WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

HANADI VARVAIS, *Applicant*

vs.

UCI MEDICAL CENTER; permissibly self-insured, administered by SEDGWICK, *Defendants*

Adjudication Number: ADJ15815443
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on August 18, 2025, wherein the WCJ found in pertinent part that applicant was employed as registered nurse by defendant during the time period September 30, 2001 through January 25, 2019; that she failed to meet her burden to prove that she sustained industrial injury to her back arising out of and in the course of her employment (AOE/COE); and that applicant incurred reasonable and necessary medical-legal expenses payable by defendant; and the WCJ ordered that applicant take nothing.

Applicant contends in the Petition for Reconsideration (Petition) that the WCJ's Opinion on Decision (OOD) is skeletal and does not include a summary of the evidence, adequate analysis to support its conclusions, nor application of the law to the facts; that substantial evidence in the record, including the treating physician's report, supports applicant's assertion that her injury was AOE/COE; that employment need not be the sole cause of injury and that the injury is compensable if employment is a contributory cause; and that panel qualified medical evaluator (QME) Robert Ahearn, M.D.,'s opinions are based on erroneous facts and do not constitute substantial medical evidence.

We have not received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

Applicant recently filed a "Request for Supplemental Petition for Good Cause; Pursuant to CCR §10964" in which applicant requested that we accept her Supplemental Petition, to allow her an opportunity to respond to the reasoning and analysis in the WCJ's report, and a "Supplemental Petition for Good Cause." Pursuant to WCAB Rule 10964(a), we have accepted and considered applicant's Supplemental Petition. (Cal. Code Regs., tit. 8, § 10964(a).)

We have considered the allegations in the Petition, the Supplemental Petition, and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will grant reconsideration, rescind the F&O, and return the case to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

Applicant filed an Application for Adjudication (Application) on February 9, 2022, claiming that she sustained a specific injury to her lower back and right shoulder while working for defendant on January 25, 2019. Defendant denied compensability, citing "Labor Code 3208.3 post termination defense" and "Labor Code 5405 statute of limitations." (7/18/22 Answer.) Applicant filed an amended application on December 19, 2023, in which she indicated that the injuries to her lower back and right shoulder were cumulative injuries, sustained during the time period from September 30, 2001 through January 25, 2019, while employed by defendant.

Applicant was evaluated by QME Dr. Ahearn on August 28, 2023. Dr. Ahearn wrote a QME Orthopedical Evaluation and Report, dated August 28, 2023, followed by three additional reports dated March 15, 2024, January 2, 2025 and February 2, 2025, and he was deposed on February 26, 2024 and June 3, 2024. (Defendant's Exhs. A-F.)

In his August 28, 2023 report, Dr. Ahearn indicated that applicant was employed by defendant from September 2001 to January 19, 2019. (Exh. A - QME Report, at p. 3.) Applicant reported to the QME that:

> [W]hile pursuing her usual and customary job duties as a registered nurse both working in the oncology field and in the E.R. spanning an 18-year career at UCI Medical Center, she developed pain in her right shoulder and lower back. She states over her career she was involved in repetitive activities requiring reaching, lifting, and pushing and pulling. She states this involved multiple episodes of transporting patients from the UCI E.R. to various floors in the hospital. During her career, she

> recalls having to be evaluated in the occupational medical department at UCI, primarily for her lower back. She cannot recall specific dates of her evaluations. She states she was possibly seen at occupational med at UCI for her right shoulder. She recalls reporting at least one episode in 2012 to her supervisor.

(*Id.* at pp. 2-3.)

The QME's discussion of applicant's concerns, and summary of her pertinent medical records, documented a long history of back pain, including that she currently suffers from "constant" lower back pain, mostly on the right side, that ranges in intensity from 2 to 8, on a 10 point scale, and is sometimes "severe." (*Id.* at p. 3.)

