WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOSE CASILLAS (DEC'D);
AMPARO CASILLAS (DEPENDENT), ***Applicant***
vs.

KLOECKNER METALS CORPORATION;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, ***Defendants***

Adjudication Number: ADJ12013613; ADJ12013560
Van Nuys District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, we will deny reconsideration.

Former Labor Code[1] 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.

[1] All further statutory references are to the Labor Code, unless otherwise noted.

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 8, 2025 and 60 days from the date of transmission is Sunday, December 7, 2025. The next business day that is 60 days from the date of transmission is Monday, December 8, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, December 8, 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 8, 2025, and the case was transmitted to the Appeals Board on October 8, 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 8, 2025.

In addition to the reasons given by the WCJ in the Report, we note that the employee bears the initial burden of proving injury arising out of and in the course of employment (AOE/COE) by a preponderance of the evidence. (Lab. Code, § 5705; *South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3202.5, 3600(a).) Moreover, it is well established that decisions by the Appeals Board must be

[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.

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].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) 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 Board en banc).)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 8, 2025

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

JOSE CASILLAS (DECEASED)
AMPARO CASILLAS (DEPENDENT)
LAW OFFICE OF RAPHAEL HEDWAT
MORGAN & LEAHY, LLP

PAG/bp

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

JOINT REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

1. Decedent's Occupation: Warehouseman
   Applicant's Age on Date of Injury: (1) 60
   (2) 61
   Date of Injury: (1) May 22, 2018
   (2) May 22, 2018 – February 25, 2019
   Parts of Body Injured: (1) Admitted left knee
   (2) Disputed bilateral knees, bilateral shoulders, heart, cardiovascular system, hypertension, death
   Manner in Which Injury Occurred: (1) Per PQME "…forklift driver struck the table that stood about knee high and crushed him between both tables"
   (2) Per Application "repetitive nature of his work"
2. Identity of Petitioner: Applicant filed the petition
   Timeliness: The petition is timely filed
   Verification: The petition is properly verified
3. Date of Issuance of (1) Findings of Fact & Award & Order and (2) Findings of Fact & Order: September 13, 2025, served September 17, 2025
4. Date of Transmission to the Appeals Board Pursuant to Labor Code § 5909 10/08/2025
5. Petitioner's Contentions:

   A. That the court erred in finding non-industrial injury/death based upon the panel qualified medical evaluator (PQME) opinion of Olga Voroshilovsky, M.D. as opposed to the consultative reports secured by the applicant from Marvin Pietruszka, M.D.

   B. That the court should have, in the event the opinion pursuant to that of consult Marvin Pietruszka, M.D. fail to constitute substantial evidence, appointed an IME (presumably meant to reference a regular physician) pursuant *Labor Code* §§ 5701 and 5706, the latter which concerns an autopsy.

II
FACTS

This matter involves facts that are not undisputed. In fact, much is in dispute and much of the facts are contradictory among the decedent's deposition testimony, the applicant's testimony, the medical reports, and the subpoenaed records. The "statement of facts" provided by the applicant in her Petition for Reconsideration are mostly accurate, but they are not complete.

As far as the inaccuracies go, the applicant states that the "[d]ecedent sustained an admitted specific injury to the left knee on May 22, 2010 and cumulative trauma between May 22, 2018 on (sic) February 25, 2019 (as amended) not only orthopedically but including high blood pressure, hypertension, and psyche." (*Petition for Reconsideration*, p. 2, lines 6-8). This statement alone suggests that both the specific injury and the cumulative trauma (CT) injury are both admitted. They are not. The specific injury is, but the CT is disputed. The parties placed injury arising out of and in the course of employment (AOE/COE) in issue for the trial-court to decide. Additionally, and presumably a typographical error, is that the specific injury occurred on May 22, 2018 (not May 22, 2010). *Id*. at p. 2, line 8. The following statement by the applicant is that the decedent passed away on September 1, 2020. Although possible a typographical error, it is important note that he passed a year later on September 1, 2021 and is noteworthy not only because his death was 15 months after he last worked (and not three months), but also because the applicant's consult opinion contained a date of death as September 1, 2020 (which, again, is not accurate).

Turning to the completeness, a more thorough recitation of the facts at hand is warranted. This matter involves two claims. The first is a claim maintained by the decedent's surviving spouse pertaining to both accrued and dependency benefits; the second is a pure dependency claim. The decedent is Mr. Jose Casillas who was born on […]. He worked for Kloeckner Metals Corporation from 2003 or 2004 up until his retirement in June, 2020 as a warehouseman. Earnings were agreed-upon at $758.80 per week, with an associated temporary disability (TD) rate of $505.86 per week and permanent disability (PD) rate of $290.00 per week. The parties agreed that the decedent was adequately compensated for all periods of TD up until the time of his unfortunate passing. The primary issue for the specific injury was that of PD whereas the primary issue for the CT was injury AOE/COE.

