WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JESUS GARCIA, *Applicant*

vs.

VICTOR MORALES;
STATE FARM administered by SEDGWICK, *Defendants*

Adjudication Numbers: ADJ12518949; ADJ20170253
Riverside District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant, in pro per, seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on September 22, 2025. The WCJ found, in relevant part, that applicant did not sustain injury arising out of and occurring during the course of employment (AOE/COE) to his left leg, left groin, hernia, right ankle, right shoulder, neck, left testicle, and nasal during the period from February 10, 2019 through May 10, 2019; applicant did not sustain injury AOE/COE to his right shoulder, neck, and head on March 19, 2019; and the March 19, 2019 claim of injury was barred by the statute of limitations pursuant to Labor Code section 5405[1]. The WCJ ordered that applicant take nothing.

Applicant appears to contend that he is aggrieved by the F&O. He also alleges he never said he made a hole with a sledge hammer but with the pick of a hammer, the police report was never mentioned in the F&O, and that his prior attorney said he hurt both his feet.

We have not received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny reconsideration.

[1] All section references are to the Labor Code, unless otherwise indicated.

We have considered the allegations of the Petition for Reconsideration (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 this matter to the WCJ for further proceedings consistent with this opinion.

FACTS

We will briefly review the relevant facts.

On September 6, 2019, applicant filed an Application for Adjudication (Application) claiming a cumulative injury to his left leg, left groin, hernia, right ankle, right shoulder, neck, left testicle, and nasal while employed by defendant as a handyman from February 10, 2019 to May 10, 2019.

On November 18, 2024, applicant filed a second Application claiming a second injury to his right shoulder, neck, and head while employed by defendant as a handyman on March 19, 2019.

On August 21, 2019, applicant was initially evaluated by his primary treating physician (PTP), Veerinder Anand, M.D., who found the cumulative injury to be industrial. (Applicant's Exhibit #1.)

On November 2, 2020, applicant was evaluated by the orthopedic panel qualified medical evaluator (QME), Jean-Jacques Abitbol, M.D., who diagnosed him with a right groin strain, cervical spine strain, right shoulder strain, and right wrist strain. (Defendant's Exhibit #A.) The QME issued a supplemental report dated September 27, 2021. He determined applicant did not sustain a cumulative injury AOE/COE and noted "[t]here was no report of a specific industrial incident while he was employed…" (Defendant's Exhibit #B, at p. 3.)

On August 9, 2022, applicant was also evaluated by the independent medical evaluator (IME), James Lineback M.D., to address his alleged abdominal pain. The IME issued supplemental reports dated January 9, 2023, March 3, 2023, and May 12, 2023. In the May 12, 2023 report, the IME noted there was no evidence of an abdominal wall hernia and opined applicant's alleged abdominal pain was not industrial. (Defendant's Exhibit #F.)

On July 24, 2025, parties proceeded to trial on the issues of injury AOE/COE and whether the statute of limitations applied to the March 19, 2019 specific injury.

DISCUSSION

I.

Preliminarily, former 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 22, 2025, and 60 days from the date of transmission is December 21, 2025, which is a Sunday. The next business day that is 60 days from the date of transmission is Monday, December 22, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision was issued by or on December 22, 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

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that: Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

act on a petition. Section 5909(b)(2) provides that service of the Report shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on October 22, 2025, and the case was transmitted to the Appeals Board on October 22, 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 22, 2025.

II.

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].)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(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. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) 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, § 10761.)

We generally accord great weight to a WCJ's findings on the credibility of witnesses as the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500].) When a WCJ's findings are supported by solid, credible evidence, they are to be accorded great weight by the Board and rejected only on the basis of contrary evidence of considerable substantiality. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza*, *supra*, at p. 318.) It has long been recognized, however, that evidence from a lay witness on an issue requiring expert opinion is not substantial evidence, and medical proof is required when issues of diagnosis, prognosis, and treatment are beyond the bounds of ordinary knowledge. (*City & County of San Francisco v. Industrial Acc. Com.* (*Murdock*) (1953) 117 Cal.App.2d 455, 459 [18 Cal.Comp.Cases 103].) The Appeals Board is empowered on reconsideration to resolve conflicts in the evidence, to make its own credibility determinations, and to reject the findings of the WCJ and enter its own findings on the basis of its review of the record. (*Rubalcava v. Workers' Comp. Appeals Bd.* (1990) 220 Cal.App.3d 901, 908.)

Here, the WCJ found applicant failed to meet his burden of proof that he sustained injuries AOE/COE. Although we acknowledge the WCJ's reservations regarding applicant's lack of credibility, the WCJ's determination is not dispositive. We are not persuaded by the WCJ's findings, as they are not supported by substantial medical evidence.

QME Dr. Abitbol did not find a cumulative injury AOE/COE and noted "[t]here was no report of a specific industrial incident while he was employed…" (Defendant's Exhibit #B, at p. 3.) However, upon review, we do not find the QME's reports constitute substantial medical evidence.

Our system is based on medical evidence. (*Peter Kiewit Sons v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 831, 838-839 [30 Cal.Comp.Cases 188]; (*City & County of San Francisco v. Industrial Acc. Com.* (*Murdock*) (1953) 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103]; *Bstandig v. Workers' Comp. Appeals Bd.* (1977) 68 Cal.App.3d 988 [42 Cal.Comp.Cases 114].) Medical evidence is required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c)(d), 4061(i), 4062.3(l).) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71

Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (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].)