Applicant has been treated by Drs. Safman and Dunphy at Newport Orthopedic Institute, from 2015 to 2022, by occupational health at UCI in 2005, and by an orthopedic physician at UCI. (*Id.* at p. 4.) Applicant's medical records indicate that she received the following treatments: assessments and scans for her lower back: steroid injections to treat her lower back and sacroiliac joint in 2018, 2021, and 2022 (*Id.* at p. 10); MRI of her lumbar spine on July 9, 2018 which found a number of mild to moderate disc protrusions, bulging, disc desiccation, hypertrophy, arthropathy, stenosis and other issues (*Id.* at pp. 12-13); MRI of her cervical spine on July 26, 2019, which found disc desiccation and mild disc bulging (*Id*. at p. 13.); MRI of her lumbar spine on November 19, 2021, which found hypertrophy causing mild central canal stenosis at L3-L4, disc bulging, disc extrusion, moderate to severe central canal stenosis at L4-L5, and an overall finding of mild to moderate multilevel degenerative changes, most prominent at the L4-5 level (*Id.* at pp. 13-14); MRI of her sacroiliac joints on the same date, which found anterior bilateral SI joint sclerosis with subchondral cortical irregularity, due to either degenerative changes or inflammatory sacroiliitis (*Id.* at p. 14.); treated for lumbar strain in March, April and May 2017 after tripping at work, with PT and modified work duties by Dr. Wayne Chang (*Id.* at p. 15.); treated on July 12, 2018 by Dr. Alexander H. Tischler, who found "significant degenerative changes, protrusion, spinal stenosis, etc" in her lumbar spine, and referred applicant to pain management (*Id.* at p. 16-17); seen on August 2, 2018 by Naomi Porter, PA-C, who noted that applicant had chronic back pain over the last 10 years, and finding left lumbar radiculitis, lumbar stenosis, lumbar facet arthropathy and lumbar pain, and lumbar degenerative disc disease, and referred her to PT, epidural injection and pain medication (*Id*. at p. 18); seen on May 28, 2021 by Porter, who indicated applicant had lower right back pain for the past six months, with exam findings of positive pelvic compression, 70%

range of motion in lumbar spine, and diagnoses of right sacroiliac joint pain, lumbar pain, facet arthropathy and facet mediated pain, and history of left L4 radiculopathy, and plan of right sacroiliac joint injections (*Id*. at p. 18.); seen by Porter on August 26, 2021, who found 10/10 lower back pain and similar findings to prior visit (*Ibid.*); seen by Porter on September 27 and November 9, 2021, who noted improvement from injections and PT, but applicant still experiencing problems with range of motion, MRI ordered (*Id*. at pp. 18-19); additional progress notes from same provider in November 2021 and January, April and May 2022 indicate ongoing issues with back pain and limited range of motion (*Id*. at p. 19); seen multiple times by Dr. Kimberly Safman, October through December 2018, June and August 2021, and March and June 2022, who noted physical findings of tenderness and limited range of motion and provided treatment for significant lower back pain (*Id*. at pp. 19-20); Long Beach Medical Center record of January 2, 2005, indicating patient presented for emergency treatment after 2-3 days of left leg tingling and back pain, diagnosis was sciatica (*Id*. at p. 26); and, applicant received physical therapy for her back on multiple occasions between February 2017 and December 2021. (*Id*. at p 29.)

In the Medical History Timeline section of the report, and again in the diagnoses section, the QME wrote that applicant's 2005 back pain and left leg numbness occurred while she was working for Long Beach Memorial Hospital. (*Id*. at pp. 30, 32.) This contradicts the medical records and applicant's employment history, both of which indicate that applicant worked for defendant in 2005 and was treated at Long Beach Memorial on January 2, 2025 for her back pain, but *was not employed there* at that time. (*Id*. at 3, 26.) This error regarding applicant's employer in 2005 was repeated in Dr. Ahearn's subsequent reports. (Defendant's Exh. B, at p. 2; Defendant's Exh. C, at p. 2; Defendant's Exh. D, at p. 2.) The same timeline repeatedly indicates that applicant's 2019, 2021 and 2022 injuries were "non work related" or "no mention of industrial component" despite applicant's repeated statements that these injuries were work related. (*Id*. at pp. 31, 27.)

Dr. Ahearn concluded that applicant had no indication of a cumulative trauma injury to her lower back or her right shoulder, secondary to her work history as a nurse at UCI, and found that her whole person impairment rating was 0%. (*Id*. at pp. 31, 33.)