The May 22, 2018 Specific Injury

Turning to the specifics of the first matter, the decedent filed a claim while alive, and the defendant admitted industrial causation to the left knee. Parts of body are neither disputed nor at issue on this claim. TD is agreed to have been adequately compensated. PD was agreed upon at 4% based upon the orthopedic panel qualified medical evaluator (PQME) James Fait, M.D. In his initial report dated September 20, 2019, the decedent "…was standing between two workstations when a forklift driver struck the table that stood about knee high and crushed him between both tables." Further, "[h]e was taken to a medical clinic in Santa Fe Springs…[h]e was examined, x-rays were taken, and he was released to work." At the time of this evaluation, the applicant remained working, and there is no history that he lost any time from work, contrary to the widow's assertion that he missed three weeks of work. See *Deposition Transcript, Amparo Casillas*, July 10, 2023, p. 21, line 21. The PQME's social history section reflects that "[h]e smokes a half-pack of cigarettes every two

days" and also reflects "[a]lcohol: None", a stark contrast when compared to the subpoenaed medical records. His physical examination provided that he was 5'5" tall, weighed 172 pounds, and that his blood pressure was 189/102. The doctor found injury AOE/COE to his left knee but not to his right knee. The doctor concluded that "…there is insufficient medical evidence to indicate that a cumulative trauma injury to the musculoskeletal system has occurred in this case." Diagnostic tests were needed, and thus the applicant was not rendered maximally medically improved (MMI). No periods of TD were warranted.

The re-evaluation report from the orthopedic PQME is dated January 13, 2021 and states that the decedent retired in June, 2020. He was not presently under the care of a physician but he told the PQME that he was then "…taking Tylenol and an unknown antihypertensive medication." Despite the representation that he was taking blood pressure medication, his reading was 195/111. The PQME also noted that the decedent appeared much older than his stated age and had "a very masked and expressionless facial countenance that is reminiscent of possibly residual of a stroke or even Parkinson's."

The PQME's third report dated June 24, 2021 defers any issue of hypertension to an internal medicine specialist, and the final report of December 3, 2021 is a record review wherein the PQME concludes that the decedent's "…claim of injury on the left side has essentially resolved and that there is insufficient evidence to suggest a significant injury occurring to the right knee." At the time of his cross-examination, the PQME maintained his position of deferring to an internist for any issue of "…acceleration of the blood pressure." He went on to testify that although it would have been reasonable for him to take over-the-counter ibuprofen (as claimed by the widow, despite the decedent advising of Tylenol), his initial report did not reflect that the applicant was taking "…medicines for pain" or "…pain from bruising and contusions…." The PQME was asked about the fact that ibuprofen can be taken for headaches, that the decedent allegedly had headaches as a result of stress from his supervisor, and that stress affects blood pressure. In the end, as it pertained to the decedent's orthopedic complaints, the PQME afforded a 2% whole person impairment (WPI) rating for the decedent's left knee, despite the fact that the medical record demonstrated that "…within three days [of the injury] he had no pain…his bruise was much smaller…," and he had a clear diagnosis of preexisting arthritis that had "…been there for quite some time, and that's why [he] was reluctant to assign an impairment rating". Exhibit E, Deposition Transcript James Fait, M.D. p. 21, lines 11-22. The PQME declined "…to express an opinion one way or another" as to the cause of death and testified "…that would be a different specialist generalized to that." Id. at p. 24, lines1-10 and p. 27, lines 14-17.

<u>The May 22, 2018 to February 25, 2019 Cumulative Trauma</u>

This claim was originally filed on March 13, 2019 as an alleged CT injury from May 22, 2018 through February 25, 2019 resulting from repetitive nature of his work to his eye, ear, knee, arm, shoulders, respiratory system, head, headaches, brain, body system - neuro, nervous system - psych, and sleep disorder. The application was amended subsequent to his death on March 24, 2022 to include circulatory system, high blood pressure, and hypertension and to also reflect the sole dependent, Amparo Casillas.

Given the foregoing analysis of the orthopedic PQME reporting, further medical evidence was mandated. Rather than securing an additional panel, however, the applicant secured an "Occupational Medicine and Virtual Postmortem Examination" report from Marvin Pietruszka, M.D. dated May 1, 2023 wherein he interviewed the widow/dependent and reviewed only the orthopedic PQME reports dated September 20, 2019 and January 13, 2021 and the deposition transcript dated July 13, 2022. There was no review of the PQME's other two reports. Dr. Pietruszka's only other report, a Supplemental Report dated February 2, 2025, reviewed, for the first time, the Certificate of Death, as well as the deposition of the widow. Neither report contained a review of the applicant's personal health records, but the doctor's supplemental report states that he reviewed "Dr. Voroshilovsky's summary" and her deposition testimony as well. In his first report, the only history provided by the widow to the doctor is that the decedent retired approximately one year prior to his death, that his work was stressful, that he had trouble ambulating after the injury, that he had extreme pressure from his supervisor, that he developed hypertension, that he was prescribed medication by his personal physician, Dr. Ali Karinyan (sic), that his medications caused gastritis and GERD, that he developed depression, headaches, and heart palpitations, and that he died on September 1, 2020 (sic) while watching TV. He concludes in favor of finding injury AOE/COE.

