

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

**HECTOR SALAZAR, *Applicant***

**vs.**

**SOUTHWEST PATROL;  
ARCH INSURANCE GROUP administered by LWP CLAIMS SACRAMENTO,  
*Defendants***

**Adjudication Numbers: ADJ17912353 (MF); ADJ17823292  
Pomona District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Order (F&O) issued on August 26, 2025 by the workers' compensation administrative law judge (WCJ) which found in relevant part that in ADJ17912353, applicant claimed psychiatric injury and stress<sup>1</sup> while employed by defendant as a security guard from November 12, 2022 through June 12, 2023 so that defendant did not meet its burden that applicant was employed less than six months; and that in ADJ17823292, applicant sustained injury to his head and face and claimed injury to his neck, back and hips while employed by defendant as a security guard on June 12, 2023, and that defendant failed to prove by a preponderance of the evidence that applicant was the initial aggressor.

Defendant contends that applicant's injury arose out of an altercation in which he was the initial physical aggressor so that compensation is barred by Labor Code section 3600(a)(7); the appropriate weight was not given to the security video; and it impeached the credibility of applicant and witness, Fred Lorenzo.

We have not received an Answer from applicant. The WCJ filed a Report and Recommendation on the Petition for Reconsideration (Report) recommending that we deny reconsideration.

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<sup>1</sup> The parties are reminded that stress is not a body part; it is a cause of injury to a body part and can be the cause of a physical injury or a psychiatric injury.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, and for the reasons discussed below, we will deny reconsideration.

## **DISCUSSION**

### **I.**

Preliminarily, we note that former Labor Code<sup>2</sup> 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 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 September 26, 2025 and 60 days from the date of transmission is November 25, 2025. This decision was issued by or on November 25, 2025, so that we have timely acted on the petition as required by section 5909(a).

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<sup>2</sup> All further references are to the Labor Code unless otherwise stated.

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 WCJ, the Report was served on September 26, 2025, and the case was transmitted to the Appeals Board on September 26, 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 September 26, 2025.

## II.

In addition to the analysis set forth in the WCJ's Report, we observe the following.

At trial, the WCJ reviewed the admitted June 12, 2023 security camera footage of the altercation between applicant and his co-worker, John Gonzalez, in the presence of the parties, and then she entered the following summary of its contents in the record:

We are looking at a video that appears to show a lobby with a set of doors leading out to a small vestibule with another set of doors that leads to the outside. It is date-stamped June 12, 2023, at 9:44 P.M. I see a gentleman walking out to the vestibule area and out to the outside. There appears to be someone sitting outside, and he has walked out of frame. There is someone at the front desk, a woman at the front desk.

The gentleman who had walked outside walks back towards the door and walks in the door and is now holding it open and appears to be talking to someone. Another person comes up and starts punching him. There is a third person in the video, a woman with white hair, who comes up and tells the front desk to call somebody and then runs outside and appears to be tending to somebody. The woman at the front desk is called. Another woman runs out to the front as well, and then a gentleman and two more persons, another person all run out to the front. The gentleman who had gone out first has come back in. It appears another person has come into frame. It appears to be a nurse. Several more people go outside. The gentleman comes back with his helmet and his jacket.

(08/06/2025 Minutes of Hearing and Summary of Evidence, at p. 3:6-17.)

In her Report, the WCJ further explained what she discerned in the June 12, 2023 security camera footage of the altercation to explain why she assigned it the weight that she did:

While there is video of the altercation, it is silent. The view is from a security camera in the lobby, pointed somewhat downward, looking through the lobby glass doors, into an entry way, through a second set of glass doors, and into the darkness outside. The view provides limited view of Mr. Gonzalez, as he is at the second set of glass doors leading from the entryway to the outside. For the most part, except when he turned away from the doors, started to walk to the lobby and then turned back, all we can see of him is his back. The video is not clear enough to show us whether Mr. Gonzalez did, or did not, have anything in his hands. Almost nothing can be actually seen of the fight although it does appear that applicant threw a punch first...as he testified.

(Report, at p. 4.)

In essence, defendant contends that its interpretation of the security camera footage is fact, that it impeached the testimony of applicant and witness, Fred Lorenzo, and otherwise proved that applicant was the initial aggressor in the June 12, 2023 altercation.