The QME described applicant's work duties as follows:

> Her job duties as a registered nurse are occasionally physical including standing, walking, bending, stooping, lifting, and pushing and pulling; however, these activities are done on an intermittent basis and are described as normal activities of daily living. There is no

> indication of a repetitive nature that would lead to tissue damage. There is therefore no indication of a cumulative trauma injury.

(*Id*. at p. 33.)

Dr. Ahearn was subsequently provided with applicant's job analysis, which indicated that her role as Clinical Nurse II included frequent "bending, twisting and turning," occasional "climbing, crouching and kneeling," and "carrying up to 25 pounds, lifting up to 50 pounds, pushing and pulling up to 75 pounds." (Defendant's Exh. B, at p. 2.) The QME pointed out that these activities were "not continuous" and made no change to his prior conclusion that there is "no indication of a cumulative trauma injury." (Defendant's Exh. B, at p. 2.) In his second deposition, when asked about the job analysis, as well as applicant's deposition, where applicant had explained that her job included transporting and lifting patients, and other hard, physical work, the QME again declined to change his opinion, stating,

> I see backs all day, and the great majority of us as human beings injure our backs in some way during our lifetime. But the question you're asking me is her job duties related to an injurious pattern to her back, and again, I say no. Just because she had to do repetitive activities that we all do during the day, if it was injurious, it would lead to a quote unquote injury, and she would have been treated for that.

(Defendant's Exh. F, at pp. 10, 13-14.)

The QME concluded that not even 1% of applicant's lower back injury was due to industrial cumulative trauma. (*Id*. at pp. 16-17.)

Applicant was treated by primary treating physician (PTP) Simon Lavi, D.O. He completed "Primary Treating Physician's Initial Complex Orthopedic Evaluation with Request for Surgical Authorization" on July 5, 2023. (Applicant's Exh. 2, at pp. 55-65.) Dr. Lavi diagnosed applicant with "right shoulder internal derangement / AC arthropathy" as well as "lumbar facet arthropathy." (*Id.* at p. 61.) In the causation section of the report, Dr. Lavi concluded:

> Having had the opportunity to see and examine the patient in my office and reviewing the mechanism of injury, the patient's subjective complaints of pain and my objective findings, as well as having had the opportunity to review the submitted medical records, I have arrived at the above-noted diagnoses.
>
> Absent evidence to the contrary, based on the information available to me at this time, it is within reasonable medical probability the patient's symptoms and diagnoses are a direct result of the injurious exposure that occurred while working for UCI Medical Center as an RN.

> I have not had the opportunity to review the patient's entire prior medical records nor any AME/IME that may be completed. Apportionment to pre-existing injuries and/or nonindustrial causation could be indicated. I do reserve the right to alter my opinions noted regarding causation upon review of any additional medical records, including, but not limited to, any future AME/IME reports, should the need arise.

(*Id.* at pp. 61-62.)

Dr. Lavi wrote numerous progress reports, documenting applicant's regular treatment for her right shoulder and lower back pain, during the time period August 4, 2023 through February 12, 2025. (*Id.* at pp. 1-54.)

Dr. Lavi also prepared a rebuttal report, dated August 27, 2024, in which he summarized Dr. Ahearn's August 23, 2023 QME report, and then commented on Dr. Ahearn's findings and on applicant's job description. (Applicant's Exh. 1.) He described in detail the tasks applicant performed, including "total patient care such as dressing the patients, placing them on gurneys, monitoring the patients depending on the level of care. When patients fainted and Ms. Varvais would have to lift and place them back on the bed, turn them, transport the patients upstairs and/or to the diagnostic test department. Ms. Varvais states she performed frequent to constant heavy pushing, pulling, turning, lifting, and bending." (*Id*. at p. 4.) Applicant also had to, at times, "perform CPR at the door on her knees" and that while serving as a Clinical Nurse Supervisor II, she nevertheless "had to perform the duties of a registered nurse 10% to 50% of the 12 hour workday." (*Ibid*.) While doing the office work part of her job, she "had a standup desk because she could not sit down for prolonged periods" and she noted that in the shared office, "there was not enough space to bend to get to the cabinets. She had to bend and twist in an awkward position to get paperwork." (*Id*. at pp. 4-5.)