The parties went on to secure a PQME with Olga Voroshilovsky, M.D. in the specialty of Internal Medicine/Cardiology. For the first 19+ pages of her report, she provides a detailed review of 1,208 pages of pleadings, medical records for the last 17 years of the decedent's life, and deposition transcripts – again, a review of such records that was not present in either of Dr. Pietruszka's reports, including his supplemental. The review describes 15 years of high blood pressure, alcohol abuse, poorly-controlled hypertension, high cholesterol, smoking, and erectile dysfunction – a history missing from Dr. Peitruszka's analyses. Further entries provide for "noncompliance with medication regimen" whereas other entries reflect his insistence of taking the medications, although he could not provide any names. Throughout the relevant 15 years, entries consistently reflect high cholesterol, high blood pressure, lack of undergoing lab work and blood tests, the need to stop smoking, alcohol abuse, and that he was "[n]on-compliant with medication regimen". Of particular relevance is a 2012 entry showing that he was drinking "…about 4 beers a night down from 18 in the past". Various other entries diagnose "alcohol abuse" going back to 2007.

Another telling entry is that of July 31, 2019 (a time when he was employed) reflecting that he admitted to "…not taking any medication for the past 6 months". Entries in 2021 (after his last day of work) continue to reflect uncontrolled hypertension, counseling for smoking cessation, high cholesterol, and further non-compliance with his medication regimen.

The PQME interviewed the widow who provided her history of the specific injury but who also said that she was "…unsure regarding further details of his treatment for the injury other than he received some medications." She went on to tell the PQME that the decedent had problems with one of the foreman at work and would come home upset. As told to the PQME, "[t]he foreman was ultimately fired, and things improved at work." Further, the widow denied "…knowledge of any physical impact from stress." According to the widow, the decedent retired due to his inability to walk and his leg pain (although a review of the orthopedic PQME reports fail to support such a position, at least as it pertains to the specific injury). More telling is what the widow is unaware of as evidence by telling the PQME the following:

> She states that he did not previously complain of any chest pain, shortness of breath, or prior cardiovascular events. She is also unaware of his blood pressure control, management, or medication history although she was aware of a history of hypertension. Mrs. Casillas did state that her husband has stopped smoking and drinking after starting on pain medication for his leg pain and that he was sober until his death.

The PQME goes on to note the family history of hypertension and heart attack as well, and thereafter concludes, in terms of reasonable medical probability, that the decedent's hypertensive cardiovascular disease was not industrially related. She specifically found that the condition was "…due to longstanding, poorly controlled HTN, medication non-compliance, history of tobacco abuse, alcohol abuse, obesity, and genetic predisposition with family history of HTN, stroke and myocardial infarction."

The PQME was cross-examined on October 14, 2024, and she confirmed that credibility of the widow is left to the court, that stressors can elevate hypertension transiently, as can non-steroidal anti-inflammatories (NSAIDs), that the widow was unable to provide any specific representation to the doctor about what medication the decedent took aside from aspirin, that he led a sedentary lifestyle, that he had no knee complications, that Dr. Fait's report confirmed his left knee injury had resolved, and that losing leg function (resulting in a sedentary lifestyle) can be a risk factor under some circumstances. She testified that she has hospital privileges at Cedars-Sinai and maintained her conclusion as stated in her prior report that the death was not work-related. Such opinion was maintained notwithstanding her being "...presented various hypotheticals…" during her deposition. Exhibit G, *Deposition Transcript Olga Voroshilovsky*, p. 23, lines 17-20.

The PQME's third and final report reviews Dr. Pietruszka's supplemental and provides a detailed rebuttal, again basing her conclusion of non-industrial causation after reiterating the decedent's long-standing high blood pressure readings, and that his death was "…due to longstanding, poorly controlled HTN, hyperlipidemia, medication non-compliance, history of tobacco abuse, alcohol abuse, obesity and genetic predisposition with a family history of HTN, stroke and myocardial infarction."

The Certificate of Death reflects the date as September 1, 2021 as a result of cardiopulmonary arrest and hypertension, with such certification provided by Kaiser physician, Ali Reza Karimian, M.D.

The decedent was deposed on May 29, 2019 and admitted that he consumed alcohol the day before the proceeding, and that he does drink beer. He testified to the specific injury, pressure from his supervisor, seeing Kaiser physicians for about 15 years where he was treated for high blood pressure, receiving warnings from a prior supervisor, and having severe bilateral knee pain. Specifically the pressure from the prior supervisor ended when he was fired about a year and a half prior to the deposition (i.e., approximately late 2017, early 2018). Exhibit 3, *Deposition Transcript Jose Casillas* May 29, 2019, p. 37, lines 2-3. Also, a subsequent supervisor by the name of Beto who made comments about his frequency of restroom use, *id*. at p. 43, lines 17-18, and who also provided three write-ups with the third one concluding that the decedent had unsatisfactory work

performance in that he could not complete his tasks on time which caused production delays and which could result in termination if one more write-up occurred. *Id*. at p. 50, line 22 through p. 51, line 12. But the decedent also testified that these actions caused no need for treating his high blood pressure; it was the prior supervisor, Enrique Navarette, who caused such a need. *Id*. at p. 51, line 14 through p. 52, line 14. By the time of the decedent's deposition, he had no interaction for at least a year and a half.