It is well established law that the weight accorded to the evidence is a matter to be determined by the WCJ and the WCJ's credibility determinations are given great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317-319 [35 Cal.Comp.Cases 500].)

Until reconsideration, it does not appear that defendant objected to the WCJ's August 6, 2025 summary of what she saw on the security camera footage. The WCJ's determinations about the June 12, 2023 altercation are consistent with both the security camera footage as described by the WCJ and credible testimony. In particular, the WCJ could not see Mr. Gonzalez' left hand in the security camera footage, but applicant's credible testimony about the same was clear. (06/17/2025 Minutes of Hearing and Summary of Evidence, at p. 7:7-24.) As explained in the WCJ's Report, neither of the defendant's witnesses, George Tabullo nor Marilein Martinez, witnessed the altercation on June 12, 2023 and could therefore offer no firsthand witness testimony about it. Mr. Gonzalez, who was involved in the altercation, did not offer testimony.

Defendant incorrectly asserts that the security camera footage was relied upon by the Covina Police Department as their evidence to determine that applicant was the "initial aggressor" and implies the WCJ is somehow bound by this conclusion and/or the WCJ should assign it great weight. (Petition for Reconsideration, at p. 4.) The investigating detective, who was not on the

scene on June 12, 2023 to interview any witness, concluded that the incident between applicant and Mr. Gonzalez was a “mutual combat physical altercation” when he reviewed the silent security camera footage. (Exhibit F, at p. 6.) The detective concluded applicant was the “primary aggressor.” (*Id.*) However, as the security camera footage was not clear to the WCJ, it could not have been clear to the detective either. We observe that while defendant appears to rely on this characterization by the detective, defendant failed to call the detective to testify. In any event, the WCJ is not bound by the conclusions of the detective. Similarly, defendant failed to call Mr. Gonzalez or any other witness to the incident to testify in support of its burden. Hence, based on this evidence, the WCJ assigned more weight to the credible, firsthand witness testimony than to the limited security camera footage available.

We have given the WCJ’s credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza, supra.*) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ’s credibility determination. (*Id.*)

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**November 25, 2025**

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

**HECTOR SALAZAR  
SOLIMON RODGERS  
FAMIGLLIETTI & VOLPE**

**SL/abs**

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

## **REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

**ADJ17912353: HECTOR SALAZAR** born on [], while employed during the period November 12, 2022 through June 12, 2023 as a **SECURITY GUARD** at Covina, California, by **SOUTHWEST PATROL**, whose workers' compensation insurance carrier was **ARCH INSURANCE GROUP** administered by **LWP CLAIMS SOLUTIONS, INC.**, claims to have sustained injury arising out of and occurring in the course of employment to stress & psyche.

**ADJ17823292: HECTOR SALAZAR** born on [], while employed on June 12, 2023 as a **SECURITY GUARD** at Covina, California, by **SOUTHWEST PATROL**, whose workers' compensation insurance carrier was **ARCH INSURANCE GROUP** administered by **LWP CLAIMS SOLUTIONS, INC.**, sustained injury arising out of and occurring in the course of employment to his head and face and claims to have sustained injury arising out of and occurring in the course of employment to his neck, back and hips.

Defendant has filed a timely Petition for Reconsideration, objecting to said decision(s) in the following particular(s):

1. Petitioner contends that the undersigned erred insofar as the evidence does not justify the finding of fact.
2. Petitioner further contends that the undersigned erred insofar as the finding of fact do not support the Findings and Order.

### **FACTS ON DISPUTED ISSUES**

This matter came on for trial on the limited issues of:

**ADJ17912353:** AOE/COE, nature and extent and the affirmative defense of the six-month rule under California Labor Code §3208.3(d), barring compensation for psychiatric injuries where the applicant was employed with defendant for a period less than six months.

**ADJ17823292:** AOE/COE, nature and extent and the affirmative defense of initial aggressor.

Applicant, Hector Salazar, testified on his own behalf and described a history of intimidation and bullying by John Gonzalez, culminating in an altercation on June 12, 2023. Fred Lorenzo, applicant's co-worker who was present at the time of the altercation, testified on his behalf and substantially supported applicant's testimony.

Defendant did not bring in John Gonzalez, the other participant in the altercation to testify.