Dr. Lavi noted, generally, that

> Nurses can get injured due to the cumulative effects of years of bending and lifting heavy patients. Overexertion injuries in nurses can result from the physical demands of patient care that exceed a nurse's physical capacity. These injuries can occur through various activities, such as lifting, pushing, pulling, or carrying heavy loads, often involving the movement of patients.

(*Id*. at p. 5.)

Dr. Lavi's report concluded:

> Based on my understanding of the patient's job duties at UCI as discussed above, the frequency of activity as described by the patient (heavy lifting, pushing, pulling, twisting, stooping), as well as review of the QME's report, it is within reasonable medical probability that the patient sustained a low back injury while working for UCI in the capacity of a Registered Clinical Nurse in ER and Clinical Nurse Supervisor II.
>
> If there is a dispute regarding her job description since the job description the patient provided in this office differs from that described by Dr. Ahearn, I would suggest a formal job description be prepared to be reviewed by the respective parties herein.

(*Ibid*.)

On October 8, 2024, the WCJ ordered the matter off calendar to allow for further discovery and ordered that all known PTP reports or other medical records were to be sent to QME within 10 days with a request for a supplemental report. Dr. Ahearn's two supplemental reports, written after his review of the PTP's reports, did not include any change in his prior opinion that applicant's injuries were non-industrial. (Defendant's Exh. C., at pp. 3-4, and Exh. D. at pp. 3-4.)

The matter proceeded to trial on May 7, 2025. The parties stipulated, in relevant part, to employment, and that applicant claimed an industrial back injury during the time period September 30, 2001 through January 25, 2019; and framed for decision whether applicant had an injury to her back AOE/COE; and, whether defendant has met the burden for the affirmative defense of the statute of limitations. (5/7/25 MOH, at p. 2.) Admitted into evidence for applicant were PTP Dr. Lavi's reports dated July 5, 2023 through Feb. 12, 2025. (Applicant's Exhs. 1-2.) Admitted for defendant were QME Dr. Ahearn's four reports and two depositions. (Defendant's Exhs. A-F.) There were no witnesses. The WCJ permitted the parties to file post-trial briefs prior to the matter being submitted, and both parties did so.

The WCJ issued the F&O and OOD on August 18, 2025.

DISCUSSION

I.

Former Labor Code section 5909[1] 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 section references are 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 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 10, 2025, and 60 days from the date of transmission is December 9, 2025. This decision is issued by or on December 9, 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 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 10, 2025, and the case was transmitted to the Appeals Board on October 10, 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 October 10, 2025.

II.

Parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [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 Supreme Court of California 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, to introduce and inspect exhibits, and to 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 pp. 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.4 703, 710 [57 Cal.Comp.Cases 230].)

Section 5313 provides that the WCJ shall:

> "Within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.

(Lab. Code, § 5313.)

Section 5815 provides:

> Every order, decision or award, other than an order merely appointing a trustee or guardian, shall contain a determination of all issues presented for determination by the appeals board prior thereto and not theretofore determined. Any issue not so determined will be deemed decided adversely as to the party in whose interest such issue was raised.

(Lab. Code, § 5815.)

Taken together, sections 5313 and 5815 require the WCJ to "make and file findings upon all facts involved in the controversy" and to issue a corresponding award, order or decision that states the "reasons or grounds upon which the [court's] determination was made." (Lab. Code, §§ 5313, 5815; see also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621 (Appeals

Bd. en banc) ["It is the duty of the WCAB to make 'findings upon all facts involved in the controversy"].) The WCJ's decision "must be based on admitted evidence in the record" (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc)), and the decision must be supported by substantial evidence. (Lab. Code, §§ 5903, 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 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

In *Hamilton*, we held that "[t]he WCJ is also required to prepare an opinion on decision, setting forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on." (*Hamilton*, *supra*, 66 Cal.Comp.Cases at p. 476, citing Lab. Code § 5313.) The WCJ's opinion "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." (*Ibid*, citing *Evans v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Here, two distinct requirements in section 5313 were violated: the requirement that the WCJ "make and file findings upon all facts involved in the controversy" and the requirement that the WCJ provide the parties with "a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313; Cal. Code Regs., tit. 8, § 10787(c)(5); *Blackledge*, *supra*, 75 Cal.Comp.Cases at p. 621; *Hamilton*, *supra*, 66 Cal.Comp.Cases at p. 476.) First, the F&O issued here did not comply with the mandate that findings must be made regarding "all facts involved in the controversy." There were two issues framed for trial—whether applicant's injuries were AOE/COE, and whether defendant's statute of limitations defense was applicable. (5/7/25 MOH, at p. 2.) The F&O, however, addressed only the first issue. The finding that applicant's injuries were not AOE/COE does not negate the requirement that the WCJ must enter a finding regarding each issue framed for trial. (*Hamilton*, *supra*, 66 Cal.Comp.Cases at p. 476; Lab. Code, §§ 5313, 5815.)