The widow was deposed on July 10, 2023 and testified to her marriage with the decedent since 1979, his specific injury, and his death one year after he last worked. Contrary to what she told the physicians, she testified that she was unaware that the decedent had been diagnosed with hypertension, that he was not taking any medication (but then that she knew he was taking medication for high blood pressure), that he took over-the-counter ibuprofen for his pain, and that she was unaware of any other prescription medication. She then went on to testify about his smoking no more than three cigarettes per day and for no more than five years (contrary to the Kaiser records), the stress from the supervisor, him missing three weeks of work after the specific injury (contrary to Dr. Fait's PQME report wherein the decedent advised he missed no time from work), that she lacked any knowledge of treatment he had, that he could not walk, that he could only sit after he retired because of his leg pain, and that he continued smoking after retirement. The widow also specifically testified that her husband did not drink alcohol at all or at any time in the past (significantly contrary to the Kaiser records).

There are no psychiatric medical reports at all, either treating, PQME, or otherwise, and as such, there is no finding of an industrially-related psychiatric injury, disability, apportionment, or analysis of any alleged stressors. Consequently, there is also no conclusion as to whether any affirmative defenses exist as they may pertain to the write-ups.

The matter came to trial on September 8, 2025, and as the applicant states in her Petition for Reconsideration pertaining to the respect and exemplary conduct displayed, the court unambiguously agrees. But the court adds that such conduct was mutual. Both counsel were well-prepared with the facts, issues, and the law. It was both parties who demonstrated the utmost respect, professionalism, class, and dignity as well.

Prior to trial both parties submitted trial briefs, and the matter was submitted on the record with the court taking into evidence the medical reports and deposition transcripts outlined above. The court granted the parties' joint motion to forego testimony by the widow, and thus the court was tasked to review the record as submitted. As to the specific injury, based upon the agreement that the decedent's left knee PD rated 4%, such a Findings and Award issued. As to the CT, the court issued a Findings and Order that the decedent did not sustain an orthopedic injury, pursuant to the opinion of PQME Fait, and that he also did not sustain an industrial injury to his heart and cardiovascular system, or in the form of hypertension. As to both claims of injury, the court found that the death was not industrially related, based upon the PQME conclusions of Dr. Voroshilovsky. It is from these findings that the applicant seeks relief in terms of a specific finding of industrial injury to the decedent's heart and cardiovascular system, resulting in death, or, in the alternative, the appointment of a regular physician.

III
DISCUSSION

INJURY AOE/COE; CAUSATION; THE MEDICAL REPORTING OF PQME OLGA VOROSHILOVSKY, M.D. AND CONSULT MARVIN PIETRUSZKA, M.D.

The specific injury is not at issue, per se. The applicant sustained an admitted left knee injury causing a 2% whole person impairment, resulting in a 4% PD award. It is the allegation that the pain and medication contributed to the cardiopulmonary arrest on September 1, 2021. It is also the CT based upon the alleged stress and pressure from the decedent's supervisor that contributed as well. The court is presented with two divergent opinions in this regard. One is a consultation report secured by the applicant finding in her favor. The other is the PQME report concluding otherwise.

Although *Labor Code* § 3202 mandates that workers' compensation laws "…shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment", *Labor Code* § 3202.5 provides that "[a]ll parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law." Injury AOE/COE is at issue, and it is therefore the applicant who maintains the burden of proving a work-related connection to the death.

Death benefits cannot be apportioned. So long as the decedent's employment, work stressors, or the taking of medications for his work-related pain contributed to his death, then industrial causation is greater than zero, and employment is thus a contributing factor. A finding of injury AOE/COE would then be proper. *South Coast Framing v. Workers' Comp. Appeals Bd.* (2015) 61 Cal.4th 291 [80 Cal.Comp.Cases 489].

At the same time, however, the Board's award, order, or decision must be supported by substantial evidence in light of the entire record. *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 280–281, 113 Cal.Rptr. 162, 520 P.2d 978, 39 CCC 310; *Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 317, 90 Cal.Rptr. 355, 475 P.2d 451; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246, 255, 262 Cal.Rptr. 537.

Medical opinions are not substantial evidence if based upon an inadequate medical history or examination or on surmise, speculation, conjecture, or guess. *Zemke v. WCAB* (1968) 33 CCC 358; *Bracken v. WCAB* (1989) 54 CCC349; *Place v. WCAB* (1970) 35 CCC 525; *Hegglin v. WCAB* (1971) 36 CCC93; *Insurance Company of North America v. WCAB (Kemp)* (1981) 46 CCC 913; *Baptist v. WCAB* (1982) 47 CCC 1244; *Guerra v. WCAB* (1985) 50 CCC 270; *Escobedo v. Marshalls* (2005) 70 CCC 604; *E.L. Yeager Construction v. WCAB (Gatten)* (2006) 71 CCC 1687.

The entire report and testimony must demonstrate that the doctor's opinion is based upon reasonable medical probability. *McAllister v. WCAB* (1968) 33 CCC 660; *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 280–281, 113 Cal.Rptr. 162, 520 P.2d 978, 39 CCC 310.

The trier of fact is empowered to choose among conflicting medical reports and rely on that which is deemed most persuasive *Jones v. WCAB* (1968) 68 Cal. 2d 476.

In this situation, the applicant presents her arguments in a cogent fashion. It is an argument that again is based upon the theory that the decedent's cardiac arrest is related to his stress at work, the NSAID he was taking, his pain from his specific injury, and his resulting sedentary lifestyle. The applicant's legal and medical theory is correct, generally speaking. But the court fails to find in the applicant's favor in this particular situation because Dr. Pietruszka's conclusions do not rise to the level of reasonable medical probability, and his reports do not constitute substantial medical evidence. On the other hand, the PQME's reports and conclusions do.

