

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

GEORGETTE MUTAFYAN, *Applicant*

vs.

COUNTY OF LOS ANGELES Permissibly Self-Insured, *Defendant*

Adjudication Numbers: ADJ16567344, ADJ16597926
Van Nuys District Office

OPINION AND ORDER
GRANTING PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of two decisions issued concurrently by a workers' compensation administrative law judge (WCJ). In a Findings and Award of September 26, 2025 in case ADJ16567344, it was found that while employed during a cumulative period ending November 8, 2021 as a children's social worker, applicant sustained industrial injury to her psyche causing permanent disability of 18% after apportionment. In finding permanent disability of 18%, the WCJ apportioned 20% of applicant's permanent disability to non-industrial factors. In a Findings and Award of September 26, 2025 in case ADJ16597926, it was found that while employed during a cumulative period ending August 3, 2022 as a children's social worker, applicant sustained industrial injury to her neck and back causing permanent disability of 22%. It was found in this case that applicant "did not sustain injuries to her upper extremities and wrists."

Applicant contends that the WCJ erred in applying apportionment in case ADJ16567344 arguing that the report of qualified medical evaluator psychiatrist Linslee Egan, M.D., upon whom the WCJ relied in making his findings, did not constitute substantial medical evidence of apportionment. Applicant also contends that the WCJ erred in not finding industrial injury to the wrists and consequent permanent disability in case ADJ16597926.

As explained below, we will grant reconsideration and amend the decision in ADJ16567344 to reflect that applicant's injury caused permanent disability of 22%, as we agree that there is not substantial medical evidence of apportionment. Additionally, we will amend the decision in case ADJ16597926 to defer the issues of injury to the upper extremities and wrists and

permanent disability so that qualified medical evaluator chiropractor Shay Shani, D.C. may clarify his opinions regarding whether applicant has sustained industrial injury and permanent disability.

Preliminarily, we note that 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 October 27, 2025 and 60 days from the date of transmission is December 26, 2025. This decision is issued by or on December 26, 2025, so 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 October 27, 2025, and the case

was transmitted to the Appeals Board on October 27, 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 October 27, 2025.

Turning to the merits, with regard to the issue of apportionment in case ADJ16567344, Dr. Egan ascribed a whole person impairment of 12% based on a Global Assessment of Functioning (GAF) score of 62. Dr. Egan's discussion of apportionment in her report is as follows:

In this applicant's case, I find that concurrent and preexisting nonindustrial factors also contributed to the development of her psychiatric symptomatology in the face of work-related stress. I therefore determine that 20% of the applicant's psychiatric injury was the result of preexisting anxiety, poor coping skills and impaired distress tolerance, combined with a nonindustrial concurrent stress burden, which predisposed her to psychiatric decompensation in the face of stress. Pre-existing and nonindustrial concurrent stressors include some financial stress as she is paying off education loans, and her father's difficult battle with Alzheimer's. She acknowledged trauma in her childhood (outside of her home) which she declined to provide details, but reported having received treatment and counseling to overcome. There is one record that anecdotally notes a past diagnosis of anxiety in 2007. Nonindustrial factors therefore present a significant nonindustrial stress burden which contributed to the overwhelm of her limited coping capacity, leading to the Depressive Disorder.

(November 29, 2024 report at p. 17.)

Dr. Egan later repeated this analysis in her report, stating that she apportioned:

20% to preexisting poor coping skills and impaired distress tolerance, which predisposed her to psychiatric decompensation in the face of stress, and now present an ongoing barrier to psychiatric recovery. The applicant has a chronically significant nonindustrial stress burden which fluctuates in nature and intensity, but has remained, on average, serious enough to impact both the inception of the psychiatric injury and the maintenance of her permanent psychiatric disability to a significant and persistent degree.

(November 29, 2024 report at p. 25.)

While it is now well established that one may properly apportion to pathology and asymptomatic prior conditions (see, e.g. *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 617 [Appeals Bd. en banc]), an apportionment opinion must still constitute substantial medical evidence. As we explained in *Escobedo*:

[A] medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. [Citations.]

