins scheduled for September 17, 2025. (Minutes of Hearing/Summary of Evidence (MOH/SOE), July 9, 2025, p. 3.)

At the July 9, 2025 trial, the following issues were set for determination: injury AOE/COE; permanent disability; apportionment; need for future medical treatment; attorney's fees; the pending deposition of Dr. Hopkins and applicant's objection to her report. (*Id.* at pp. 2-3.) Applicant submitted into evidence his December 4, 2024 objection letter. Defendant submitted

into evidence the August 23, 2024 denial letter and the October 14, 2024 report of Dr. Hopkins. Thereafter, the matter stood submitted.

On August 26, 2025, the WCJ issued a FOF wherein she found, in relevant part, that applicant failed to meet his burden in proving injury AOE/COE to the back, neck, shoulders, wrists, knees, hips, teeth/jaw, psyche, anxiety, and insomnia for the period from August 1, 2022, through March 11, 2024 during which time applicant was employed by defendant as a forklift driver.

It is from this FOF 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:

- (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 October 6, 2025, and 60 days from the date of transmission is December 5, 2025. This decision was issued

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

by or on December 5, 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 October 6, 2025, and the case was transmitted to the Appeals Board on October 6, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under Labor Code section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on October 6, 2025.

II.

Turning now to the merits of the Petition, applicant contends that the October 14, 2024 report of Dr. Hopkins is not substantial medical evidence. (Petition, p. 7.) As explained in *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and 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].) Pursuant to *E.L. Yeager v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687], "[a] medical opinion is not substantial 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. (citations.) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (citation.)" "A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial evidence to support a denial of benefits. (citation.)" (*Kyle*

v. Workers' Comp. Appeals Bd (City and County of San Francisco) (1987) 195 Cal.App.3d 614, 621.)

Here, in her October 14, 2024 report, Dr. Hopkins noted that applicant's "neck pain has improved but he continues to have vague low back pain" which is "diffuse in the lumbar paraspinal muscles." (Exhibit B, p. 14.) She similarly opined that applicant has "intermittent discomfort in the shoulders and wrists" and "intermittent diffuse pain in his knees." (*Ibid.*) With respect to applicant's hips, she noted complaints of groin and leg pain "with prolonged sitting, standing or walking" as well as "significant degenerative changes in the hips" and "decreased range of motion bilaterally." (*Ibid.*) She ultimately concluded that applicant did not sustain injury AOE/COE to the lumbar spine, cervical spine, shoulders, wrists, knees, or hips. (*Id.* at p. 15.) Although she explained that osteoarthritic changes contributed to applicant's hip complaints, she failed to fully address whether applicant's employment was also contributing factor and if not, why. She noted also that applicant "never reported or sought care for low back pain while employed[.]" but as the parties are well aware, lack of reporting and/or treatment does not preclude injury AOE/COE. Further reasoning is necessary. Considering the foregoing, we do not believe that the report of Dr. Hopkins, as it currently stands, is substantial medical evidence.

III.

On the issue of further discovery, applicant contends that Dr. Hopkins specifically indicated in her one and only report that she would address "only the orthopedic issues related to this claim[.]" (Petition, p. 2.) As such, applicant argues that "the case [is] not fully developed because Dr. Hopkins [has] fail[ed] to opine on [applicant's] non-orthopedic injuries" and has yet to defer to "doctors of different specialties" with respect to these claims. (Petition, p. 7.)

As the parties are well aware, an adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, at pp. 473, 475.) 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.” (*Id.* at p. 475.) This “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.” (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

It is also well established that the Appeals Board has the discretionary authority to develop the record when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 9 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) Under both the California and United States Constitutions, all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [97 Cal Rptr. 2d 852, 65 Cal.Comp.Cases 805].) A fair hearing is “... one of ‘the rudiments of fair play’ assured to every litigant ...” (*Id.* at p. 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, “the commission ... must find facts and declare and enforce rights and liabilities, - in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law.” (*Id.* at p. 577.) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses, introduce and inspect exhibits, and offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) Full development of the evidentiary record also ensures that the decision is based upon substantial evidence and sections 5701 and 5906 authorize the WCJ and the Appeals Board to obtain additional evidence, including medical evidence. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141-143 (Appeals Bd. en banc).)

Here, the record is lacking on the issue of injury AOE/COE to the teeth/jaw, psyche, anxiety, and insomnia. Further, applicant issued a timely objection to the Declaration of Readiness to Proceed preceding trial. Per the evidentiary record, applicant issued an initial objection to the PQME report and reserved his right to depose Dr. Hopkins in a letter dated December 4, 2024. (Exhibit 1.) Thereafter, in response to defendant's Declaration of Readiness Proceed, applicant filed a subsequent objection dated February 25, 2025, wherein he noted that he was in the process

of scheduling her deposition. Finally, prior to trial, applicant provided notice to defendant that a deposition of Dr. Hopkins had been scheduled for September 17, 2025. (MOH/SOE, July 9, 2025, p. 3.) Given the outstanding issues and timely objections, we believe that the record requires further development and that applicant is entitled to depose Dr. Hopkins.

Accordingly, we grant applicant's Petition, rescind the FOF, and substitute it with a new Findings and Order to reflect that the issues of injury AOE/COE, permanent disability, apportionment, further medical treatment, attorney's fees, and any other relevant issues are deferred, and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings of Fact dated August 26, 2025, is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact dated August 26, 2025, is **RESCINDED** and **SUBSTITUTED** with a new Findings and Order, as provided below, and that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

FINDINGS OF FACT

1. Gabriel Barrera born [], while employed during the period from August 1, 2022 through March 11, 2024, as a forklift operator/general laborer, occupational group number 351, at Menifee, California, by Matthews International, claims to have sustained injury arising out of and in the course of employment to the back, neck, shoulders, wrists, knees, hips, teeth, jaw, psyche, anxiety and insomnia.
2. At the time of the alleged injury defendant was insured by Travelers Insurance Company.
3. Applicant's earnings at the time of injury was \$818.40 per week producing a temporary disability rate of \$545.60 per week and a permanent disability rate of \$290.00 per week, as stipulated by the parties.

ORDER

All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 4, 2025

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

**GABRIEL BARRERA
SOLIMON RODGERS, P.C.
HARRISON, EICHENBERG & MURPHY 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