Secondly, the Opinion did not adequately address the "reasons or grounds upon with the determination was made," as required by section 5313. The Opinion simply listed the evidence in the case and then concluded that applicant "failed to meet her burden of proving she sustained industrial injury to her back arising out of and in the course of her employment with defendant." (OOD, at p. 1.) What is missing is any discussion of or citation to the specific evidence relied upon in reaching this conclusion, as well as a discussion of the relevant law, and an application of the

law to the facts. These steps were required here. (*Hamilton*, *supra*, 66 Cal.Comp.Cases at p. 476, citing Lab. Code § 5313 ["[t]he WCJ is also required to prepare an opinion on decision, setting forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on"].) Also missing from the Opinion is any discussion about the conflicting medical evidence, about the reasons the WCJ found the QME's reporting to be more persuasive than that of the PTP, and about applicant's concern that the QME's opinion was based on mistakes of fact.

Although the WCJ provided some analysis of the evidence in the Report, here this does not cure the defects in the Opinion. A WCJ's opinion on decision "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." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.) In the Report, the WCJ addressed applicant's concern that the Opinion violated section 5313 because it "is skeletal and fails to set forth a proper statement of evidence, reasoning, or application of law to the facts" by asserting that the Opinion "although concise, incorporated Dr. Ahearn's reasoning by reference, therefore satisfying Labor Code § 5313." (Report, at p. 4.)

We respectfully disagree. The Opinion does not indicate in any way that the QME's reasoning was incorporated by reference. Even if it had done so, this approach would be insufficient. The statute requires the WCJ to state the "reasons or grounds upon which the [court's] determination was made"; incorporation by reference of a physician's opinions does not meet this requirement. (Lab. Code, § 5313.) Findings and Orders "must be based on admitted evidence in the record." (*Hamilton, supra,* at p. 476.) Section 5313 requires that the evidence relied upon be identified. Thus, the approach here, where the Opinion simply listed all of the trial exhibits, with no analysis of that evidence, and no indication of which evidence was found to be persuasive by the WCJ, does not meet the statutory requirements.

III.

Section 5405 limits the time in which an employee may commence proceedings for the collection of California workers' compensation benefits. Section 5405 provides:

> The period within which proceedings may be commenced for the collection of the benefits provided by Article 2 (commencing with Section 4600) or Article 3 (commencing with Section 4650), or both, of Chapter 2 of Part 2 is one year from any of the following:
>
> (a) The date of injury.

> (b) The expiration of any period covered by payment under Article 3 (commencing with Section 4650) of Chapter 2 of Part 2.
> (c) The last date on which any benefits provided for in Article 2 (commencing with Section 4600) of Chapter 2 of Part 2 were furnished.

(Lab. Code, § 5405.)

Thus, an applicant must commence proceedings with the WCAB within one year of (1) the date of injury or (2) the expiration of the period covered by the employer's last payment of disability indemnity or (3) the date of the last furnishing by the employer of medical, surgical or hospital treatment. (*J.T. Thorp. v. Workers' Comp. Appeals Bd.* (*Butler*) (1984) 153 Cal.App.3d 327, 334 [49 Cal.Comp.Cases 224].)

In cases involving an alleged cumulative injury, the date of injury is governed by section 5412, which states:

> The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment.

(Lab. Code, § 5412.)

The court of appeal has defined "disability" per section 5412 as "either compensable temporary disability or permanent disability," noting that "medical treatment alone is not disability, but it may be evidence of compensable permanent disability, as may a need for splints and modified work. These are questions for the trier of fact to determine and may require expert medical opinion." (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Rodarte*) (2004) 119 Cal.App.4th 998, 1005-1006 [69 Cal.Comp.Cases 579].)

