

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

LORENZO TORRES, *Applicant*

vs.

KOOS MANUFACTURING COMPANY, INC.;
SAFETY NATIONAL CASUALTY COMPANY, administered by TRISTAR GROUP,
Defendants

Adjudication Numbers: ADJ13002649, ADJ13002697
Santa Ana District Office

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Joint Findings and Award (F&A) of July 21, 2025, wherein the workers' compensation judge (WCJ) found in relevant part that applicant sustained injury arising out of and in the course of employment (AOE/COE) to his lumbar spine and psyche, and that the psychological injury was not precluded by the good faith personnel action defense, and that the injury caused a period of temporary partial disability and then 14% permanent disability to the lumbar spine after apportionment in ADJ13002649; applicant sustained injury AOE/COE to his right shoulder and left shoulder and the injury caused right shoulder permanent disability of 3% and left shoulder permanent disability of 4% in ADJ13002697; and awarded permanent partial disability in both cases as well as further medical treatment.

Defendant contends that the psyche injury is not supported by substantial evidence; that the award of temporary partial disability is unjustified; that the qualified medical evaluator's (QME) impairment to the lumbar spine is 11%; there is no industrial injury to the shoulders; and that there is no combined impairment to the shoulders.

We have not received an Answer from applicant. The WCJ prepared a Joint Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. Based on our review of the record, for the reasons stated below and for the reasons stated in the WCJ's report, which we adopt and incorporate in part, we will deny reconsideration. We adopt and incorporate the WCJ's Report except that we do not incorporate the sections regarding the good faith personnel action starting with the last paragraph on page 5 through the first paragraph on page 8.

FACTS

In addition to the Facts section in the Report, additional relevant facts to applicant's psyche injury are included below. In case number ADJ13002649, applicant sustained injury AOE/COE to his low back that was accepted by defendant and also claimed industrial injury to his shoulders, hips, and psyche while working for defendant as a painter on June 21, 2019. In ADJ13002697, applicant claimed cumulative trauma while working for the defendant as a painter from January 31, 2017, to January 31, 2020, to his back, shoulders, tailbone, psyche, and hands.

Licensed psychologist, Dr. Seth Hirsch, Ph.D., acted as the QME in psychology in this case and provided three reports regarding applicant's psychological condition. In Dr. Hirsch's preliminary psychological report of December 2, 2022, he noted that after applicant was given work restrictions following his injury, applicant reported that his co-workers ridiculed him and made fun of him for "making a lot of money for doing nothing." (App. Ex. 17, Medical Report by Dr. Seth Hirsch, dated 12/2/22, p. 2.) In the supplemental psychological evaluation of September 10, 2023, Dr. Hirsch stated that

In my best estimate, with all reasonable medical probability, I would assess 20% of Mr. Torres's disability as associated with his termination, 20% to the harassment endured and 60% to the depression and agitation associated with his chronic pain worsened by the uncertainty of when he will return to a full-time job, given his physical limitations.

(App. Ex. 18, Medical Report by Dr. Seth Hirsch, dated 9/10/23, p. 4.) Dr. Hirsch confirmed these percentages in the permanent and stationary report of February 2, 2024. (App. Ex. 16, Medical Report by Dr. Seth Hirsch, dated 2/2/24, p. 2.) Dr. Hirsch found applicant to be permanent and stationary as of the examination on February 2, 2024. (App. Ex. 16, Medical Report by Dr. Seth Hirsch, dated 2/2/24, p. 2.)

At the trial on December 20, 2024, applicant testified that after his injury, he was placed on modified duty and was treated differently. (12/20/24 Minutes of Hearing/ Statement of

Evidence (MOH/SOE), p. 3.) His supervisor told him that he should leave if he could not do the work and his co-workers said he was paid more to do less and that he was paid to do nothing as well as other negative comments. (12/20/24 MOE/SOE, p. 4.) He was fired because he could not do the job anymore. (12/20/24 MOE/SOE, pp. 3, 9.) There was no meeting to attend to find him another position although he received a voucher for a different job. (12/20/24 MOE/SOE, p. 9.)

Applicant's supervisor Luis Chicas Machado testified that applicant did not report any stress or depression to him or that he was being ridiculed by his co-workers but that he was not always present with applicant and not aware of every conversation applicant had with coworkers. (4/28/25 MOH/SOE, pp. 3-4.) Applicant was terminated because there was no available work for him with his modified duties. (4/28/25 MOH/SOE, p. 3.)

Defendant's payroll manager Christian Leon confirmed that applicant was terminated because defendant was unable to accommodate his permanent work restrictions. (4/28/25 MOH/SOE, p. 5.) Former co-worker and family friend Milton Ceron testified that that he witnessed applicant's work injury but that applicant had not reported stress or depression to him or that his co-workers were making fun of him. (4/28/25 MOH/SOE, p. 6.)