Dr. Pietruszka fashions his analysis around his interview with the widow only. He did not review the Kaiser medical records which spanned the course of 15 years. And he haphazardly reviewed Dr. Voroshilovsky's 12-page summary of her actual, detailed review. Dr. Pietruszka favors the applicant's theory, but the evidence does not support his conclusions. And it is the evidence that matters – not a theory and not hypotheticals. The widow cannot recall the names of the medications the decedent was taking (for either his knee or his blood pressure), but she argues that the prolonged stress and chronic knee pain was causative. She states that he retired because of his knee pain and could not walk as well. The position, however, is speculative. The orthopedic PQME concludes that the decedent's left knee had essentially healed and was, in the end, allowed a mere 2% WPI. The orthopedic PQME, at no time, supported the widow's claim that the decedent could no longer walk. He was even reluctant to provide a 2% WPI due to the decedent's longstanding arthritis, and it is clear that he missed no time from work after the injury (contrary to the widow's claim). There is no credible evidence that the decedent took his medications regularly, if at all, and which medications those even were.

Further complicating Dr. Pietruszka's analysis is that he objects to the orthopedic apportionment provided, even though he is not an orthopedist. Moreover, he goes on to discuss and then make findings regarding the applicant's stressors at work and his psychiatric condition, despite not being a psychiatrist or psychologist. There is no reason for him to step outside his field of expertise to opine as he did. The grasping at straws is obvious, especially when he does not address the decedent's poorly-controlled hypertension, high cholesterol, hyperlipidemia, longstanding tobacco and alcohol abuse (at times 18 beers in a single night), medication non-compliance, and obesity. The 15 years of records tell a completely different story of the decedent's lifestyle and habits than does the version provided to Dr. Pietruszka. To completely ignore such a lengthy history of complications and treatment that is directly at issue in this case causes his opinions to fail the standard of substantial medical evidence. The applicant takes the position that Dr. Pietruszka reviewed all records, just not in their original form. That is a stretch. The doctor's supplemental report of February 2, 2025 contains four pages of discussion where he was states he reviewed his first report, PQME Voroshilovsky's report (no date provided, and her deposition transcript. Taking the applicant's assertion at face value, the court would expect this report from Dr. Pietruszka to comment on the 19+ pages of the PQME's report that reviews the 1000+ pages of the decedent's private medical records. And there is none. What Dr. Pietruszka did was he stated the cause of death as set forth on the Certificate, review Dr. Fait's orthopedic PQME report and the widow's deposition, and then review Dr. Voroshilovsky's deposition. He continues to argue in favor of causation. But at no point – contrary to the applicant's position in the Petition for Reconsideration

– does Dr. Pietruszka even allude to the voluminous records that Dr. Voroshilovsky reviewed. Not one word. There is no indication at all that he reviewed the PQME's summary of the 17 years of personal medical records – records that go into great detail about the decedent's 15 years of high blood pressure, alcohol abuse, poorly-controlled hypertension, high cholesterol, smoking, and erectile dysfunction.

On the other hand, PQME Dr. Voroshilovsky interviewed the widow as well. And what she also did was to review not only the widow's deposition testimony but the voluminous medical records from Kaiser as well. Dr. Pietruszka took the widow's history and then argued his way to his conclusion. Dr. Pietruszka did not; she acted objectively. She took the widow's version, reviewed all the evidence, and then looked to the totality of the circumstances. That totality provided a much different story, and one filled with contradictions that Dr. Pietruszka was unaware of.

The widow's credibility, or the lack thereof, is important. It is not the fact that the court did not watch the widow testify that is important or dispositive. What is critical is whether her testimony (which was taken in by way of her deposition transcript) is corroborated by the other admitted evidence or whether it is contradicted and impeached. Here, her testimony is significantly at odds with the medical records.

Generally, the credibility of witnesses and the persuasiveness or weight of evidence are questions of fact, and are therefore questions for the judge. *Clendaniel v. IAC* (1941) 6 CCC 85, 88; *Western Electric Co. v. WCAB (Smith)* (1979) 44 CCC 1145, 1152.

The board must accept as true a witness' testimony if it is both uncontradicted and unimpeached. *McAllister v. WCAB* (1968) 33 CCC 660, 662; *LeVesque v. WCAB* (1970) 35 CCC 16, 26; *Lamb v. WCAB* (1974) 39 CCC 310, 314; *Western Electric Co. v. WCAB (Smith)* (1979) 44 CCC 1145, 1152; *San Amico v. WCAB* (1974) 39 CCC 845. The fact that testimony is self-serving does not render it inadmissible. *Gillette v. WCAB* (1971) 36 CCC 570, 577. But the board may also choose to disbelieve relevant uncontradicted and unimpeached evidence if it has grounds other than mere speculation and conjecture. *Lamb v. WCAB* (1974) 39 CCC 310, 316.

If the applicant is the only witness, the appeals board is not required to accept their testimony as true. See *Alexander v. WCAB* (1968) 33 CCC 341, 343; *Carpenter v. IAC* (1965) 30 CCC 264 (writ denied). The board is free to disbelieve an applicant's testimony, even though it is uncontradicted by other witnesses, if there is a rational reason for doing so and it does not act arbitrarily. Testimony may also be impeached by the medical record. [*Kocalis v. WCAB* (1997) 62 CCC 1299 (writ denied); *Garcia v. WCAB* (2014) 79 CCC 356 (writ denied)].