The defendant did provide two witnesses. The first, George Tabullo, plant manager for the hospital where the altercation took place, authenticated the video of the incident, but was not present at the time of the altercation. Defendant also called Marilein Martinez, office manager of Southwest Patrol, who testified that applicant was hired on November 12, 2022, and was still employed as of June 12, 2023.

Defendant produced a video, which the court watched and narrated into the record as Exhibit B. Defendant also offered a police report of the incident, Exhibit F, as well as incident reports regarding the altercation. Exhibit D.

Pursuant to the testimony of Marilein Martinez, applicant was employed by Southwest patrol from November 12, 2022 through, at least June 12, 2023. MOH/SOA 8/6/2025 pg. 4, ln. 20-25. Exhibit C shows that his first paycheck was issued November 20, 2022 and his last one was issued July 16, 2023, but there is no indication of which days applicant did or did not work during that period. There were nine days between the 12th and 20th of November, and applicant was paid for 32 hours of work, (Exhibit C, pg.2) thus the court makes a reasonable assumption that he started working the day of, or shortly after being hired and continued through the 16th of July 2023, – a period in excess of seven months.

There was a history of harassment and bullying by John Gonzalez toward the applicant. Applicant testified that in May of 2023 there was an incident in which Mr. Gonzalez, “got into his face,” and asked him if he wanted to fight, called him names and stated that “he would fuck him [applicant] up.” MOH/SOA 6/17/2025 pg. 6, ln. 7-10. As he was leaving, Mr. Gonzalez turned and yelled insults at the applicant sufficient that the receptionist asked what caused the issue. MOH/SOA 6/17/2025 pg. 6, ln. 13-15. He indicated that he made out an incident report and therein informed his supervisors that he felt physically and verbally threatened by Mr. Gonzalez. MOH/SOA 6/17/2025 pg. 6 ln. 17-20, pg. 10, ln. 3-12, Exhibit E. He was losing sleep because of the stress Mr. Gonzalez caused him. MOH/SOA 6/17/2025, pg. 6 ln 25.

Prior to the May incident, Mr. Gonzalez had been acting with hostility toward the applicant for at least two months. MOH/SOA 6/17/2025 pg. 6, ln 22-23.

In June of 2023, the fight occurred.

Mr. Gonzalez started by insulting applicant and Mr. Lorenzo, another security guard, while they were sitting outside the lobby entrance. MOH/SOA 6/17/2025 pg. 7, ln 6-9. He called them “Old F’s,” and “bitches,” and complaining that “you old motherfuckers can’t do your fucking jobs.” MOH/SOA 6/17/2025 p. 7, ln 6-9, pg. 12, ln. 18-19. While doing so he was holding his keys in his left hand and his radio in his right. MOH/SOA 6/17/2025 pg. 7, ln 6-9. When they ignored him, Mr. Gonzalez insulted them again, turned and walked into the lobby. MOH/SOA 6/17/2025 pg. 7, ln. 9-11. This physical action is corroborated by the video. Exhibit B. Applicant testified that Mr. Gonzalez then turned back, came toward them and hurled more insults. MOH/SOA 6/17/2025, pg. 7 ln 9-11. Again, this physical action is corroborated by the video. Exhibit B. Mr. Lorenzo indicated that, at that time, Mr. Gonzalez told applicant he was going to “fuck Salazar up.” MOH/SOA 6/17/2025 pg. 12, ln. 19-20.

Applicant then testified that he walked toward the lobby entrance to leave and Mr. Gonzalez told him, “I’m going to fuck you up,” more than once. MOH/SOA 6/17/2025, pg. 7, ln. 11-13. Applicant saw that Mr. Gonzalez had his keys laced through the fingers of his left hand, protruding between the knuckles. MOH/SOA 6/17/2025, pg. 7, ln. 13-14. This was confirmed by Mr. Lorenzo. MOH/SOA 6/17/2025, pg. 12, ln. 20-12. Mr. Gonzalez raised his left hand as though he was going to strike the applicant. MOH/SOA 6/17/2025, pg. 7, ln. 15-16. Applicant admits he threw a punch, MOH/SOA 6/17/2025, pg. 7, ln 16, but he did not recall if he or Mr. Gonzalez punched first. MOH/SOA 6/17/2025, pg. 7, ln. 7-11. Mr. Lorenzo believed that Mr. Gonzalez through the first punch. MOH/SOA 6/17/2025, pg. 12, ln. 21-22.