Here, it is apparent QME Dr. Abitbol has an incorrect history of applicant's alleged injuries. Although applicant pled a cumulative injury from February 10, 2019 to May 10, 2019, the QME initially opines he does not find a cumulative injury which occurred between February 2019 to March 2019. (Defendant's Exhibit #A, at p. 11.) However, in the supplemental report, the QME then opines "no injury had occurred in the three months [applicant] worked as a laborer…" although he also continued to note the date of injury to be February 2019 to March 2019. (Defendant's Exhibit #B, at pp. 1, 3.) The QME further notes "[t]here was no report of a specific industrial incident while [applicant] was employed…" (*Id.* at p. 3.) However, in the initial report, the QME notes applicant's history of a shoulder injury on May 3, 2019, which would have occurred while applicant was still employed by defendant. (Defendant's Exhibit #A, at p. 5.) The QME failed to address this 2019 injury in further detail and instead, concluded that there was no report of a specific incident while applicant was employed by defendant.

We also find the QME failed to obtain an adequate history regarding applicant's job duties and work history which are crucial in determining whether there is a cumulative injury AOE/COE. In the "Occupational History" section of the QME's initial report, the QME notes applicant worked as a day laborer and his work duties were "[v]arious construction laborer duties." (*Id.* at p. 6.) Although the QME did note the physical demands of the position, he did not have an adequate discussion of the actual job duties applicant's position entailed. Moreover, the QME notes applicant worked for the employer for three months but that he "has been in this line of work for 15+ years." The QME failed to adequately address what "this line of work" involved.

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 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los*

Angeles County Metropolitan Transit Authority (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), 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*, *supra*, 67 Cal.Comp.Cases at 141.)

Moreover, AD Rule 41 lays out ethical requirements of all QMEs. It states, in pertinent part, that "[a]ll QMEs, regardless of whether the injured worker is represented by an attorney, shall…[c]ommunicate with the injured worker in a respectful, courteous and professional manner." (Cal. Code Regs., tit. 8, § 41(a)(5).)

Here, QME Dr. Abitbol notes the following troubling statements in his report: "[g]iven his normal examination as well, it is my fear that there is clear secondary gain with regard to this claim"; "he only filed the claim four months later"; and he "walked in and out of the office without any difficulties at all." (Defendant's Exhibit #A, at pp. 11-12.) Based upon our review of the QME's reporting, which include the aforementioned statements, we are unable to find the QME's opinions rise to the level of substantial medical evidence. Alternatively, we find sufficient evidence to support a violation of ethical requirements under AD Rule 41, which would warrant a disqualification of Dr. Abitbol.

Based on the deficiencies in the QME's reporting discussed above, we do not find the QME's opinions as to causation of injury to be substantial medical evidence. It would further appear that development of the record in this matter would be best accomplished through appointment of a regular physician under section 5710 or by proceeding with a replacement panel in orthopedic surgery.

III.

The running of the statute of limitations is an affirmative defense, and the burden of proving it is on the party opposing the claim. (Lab. Code, § 5409; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Martin*) (1985) 39 Cal.3d 57, 67, fn. 8 [50 Cal.Comp.Cases 411].) The burden is on defendant to show when the statute of limitations began to run, "starting from any and all three points designated [in Labor Code section 5405]." (*Colonial Ins. Co. v. Industrial Acc. Com.* (*Nickles*) (1945) 27 Cal.2d 437, 441 [10 Cal.Comp.Cases 321].) The three points designated in

section 5405 are date of injury (Lab. Code, § 5405, subd. (a)); the last payment of disability indemnity (Lab. Code, § 5405, subd. (b)); and the last date on which medical treatment benefits were furnished (Lab. Code, § 5405, subd. (c).)

"Limitations provisions in the [workers'] compensation law must be liberally construed in favor of the employee unless otherwise compelled by the language of the statute, and such enactments should not be interpreted in a manner which will result in a loss of compensation." (*Blanchard v. Workers' Comp. Appeals Bd.* (1975) 53 Cal.App.3d 590, 595, 40 Cal.Comp.Cases 784, 787 (internal citations omitted).)

Labor Code section 5313 mandates that a WCJ specify "the reasons or grounds upon which the determination was made." As explained in our en banc decision in *Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), "The WCJ is … 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. (Lab. Code § 5313.) The opinion enables the parties, and the [Appeals] Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful. (See *Evans v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record."

At this time, we are unable to address the issue of whether the statute of limitations defense applies to the March 19, 2019 injury. As previously discussed, applicant will need to be evaluated by a new orthopedic physician or QME and the WCJ will need to re-analyze whether the statute of limitations defense applies based on the new reporting.

Accordingly, we will grant applicant's Petition, rescind the F&A, and return this matter to the trial level for development of the record. Following development of the record, the WCJ may issue a new decision from which any person aggrieved thereby may seek reconsideration. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of September 22, 2025 is **GRANTED.**

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the September 22, 2025 Findings and Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with the opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 22, 2025

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

JESUS GARCIA
MICHAEL SULLIVAN AND ASSOCIATES

JL/abs

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