It is up to this court to determine the facts, especially since there are significant inconsistencies between the widow version and the decedent's medical records. In this case, the widow's testimony is not unimpeached and is not uncontradicted. The facts here, as outlined by Dr. Pietruszka, are seriously compromised, and if he was provided with the PQME reports of Dr. Voroshilovsky (as the applicant states in her Petition for Reconsideration), then Dr. Pietruszka chose to ignore them or made a mistake in ignoring them. Either way, he failed to address them.

The widow's deposition testimony and history provided to Dr. Pietruskza are impeached by the medical records that he did not review. Dr. Voroshilovsky is the only physician who reviewed all evidence and did not solely rely on the widow's inaccurate history. The widow's testimony and history are self-serving. That fact, in and of itself, is not necessarily all-important. But it is when over 1,000 pages of medical records prove a much different scenario of the decedent than she lead Dr. Pietruszka to believe. Although admissible, her testimony and history, without speculation or conjecture, are both contradicted and impeached by the more-reliable medical records. The court cannot believe her history – a history that Dr. Pietruszka's uses to arrive at his conclusions. The facts in this case therefore must support a finding consistent with Dr. Voroshilovsky's conclusions.

Turning to the decedent's own history provided to the orthopedic PQME, the history shows that he smoked but that he did not use of alcohol. The PQME originally opined after two evaluations that his left knee had essentially healed. He originally provided for a 0% WPI, but after cross-examination, he placed it at 2%. The widow provided a history that the decedent was unable to walk and had an awful lot of leg pain that caused him to retire. Her representations are at complete odds with the medical evidence, at least as it pertains to the work-related left knee injury.

The applicant provided neither Dr. Pietruszka nor Dr. Voroshilovsky with an accurate history of what medications the applicant took, the frequency, or the duration. She provided a generalized statement that he took medication, but there are no further details. And on top of this is what is of tremendous importance – the widow testified during her deposition that her husband smoked for no more than five years and that he never drank alcohol at all or at any time in the past. Exhibit 4, *Deposition Transcript Amparo Casillas*, p. 18, lines 3 through p. 19, line 14. The medical records paint a much different picture. He had been told to participate in a smoking cessation program starting as early as March 15, 2007 and up to April 19, 2021 (i.e., a period of 14 years, not five). Furthermore, his alcohol abuse is clearly documented going back to March 15, 2007 as well, with a glaring notation on February 17, 2012 that he "[d]rinks about 4 beers a night *down from 18 in the past*." (emphasis added). The court has no idea whether the widow was unaware of the decedent's habits or whether she did and intended to mislead the parties and the physicians. Regardless, what is clear is the fact that her assertions cannot be relied upon in order to form a basis for a medical opinion that must be based upon reasonable medical probability.

Unlike Dr. Pietruszka's conclusions, those of Dr. Voroshilovsky do not rely solely on the false and inaccurate history provided by the widow, and they do not discount or disregard the 15 years of medical records. In fact, after she reviewed Dr. Pietruszka's supplemental report wherein he criticized her conclusions, and subsequent to her deposition, Dr. Voroshilovsky very clearly provided as follows:

Regarding blood pressure (BP) reading, these were markedly elevated with poor control dating back as far as 2006.

Before the alleged injury:	After the alleged Injury:
3/15/2006 BP 168/101	5/22/18 BP 180/100
4/18/2008 BP 160/96	5/25/18 BP 138/84
5/9/2008 BP 139/87	5/25/18 BP 119/69
1/10/2012 BP 164/104	8/16/18 BP 192/110

1/13/2012 BP 184/104
2/17/2012 BP 148/95
3/2/2012 BP 144/95
3/20/2012 BP 166/102
7/23/2012 BP 164/97
4/30/2013 BP 182/104
6/24/2013 BP 153/81
7/1/2013 BP 156/92
1/17/2014 BP 153/94
12/10/15 BP 196/110
12/15/15 BP 154/92
8/8/2017 BP 190/123
8/10/2017 BP 154/94
8/24/17 BP 156/83
9/8/2017 BP 184/92
11/3/17 BP 166/96
7/31/19 BP 193/113
8/28/19 BP 173/94
9/20/19 BP 189/102
1/13/21 BP 195/111

> Dr. Pietruszka commented about stress and pain leading to an elevated BP on July 31st 2019 when blood pressure was 119/113 and due to knee pain on January 13th, 2021 when BP was 195/111. However, his BP was in a similar range on December 10th, 2015 at 196/110 during a regular follow-up visit. Additionally, a similar elevation in BP was documented August 8th, 2017 at 190/123 due to reported work stress which also preceded the knee injury and the timing of the current claim.
>
> I do not believe that there is correlation between blood pressure and the applicants (sic) reported industrial exposure for the dates specified in the claim and there is no evidence of aggravation or acceleration in blood pressure readings after the alleged injury.