Regarding the "knowledge" component of section 5412, whether an employee knew or should have known their disability was industrially caused is a question of fact. (*City of Fresno v. Workers' Comp. Appeals Bd.* (*Johnson*) (1985) 163 Cal.App.3d 467, 471 [50 Cal.Comp.Cases 53].) An employee is not charged with knowledge that their disability is job-related without medical advice to that effect, unless the nature of the disability and the applicant's training, intelligence and qualifications are such that they should have recognized the relationship between the known adverse factors involved in the employment and the disability. (*Id.* at p. 473; *Newton v. Workers' Co. Appeals Bd.* (1993) 17 Cal.App.4th 147 [58 Cal.Comp.Cases 395].)

Here, the F&O contained no finding or discussion about the date of injury pursuant to section 5412.

In addition, the record provides no basis for such a finding. The QME did not address the section 5412 date of injury for applicant's alleged cumulative injury in his reporting. (Defendant's Exhs. A-D.) Applicant's PTP addressed the cumulative injury dates only in vague terms, writing—without reference to any dates—that, according to applicant, "she developed the gradual onset of pain in her lower back and right shoulder secondary to the physical activities of her work duties as an RN, including pulling, lifting and transporting patients as well as cumulative wear and tear on her body." (Applicant's Exh. 2, at p. 56.) the PTP noted, further that, "[t]he patient does not recall exactly when she reported her symptoms formally for treatment." (*Ibid*.) The PTP concluded that applicant's symptoms and diagnoses were industrial but did not delineate the exposure dates nor the date of applicant's knowledge that her injuries were industrial. (*Id*. at pp. 61-62.) Thus, the record contains no substantial medical evidence upon which the WCJ can make a date of injury determination for applicant's claimed cumulative injury, as defined in section 5412. As finding the date of cumulative injury is foundational to any further findings, the medical evidence must be developed on this issue.

IV.

Section 3600(a) provides liability for injuries sustained "arising out of and in the course of the employment." (Lab. Code, § 3600(a).) An employer is liable for workers' compensation benefits "without regard to negligence." (*Ibid*.) An employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd*. (*Clark*) (2015) 61 Cal.4th 291, 297-298 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a), 3202.5.) Whether an employee's injury arose out of and in the course of employment is generally a question of fact to be determined in light of the particular circumstances of the case. (*Wright v. Beverly Fabrics* (2002) 95 Cal.App.4th 346, 353 [67 Cal.Comp.Cases 51].)

For the purpose of meeting the causation requirement in a workers' compensation injury claim, it is sufficient if the work is a contributing cause of the injury. (*South Coast Framing, supra*, at pp. 298-299.) "The applicant in a workers' compensation proceeding has the burden of proving industrial causation by a 'reasonable probability.' (citation) That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700-1701 [58 Cal.Comp.Cases 313].) Medical evidence that

industrial injury was reasonably probable, although not certain, constitutes substantial evidence for a finding of injury AOE/COE. (*McAllister v. Workers' Comp. Appeals Bd*. (1968) 69 Cal.2d 408, 416-417 [33 Cal.Comp.Cases 660].)

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb, supra,* 11 Cal.3d 274; *Garza, supra,* 3 Cal.3d 312; *LeVesque, supra,* 1 Cal.3d 627.) To constitute substantial evidence ". . . a medical opinion must 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." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Bd. en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].) 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 v. Workers' Comp. Appeals Bd*. (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525].)

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393 [62 Cal.Comp.Cases 924]; *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741, 752; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *McDonald v. Workers' Comp. Appeals Bd., TLG Med. Prods.* (2005) 70 Cal.Comp.Cases 797, 802.) In our en banc decision in *McDuffie v. L.A. County Metro. Transit Auth.,* we stated that "[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record . . . the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete. (Citations.)" (*McDuffie v. L.A. County Metro. Transit Auth.* (2002) 67 Cal.Comp.Cases 138, 141 (Appeals Bd. en banc).)