Applicant felt physically threatened. MOH/SOA 6/17/2025, pg. 7, ln. 15. Mr. Gonzalez was standing between the applicant and where he had to be – inside the lobby. MOH/SOA 6/17/2025 pg.7, ln. 17-18. He believed that Mr. Gonzalez was ready to fight him and was going to take a swing at him. MOH/SOA 6/17/2025 pg. 7, ln. 18-19.

While there is video of the altercation, it is silent. The view is from a security camera in the lobby, pointed somewhat downward, looking through the lobby glass doors, into an entry way, through a second set of glass doors, and into the darkness outside. The view provides limited view of Mr. Gonzalez, as he is at the second set of glass doors leading from the entryway to the outside. For the most part, except when he turned away from the doors, started to walk to the lobby and then turned back, all we can see of him is his back. The video is not clear enough to show us whether Mr. Gonzalez did, or did not, have anything in his hands. Almost nothing can be actually seen of the fight although it does appear that applicant threw a punch first...as he testified.

The court gave “weight” to the video, it just did not find it to be as compelling evidence as defendant does.

Applicant was struck several times in the face. His wounds were lacerations. MOH/SOA 6/17/2025, ln. 23-25. The court made a reasonable inference that the lacerations were caused by the keys in Mr. Gonzalez’s hand, as just a punch wouldn’t cut. He testified that Mr. Gonzalez hit him so hard that one of the keys bent. MOH/SOA 6/17/2025, pg. 8, ln.18-19.

The Covina Police Department was called and Mr. Gonzalez was taken from the scene. MOH/SOA 6/17/2025, pg. 8, ln 23-25. The contemporaneous detailing of police report tends to support the version of events detailed by applicant and Mr. Lorenzo. Exhibit F.

There is some issue with Mr. Lorenzo’s testimony conflicting with his deposition and initial written report. When asked the question “why,” he indicated this was due to his fear of being fired as he was still working for Southwest and that he was pressured to change what he said initially. MOH/SOA 6/17/2025, pg. 13, ln 21-25. The defense did not bring forth any witness to rebut that assertion. Further, the police report supports Mr. Lorenzo’s testimony at trial. Exhibit F. His handwritten incident report corroborates Applicant and Mr. Lorenzo’s testimony at trial that Mr. Gonzalez was yelling threats at them and had his keys in his left hand. Exhibit D.

Mr. Gonzalez’s report of the indecent is notably short and does not discuss his own behavior prior to the fight. Exhibit D. Mr. Gonzalez was not brought to testify.

Defendant called George Tabullo, Director of plant operations for Aurora Charter Oak Hospital. As the custodian of record, he detailed the chain of custody of the security video (Exhibit B) and testified to its authenticity. MOH/SOE 8/6/25 pg. 2, ln. 10 to pg. 3, ln. 23. He did not witness the altercation. MOH/SOE 8/6/25, pg. 2, ln. 20-21. Defendant also called Marilein Martinez, office manager and human resources for Southwest Patrol. She verified applicant’s employment, but had no knowledge of whether applicant was working on the day of the altercation. MOH/SOE 8/6/25, pg. 4, ln. 19-25.

## DISCUSSION

First, regarding case ADJ17912353, the court found that the six-month rule regarding psychiatric injury did not apply. The court also found that, because of the applicant’s testimony of ongoing harassment for almost the entire time applicant worked with John Gonzales, (*see discussion supra*) that this was not a specific injury as pled, but rather a continuous trauma. The court amended the pleadings to conform to the proof at trial under CCR §10517.

Because applicant worked for defendant, Southwest Patrol, for at least seven months, the affirmative defense under Labor Code §3208.3(d) failed. However, the court could not determine, based on the evidence before it, whether applicant had a compensable psychiatric injury and further development of the record was necessary.

To address each of defendant's contentions in their petition:

The Court weighed the video and found it lacking

As stated previously, the court gave weight to the video, but it did not find it to support defendant's contentions about who started the fight. The best that can be proven by it was a) there was a fight, and b) it happened at the hospital just outside the front lobby. The court found that the applicant's testimony, backed up by testimony, incident reports and contemporaneous statements taken by the police at the scene was more persuasive than a grainy video located two rooms away from the actual fight. *Carter v. County of Los Angeles* 2013 Cal.Wrk.Comp P.D. 414.