The readings alone support Kaiser's own conclusions that the decedent was not compliant with his medication. The decedent has had high blood pressure well before the specific injury more so than he had afterwards. His blood pressure remained elevated at time even after his last day of work and well beyond the time he was no longer under the supervision of a person he said caused him stress. And oddly enough, his blood pressure was at its lowest readings only three days after his injury, without explanation. Notwithstanding these facts, Dr. Voroshilovsky goes on to address Dr. Pietruszka's speculative conclusions about the alleged NSAID use and the alleged psychological workplace stress. She stated in relevant part as follows:

> The issue of potential of BP exacerbation by NSAID use was also raised. In the medical records it was unclear if Mr. Casillas was taking NSAIDs, what dose, and for how long. These medications were not endorsed by his wife at the time of the interview and the applicant was often noncompliant as already noted in medical records. Some notes stated he took Ibuprofen at some point, but it was not listed in last medication record from July 31st, 2019 when his regimen included Lisinopril-HCTZ, Amlodipine, Aspirin,

> and Atorvastatin. If in fact he was taking Ibuprofen, the average increase in BP with NSAIDS is 3/2mmHg but can vary, as it is dose (sic) dependent and on which NSAID was used. (Pope JE, Anderson JJ, Felson DT. A meta-analysis of the effects of nonsteroidal anti-inflammatory drugs on blood pressure. Arch Intern Med 1993; 153:477.) The average effects of Ibuprofen has been found to be negligible and previously shown with no significant effect on the total cardiovascular death rate or all-cause mortality. (Sherve K, Gerard CJ, Neher JO, St Anna L. Cardiovascular effects of NSAIDs. Am Fam Physician. 2014 Aug 15;90(4)).
>
> Additionally, there is evidence of potential microvascular disease due to uncontrolled hypertension, hyperlipidemia and smoking as early as March 20171 when the applicant complained of erectile dysfunction, and end-organ injury in January 2013 with microalbuminuria on urinalysis, and September 2017 with left ventricular hypertrophy on ECHO. All of these findings precede the alleged injury.
>
> *****
>
> Dr. Pietruszka commented about the impact of psychological workplace stress contributing to his cardiovascular state and sudden cardiac death, however Mr. Casillas had already retired from work one year prior to his death in September 2020. There is no evidence of aggravation or acceleration in blood pressure readings after the alleged injury as documented above. Additionally, there was evidence of work stress prior to the alleged injury as noted in a Family Medicine note from August 8th, 2017 and applicant was referred to psychiatry for acute stress disorder and given time off work. Therefore, these issues with workplace stress appear to be pre-existing and I would defer any conclusion regarding the potential exacerbation or acceleration of such injuries to the appropriate Psychiatric specialist.

Dr. Voroshilovsky compellingly concludes as follows:

> Based on the additional information presented, I do not have reason to change my prior opinion regarding causation, that the sudden cardiac death due to hypertensive cardiovascular disease based on reasonable medical probability has not arisen out of, employment or related to the industrial knee injury on May 2018 but rather due to longstanding, poorly controlled HTN, hyperlipidemia, medication non-compliance, history of tobacco abuse, alcohol abuse, obesity and genetic predisposition with a family history of HTN, stroke and myocardial infarction.

In her Petition for Reconsideration the applicant argues that Dr. Voroshilovsky subscribes to strange theories and cites no literature to support her conclusions. It goes without saying that the applicant (and her counsel as well) are not medical practitioners. They have a theory, and that theory was tested with the PQME. The PQME disagreed and did not provide the opinion or conclusion sought

by the applicant. The PQME discussed that any stressor may have caused a transient rise in the decedent's blood pressure. She testified that the NSAID use (if it occurred at all) would not have contributed to the decedent's ailment under these facts. In terms of reasonable medical probability (not possibly and not speculatively) it was the lengthy history of medication non-compliance, smoking, and alcohol/alcoholism, among others, that were the sole cause of the death – a death that occurred 15 months after the applicant last worked. Any work-related stressor had long since passed years earlier. And any continued use of NSAID is speculative; the record just does not support it. Had the applicant wished for the PQME to review any medical literature, she could have done so either before, at, or subsequent to the PQME's cross-examination. The applicant did not do so.

Turning to a couple of other points made by the applicant in her Petition for Reconsideration, one of them is that the decedent was in such severe pain that it caused a sedentary lifestyle, leading to his cardiopulmonary arrest, notwithstanding a 2% WPI because "[s]omeone can have real pain with 2% WPI." Again, this is the applicant's theory, but there is no substantial medical evidence to support it. The orthopedic PQME first gave a 0% WPI stating that the decedent essentially fully recovered, but then relented during cross-examination to allow for the 2%. As far as the decedent's work-related injury is concerned, there is no evidence of the "real pain" that the applicant asserts. And as discussed above, the claim of pain is coupled with the applicant's statement that her husband missed several weeks of work after the specific injury. But that is rebuffed by the Dr. Fait's report where he was told by the decedent that he missed no time from work. Based upon the evidence (not conjecture or surmise), the court does not agree with the applicant's position.

The final point to address is the applicant's argument that the court did not review the decedent's deposition. The court, however, did. In the Joint Opinion on Decision, the court summarized the decedent's testimony as follows:

> The decedent was deposed on May 29, 2019 and admitted that he consumed alcohol the day before the proceeding, and that he does drink beer. He testified to the specific injury, pressure from his supervisor, seeing Kaiser physicians for about 15 years where he was treated for high blood pressure, receiving warnings from his supervisor, and having severe bilateral knee pain.