The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 404 [65 Cal.Comp.Cases 264].) Where it is determined that the medical record requires further development, and 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. If none of the procedures outlined above is possible, the WCJ may resort to the appointment of a "regular physician," as authorized by section 5701. (*McDuffie, supra,* 67 Cal.Comp.Cases at pp. 142-143.)

Section 4062.2(f) provides that the parties may enter into an agreement for an agreed medical evaluator (AME) at any time. (Lab. Code, § 4062.2(f).) By its own terms, however, the scope of subdivision (f) is limited to the parties and does not limit the WCJ's authority to direct development of the record under section 5701, to appoint a regular physician, or to order the issuance of an additional panel of QMEs. (See Lab. Code, § 5701; *Allison v. Workers' Comp. Appeals Bd*. (1999) 72 Cal.App.4th 654 [64 Cal.Comp.Cases 624]; *Hardesty v. McCord & Holdren, Inc*. (1976) 41 Cal.Comp.Cases 111.)

Here, neither the QME's reporting, nor that of the PTP, constitute substantial medical evidence. The QME's reporting—including his written reports and his depositions—are not substantial medical evidence due to the QME's repeated reliance on significant mistakes of fact. (*Escobedo, supra,* 70 Cal.Comp.Cases at p. 621 [To constitute substantial evidence ". . . a medical opinion…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."].) The first significant mistake of fact is the QME's repeated assertion that applicant's 2005 back injury was non-industrial, because she was not working for defendant when she was injured. (Defendant's Exhs. A, at pp. 30, 32; B, at p. 2; C, at p. 2; D at p. 2.) In fact, as the QME acknowledged elsewhere in his report, applicant was employed by defendant at the time of the 2005 injury. (Defendant's Exh. A, at pp. 3, 26.) The QME mixed up the hospital where applicant was treated with applicant's employer, and repeatedly relied on this erroneous information to conclude that applicant's back injury was non-industrial.

The QME's second significant error of fact involves the QME's conclusions regarding applicant's job duties. Despite reviewing applicant's job analysis and deposition, both of which clearly stated that applicant frequently performed heavy physical work as part of her duties as a

nurse, Dr. Ahearn stated that her job duties were only "occasionally physical" and involved only "normal activities of daily living." (Defendant's Exh. A, at p. 33.) When asked in his June 3, 2024 deposition about this discrepancy, he did not change his opinion. (Defendant's Exh. F, at pp. 10, 13-14.) Given these significant and repeated factual errors, we conclude that Dr. Ahearn's reporting is inaccurate, inconsistent or incomplete, and cannot be deemed substantial medical evidence. Upon return, we recommend that he be replaced as he has been unable to cure his errors despite multiple opportunities.

The primary treating physician, Dr. Lavi's reporting also does not constitute substantial medical evidence. Most of his reports entered into evidence are treatment records, which do address the question of causation of applicant's cumulative trauma injuries. (Applicant's Exh. 2, at pp. 1-55.) Two of Dr. Lavi's reports, the PTP's Initial Complex Orthopedic Evaluation, and the August 27, 2024 rebuttal report, address causation, but are incomplete because Dr. Lavi was not provided, and thus did not review, most of applicant's medical records. (Applicant's Exh. 2, at pp. 62, 65; Applicant's Exh. 1, at pp. 2-5.)

Thus, additional medical reporting is required, for the purpose of determining whether applicant's injuries are AOE/COE, as well as to determine apportionment. We therefore suggest that the parties select an AME, pursuant to section 4062.2(f). If no agreement regarding an AME is reached forthwith, we suggest that the WCJ proceed with an appointment of a regular physician, pursuant to section 5701 or with a replacement QME panel.

V.

Lastly, we find it necessary to admonish applicant's attorneys. All parties appearing before the WCAB are expected to refrain from using inappropriate language in any pleading or other document. (Cal. Code Regs., tit. 8, § 10421(b)(9).) Applicant's attorneys are admonished that in the future it is expected that they will conduct themselves professionally. Failure to do so may subject the offending party to sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)

Accordingly, we grant applicant's Petition, rescind the WCJ's August 18, 2025 F&O, and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of August 18, 2025 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 18, 2025 Findings and Order are **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 9, 2025

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

HANADI VARVAIS
COOKSEY & MARENSTEIN, LLP
MICHAEL SULLIVAN & ASSOCIATES LLP

MB/*kl*

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