Moreover, in the context of apportionment determinations, the medical opinion must disclose familiarity with the concepts of apportionment, describe in detail the exact nature of the apportionable disability, and set forth the basis for the opinion, so that the Board can determine whether the physician is properly apportioning under correct legal principles. [Citations.]

For example, if a physician opines that approximately 50% of an employee's back disability is directly caused by the industrial injury, the physician must explain how and why the disability is causally related to the industrial injury (e.g., the industrial injury resulted in surgery which caused vulnerability that necessitates certain restrictions) and how and why the injury is responsible for approximately 50% of the disability. And, if a physician opines that 50% of an employee's back disability is caused by degenerative disc disease, the physician must explain the nature of the degenerative disc disease, how and why it is causing permanent disability at the time of the evaluation, and how and why it is responsible for approximately 50% of the disability.

(*Escobedo*, 70 Cal.Comp.Cases at p. 621.)

Dr. Egan's apportionment discussion does not in detail how and why each nonindustrial factor is contributing to applicant's GAF score. Additionally, while we acknowledge that determining the level of apportionment is not an exact science and "[a]rriving at a decision on the exact degree of disability is a difficult task under the most favorable circumstances. It necessarily involves some measure of conjecture and compromise" (*Liberty Mutual Ins. Co. v. Industrial Acc. Com. (Serafin)* (1948) 33 Cal.2d 89, 93 [13 Cal.Comp.Cases 267]), there must be some attempt at explaining the percentages of apportionment decided upon, not just the existence of non-industrial factors. For these reasons we find that Dr. Egan's apportionment discussion did not constitute substantial medical evidence, and that defendant did not carry its burden of proving apportionment. We therefore find applicant entitled to an unapportioned award of 22% permanent disability in case ADJ16567344.

In case ADJ16597926, applicant was initially evaluated by primary treating physician Benham Sam Tabibian, M.D. who wrote in a January 17, 2023 report that EMG and nerve conduction studies of the upper extremities showed bilateral moderate carpal tunnel syndrome." Applicant then underwent treatment under a different primary treating physician, Edwin Haronian, M.D., who diagnosed carpal tunnel syndrome and ascribed 6% whole person impairment to each

wrist. (June 27, 2024 report at pp. 8-9.) In so finding, Dr. Haronian wrote “As it relates to the wrists, I am in disagreement with the assessment of the QME, as it is not compile impairment [sic] or discussion in regards to wrists. The neurodiagnostic studies did reveal evidence of carpal tunnel syndrome and her work-related activities are consistent with her complaints on an industrial basis. As such, I do believe that the carpal tunnel syndrome is part of the industrial injury.” (June 27, 2024 report at pp. 8-9.)

Dr. Haronian’s reference to the QME referred to Dr. Shani who, in his initial report, found that applicant was negative for Phalen’s Test, Reverse Phalen’s sign, Tinel’s Test and Durkan’s Compression Test, and found that these tests “rule[d] out carpal tunnel syndrome.” (March 3, 2023 report at pp. 50-52.) However, Dr. Shani never expressly states in either of his reports that applicant did not sustain wrist injury or disability and does not discuss the EMG and nerve conduction studies discussed by Drs. Tabibian and Haronian. In the Report, the WCJ states that applicant’s wrist symptoms may have been subsumed in the permanent impairment ascribed to the back and neck. Dr. Shani should address this issue in his further reporting or testimony.

The WCAB 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. The WCAB 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].) In accordance with that mandate, we will amend the decision in case ADJ16597926 to defer the issues of industrial injury to the wrists and permanent disability so that the record may be more fully developed on these issues. In the further proceedings, Dr. Shani should clarify his findings regarding the applicant’s wrists, directly addressing the EMG/nerve studies and the reporting of Drs. Tabibian and Haronian. Dr. Shani should also clarify whether any wrist issues were subsumed in the permanent impairment ascribed to the neck and back. We express no opinion on the ultimate resolution of this matter.

For the foregoing reasons,

IT IS ORDERED that Applicant’s Petition for Reconsideration of the Findings and Award of September 26, 2025 in case ADJ16567344 and Findings and Award of September 26, 2025 in case ADJ16597926 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of September 26, 2025 in case ADJ16567344 is **AMENDED** as follows:

FINDINGS OF FACT

1. Georgette Mutafyan, age 34 at the time of injury, while employed during the period 3/30/2018 through 11/8/2021, as a children's social worker, Occupational Group Number 111, at Los Angeles, California, by the County of Los Angeles, sustained injuries arising out of and in course of her employment to her psyche.