The summary in the Opinion was provided without great detail because PQME Viroshilovsky reviewed the transcript, and as can be seen by the 17-year span of medical records, such evidence is at odds with the history provided by the decedent. Furthermore, the decedent testified that the supervisor who allegedly caused him stress had long since been fired, and even though the subsequent supervisor commented on his restroom breaks and issued written reprimands, the decedent testified that these actions did not cause the need for any treatment of his high blood pressure; it was the prior supervisor with whom he had no interaction for at least a year and a half prior to his deposition, which would be approximately two and a half years before his last day of work and approximately four years prior to his death. The court must rely on an expert medical opinion, and the court did just that. The PQME found no causative connection.

There is no other conclusion for the court to reach. The only medical reports and conclusions that constitute substantial evidence are those of the PQME, Dr. Olga Voroshilovsky.

DEVELOPMENT OF THE RECORD

The WCJ and the WCAB have a duty to further develop the record when there is insufficient evidence on an issue, when the record does not contain substantial evidence, or when appropriate to provide due process or fully adjudicate the issues. *McClune v. WCAB* (1998) 62 Cal.App.4th 1117, 63 CCC 261; *Tyler v. WCAB* (1997) 56 Cal.App.4th 389, 62 CCC 924.

If a party fails to meet its burden of proof in obtaining and introducing competent evidence, it is not the job of the appeals board to rescue that party by ordering the record developed. *[Lab. Code* § 5502*; San Bernardino Community Hospital v. WCAB (McKernan)* (1999) 74 Cal.App.4th 928, 64 CCC 986; *Telles Transport Inc. v. WCAB* (2001) 92 Cal.App.4th 1159, 66 CCC 1290]; *Velma Lankster v. WCAB* (2023) 88 Cal. Comp. Cases 1076, 2023 Cal. Wrk. Comp. LEXIS 53 (writ denied)

The WCJ may not order further discovery if it is not needed. *Townsend v. Combined Insurance Co.,* (2013) 2013 Cal. Wrk. Comp. P.D. LEXIS 342.

All parties have been engaged in discovery for years. Dr. Pietruszka criticized the opinions of Dr. Voroshilovsky, and vice versa. No further development is necessary. Here, the PQME's reports are more thorough, comprehensive, and well- reasoned than those of the consultation reports. Dr. Pietruszka was provided an inaccurate history by the widow, he failed to review the actual 17 years of Kaiser records, and he failed to address the 12-page summary of such records as provided in Dr. Voroshilovsky's report.

In the case of *Tyler*, supra, the applicant claimed a work-related psychiatric injury. Two psychiatrists (one on behalf of the applicant and one as an AME) found that the petitioner did not sustain an industrial injury. A neurologist, however, did, but the judge rejected this report based on the field of specialty being that of neurology. The judge found the AME psychiatric report to be flawed but concluded he had no authority to appoint a physician for further evaluation. The court of appeal held that the appeals board did, and that there was a duty to do so in that case, given the insufficient evidence. Our case is distinguishable. Here, no doubt we have a report that is flawed. But that report is the consultation from Dr. Pietruszka. If his was the only report, then a deficiency in the record would exist. That is not the case, however. There exists also the PQME from Dr. Voroshilovsky, and in her report, she reviews all the evidence and arrives at her conclusions that were supported after cross-examination.

The case of *McClune*, supra, is similarly distinguishable. In that case, the court found against the applicant when it held that the applicant's injury was non-industrial based upon conflicting and inadequate medical evidence. The judge held that an additional independent medical evaluation would have been helpful, but they had no authority to do so. The court of appeal reversed and held that *Labor Code* §§ 5701 and 5906 provided such authorization. In our case at hand, we are presented with *factual* issues and inconsistencies, not medical deficiencies. The applicant's case is replete with them for the reasons discussed above. The situation before us falls in line with the case law where the applicant seeks to be rescued due to a poor report by Dr. Pietruszka and a report that she disagrees with by Dr. Voroshilovsky. There is no basis to do so.

In the case of *Townsend*, supra, the trial court ordered the record developed by way of further cross-examination of a psychiatric agreed medical evaluator (AME) on the issue of causation. The Board panel disagreed holding that although a judge has the authority to develop the record, no such need existed and the judge was ordered to make a decision on the record as it existed. Our case presents a similar situation, even if not identical. Although we are not presented here with an AME, we have competing medical opinions. One failed to review over 1,000 pages consisting of substantial facts over the course of 17 years. One did not fail to do so, and that is the report that constitutes substantial medical evidence.

The record is not deficient, and no further discovery is needed, including a regular physician under *Labor Code* § 5701. For sake of completeness, the court also concludes that an evaluation pursuant to *Labor Code* § 5706, as requested by the applicant, is unwarranted. That section allows for an autopsy, which in this case would mandate exhumation. Only a commissioner can issue such an order, pursuant to *Title 8 California Code of Regulations* § 10338, but because more than four years have passed since the date of death, the court recommends against any such action. The Certificate of Death provides for the cause, and the competing medical opinions have issued their opinions. No further development is beneficial.

IV
RECOMMENDATION

It is respectfully recommended that the applicant's Petition for Reconsideration dated September 29, 2025 be denied.

DATE: October 4, 2025

TODD T. KELLY
WORKERS' COMPENSATION JUDGE