The applicant was not the initial physical aggressor

What is consistent throughout the witness testimony and contemporaneous statements made in the reports, and those taken down by the police immediately after the altercation, is that Gonzalez was threatening applicant and had his car keys laced through his fingers.

"A car key is not an inherently deadly or dangerous weapon, but if wielded as a makeshift weapon with sufficient force at close range [...], a key is capable of puncturing skin and causing serious bodily injury." *People v. Koback* (2018) 25 Cal.App.5th 323, 326 [*remanded and modified on other grounds* *People v. Koback* (2019) 36 Cal. App. 5th 912]. An initial aggressor is the one by physical conduct who *first places his opponent in reasonable fear of bodily harm*, the mere act of clenching a fist or raising a weapon can be sufficient to convey a real, present and apparent threat of physical injury. *Mathews. WCAB* (1972) 6 Cal.3d 719, 727. In the *Mathews* case, the applicant was found to be the initial aggressor because he advanced on the other party with a closed fist. *Mathews, supra*. In *Pirrie v. WCAB* (1990) 55 Cal. Comp. Cases 400 (*writ denied*), the board held that a waitress holding up pitchers and threatened a cook with them while taunting him, was the initial aggressor. The Board has opined in other cases that "[it] is not necessary that there be a battery **before** one can be deemed a physical aggressor" (*Rosenthal v. Wong* (1964) 30 Cal. Comp. Cases 103, 104, *emphasis added*); "'bodily contact . . . is not the significant factor," ( *Briglia v. Industrial Accident Commission, supra*, 27 Cal. Comp. Cases 217, 218.) in deciding who was the initial aggressor.

Whether the injured employee is the initial physical aggressor is a question of fact for the appeals board, and the burden of proof rests on the employer who must show that the applicant was the one who first engaged in physical conduct that a reasonable person would perceive as a threat. *Los Angeles County Metropolitan Transit Authority v. WCAB (Hicks)* 2006 71 Cal. Comp. Cases 641, [644] (*writ denied*). Thus the keys protruding through Mr. Gonzalez's fingers combined with the threats to "fuck you up," directed at the applicant would be a real, present and apparent threat of physical injury. That made Mr. Gonzalez the initial aggressor, and applicant was allowed to defend himself from the perceived threat.

The defense attorney did not successfully impeach either applicant or Mr. Lorenzo

The court acknowledges that there are some inconsistencies with exactly what was said in the depositions of both applicant and Mr. Lorenzo, and the testimony of trial. However, there are not so inconsistent as to completely wreck either man's credibility. What they testified to at trial is generally what they testified to at their depositions, and is generally what they wrote in their reports, and is generally what they told the police at the time of the incident. When defense attorney asked "why," Mr. Lorenzo had changed his report and was not as forthcoming in his deposition, he rationally explained it as he was afraid of losing his job at Southwest as he was still employed. Given that his initial, handwritten report was admitted into evidence and his statement to police was admitted into evidence and both of those back up his trial testimony the defendant failed to score the points they think they did.

Development of the record is warranted

Applicant and Mr. Lorenzo testified that applicant's face was slashed by the keys wielded by Mr. Gonzalez. The police report details the lacerations to the applicant's face. Applicant testified that he has nerve and scarring issues because of same. MOH/SOE 6/17/2025, pg.8, ln. 17-19. Based on the testimony and other evidence, it is apparent that applicant suffered an injury to his face/head on June 12, 2023. Whether that injury was merely superficial or has caused deeper nerve damage will require medical reporting. To date, as these are denied claims, the current medical reporting is all outside the MPN. The court will require reporting by either an MPN physician or a Qualified Medical examiner for that to be determined. This is also true for applicant's other claimed injuries resulting from the fight which applicant testified to. Thus, the nature and extent of applicant's injuries, on both cases, requires development.

### CONCLUSION

For all the forgoing reasons, defendant's Petition for Reconsideration should be denied.

DATE: September 26, 2025

**Amy Britt**  
WORKERS' COMPENSATION JUDGE