2. At the time of the injury the employer was permissibly self-insured.

3. At the time of the injury the employee's average weekly wage was \$1,795.64, warranting a rate of \$1,197.09 for temporary disability and \$290.00 per week for permanent disability.

4. The injury caused temporary total disability for the period 8/1/2022 through 3/13/2023 and 11/9/2023 through 2/21/2024, payable at the rate of \$1,197.09.

5. Payments of temporary disability may be subject to potential increases under Cal. Lab. Code sec. 4661.5.

6. Defendant is entitled to credit for any days worked during the period described in Paragraph 5. Defendant is also entitled to credit for any salary paid during that time.

7. The injury became permanent and stationary on 2/21/2024.

8. The injury caused permanent disability of 22%, equating to 85.5 weeks of indemnity payable at the rate of \$290.00 per week, commencing 2/22/2024, for a total of \$24,795.00.

9. The defendant did not meet its burden of proof on the issue of apportionment.

10. The injury caused a need for future medical care.

11. The value of Applicant's attorney's services is assessed at 15% of the permanent disability set forth above, plus 15% of any additional temporary disability due stemming from the findings of fact above.

12. The Defendant is entitled to credit for the overpayment of temporary disability for the period 2/21/2024 through 3/21/2024.

AWARD

AWARD IS MADE in favor of GEORGETTE MUTAFYAN against COUNTY OF LOS ANGELES of:

1. Temporary Disability as set forth in Paragraph 4 above.
2. Permanent Disability as set forth in Paragraph 8 above.
3. Future medical care as set forth in Paragraph 10 above.
4. Attorneys' fees as set forth in Paragraph 11 above.

ORDERS

1. Defendant's petition for overpayment of temporary disability is Granted.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of September 26, 2025 in case ADJ16597926 is **AMENDED** as follows:

FINDINGS OF FACT

1. Georgette Mutafyan, age 35 at the time of injury, while employed during the period 4/1/2019 through 8/3/2022, as a children's social worker, Occupational Group # 111, at Los Angeles, California, by the County of Los Angeles, sustained injuries arising out of and in the course of her employment to her neck and back.

2. The issue of industrial injury to the wrists and upper extremities is deferred, with jurisdiction reserved.

3. At the time of the injury the employer was permissibly self-insured.

4. At the time of the injury the employee's average weekly wage was \$1,795.64, warranting rates of \$1,197.09 for temporary disability and \$290.00 per week for permanent disability.

5. The injury caused temporary disability for the period 8/14/2022

through 3/13/2023 and 11/9/2023 through 2/21/2024, payable at the rate of \$1,197.09 per week.

6. Defendant is entitled to credit for any days worked during the periods set forth in Paragraph 5 as well as credit for salary paid during that time.

7. The payment of temporary disability may be subject to increases per Cal. Lab. Code sec. 4661.5.

8. The issue of permanent and stationary date is deferred, with jurisdiction reserved.

9. The issue of permanent disability is deferred, with jurisdiction reserved.

10. The issue of apportionment is deferred, with jurisdiction reserved.

11. The injury caused a need for future medical care.

12. The issue of attorney's fees is deferred, with jurisdiction reserved.

13. Defendant is entitled to credit for overpayments of temporary disability for the period 2.22/2024 through 3/21/2024.

14. Defendant is entitled to credit for all temporary disability payable under companion case ADJ16567344.

15. Defendant is entitled to credit for any salary or disability paid by the employer during the periods of temporary disability set forth above.

AWARD

AWARD IS MADE in favor of GEORGETTE MUTAFYAN against COUNTY OF LOS ANGELES of:

1. Temporary Disability as set forth in Paragraph 5 above,
2. Future medical care as set forth in Paragraph 11, above,

ORDERS

1. Defendant's petition for credit for overpayment of temporary disability is Granted.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 26, 2025

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

**GEORGETTE MUTAFYAN
GLAUBER BERENSON VEGO
TENNENHOUSE, MINASSIAN & ADHAM**

DW/oo/abs

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