Following the trial, the WCJ found in relevant part that applicant had sustained injury AOE/COE to his lumbar spine and psyche; that his specific injury caused a period of temporary partial disability from December 2, 2022 through February 2, 2024, based on his psyche injury pursuant to the opinions to Seth Hirsch, Ph.D.; the preliminary monetary value for temporary disability is \$33,509.34; applicant became permanent and stationary from a psychological standpoint on February 2, 2024; that the psychological injury is not precluded by the good faith personnel action defense; and that the psyche injury will not yield any increases to the applicant's impairment or disability pursuant to section 4660.1(c)(1). (F&A, pp. 1-2.)

DISCUSSION

I.

Former Labor Code¹ 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:

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

(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 August 21, 2025, and 60 days from the date of transmission is October 20, 2025. This decision is issued by or on October 20, 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 August 21, 2025, and the case was transmitted to the Appeals Board on August 21, 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 August 21, 2025.

II.

Section 3208.3 governs claims for psychiatric injury. To establish that a psychological injury is compensable, an injured worker must show by a preponderance of the evidence that actual events of employment predominantly caused the psychological injury. (Lab. Code, § 3208.3(b)(1).)

Once the issue of industrial psychiatric injury has been established, an employer may seek to have the claim barred from compensation by proving that it was substantially caused by a lawful, nondiscriminatory, good faith personnel action. (Lab. Code, § 3208.3(h).) Again, the burden of proof rests with the party holding the affirmative of the issue. (Lab. Code, §§ 3208.3(h), 5705.) Thus, defendant holds the burden of proving the good faith personnel action defense.

When a psychiatric injury is alleged and the “good faith personnel action” defense has been raised, the WCJ must evaluate the defense according to a multilevel analysis. (*San Francisco Unified School Dist. v. Workers’ Comp. Appeals Bd. (Cardozo)* (2013) 190 Cal.App.4th 1, 9 [75 Cal.Comp.Cases 1251] (writ den.); *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 242 (Appeals Board en banc) (*Rolda*).) Under this analysis, the WCJ must first consider all the medical evidence and the other documentary and testimonial evidence of record and then determine: (1) whether the alleged psychiatric injury involves actual events of employment, a factual/legal determination for the WCJ; (2) if so, whether such actual events were the predominant cause of the psychiatric injury, a determination which requires competent medical evidence; (3) if so, a further determination must be made establishing whether any of the actual employment events were personnel actions that were lawful, nondiscriminatory and in good faith - a factual/legal determination for the WCJ; and (4) if so, a determination must be made as to whether the lawful, nondiscriminatory, good faith personnel actions were a “substantial cause” of the psychiatric injury. (*Rolda, supra*, 66 Cal.Comp.Cases at p. 247; see also *San Francisco Unified School Dist. v. Workers’ Comp. Appeals Bd. (Cardozo)*, *supra*, 190 Cal.App.4th at p. 9.) Section 3208.3 defines “substantial cause” as “at least 35 to 40 percent of the causation from all sources combined.” (Lab. Code, § 3208.3(b)(3).)

“To be in good faith, the personnel action must be done in a manner that is lacking outrageous conduct, is honest and with a sincere purpose, is without an intent to mislead, deceive, or defraud, and is without collusion or unlawful design.” (*Larch v. Contra Costa County* (1998) 63 Cal.Comp.Cases 831, 837.) Personnel actions are not in good faith if they are “froth with

problems of unclarity of rules and errors of management personnel not following proper procedures.” (*City of Fresno v. Workers Compensation Appeals Bd. (Romero)* (2000) 65 Cal.Comp.Cases 1051, 1052.)

QME Dr. Hirsch found that the following circumstances caused applicant’s psychological injury: 20% was due to applicant’s termination; 20% was due to the harassment he endured from his co-workers; and 60% was due to the depression and agitation associated with his chronic pain worsened by the uncertainty of when he would return to a full-time job, given his physical limitations. (App. Ex. 18, p. 4.) As all three of these circumstances were actual events of employment, applicant has established a compensable psychological injury.

Next, we consider the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. (Lab. Code § 3208.3(h).)

A personnel action is conduct either by or attributable to management including such things as done by one who has the authority to review, criticize, demote, or discipline an employee. It is not necessary for the personnel action to have a direct or immediate effect on the employment status. Personnel actions may include but are not necessarily limited to transfers, demotions, layoffs, performance evaluations, and disciplinary actions such as warnings, suspensions, and terminations of employment.

(*Larch v. Contra Costa County, supra*, 63 Cal.Comp.Cases at p. 835.) Thus, only applicant’s termination is a personnel action; the harassment by co-workers and applicant’s depression and agitation from pain are not personnel actions as they are not by or attributable to management. Therefore, as only 20% of applicant’s psyche injury is due to a personnel action, the personnel action is not a substantial cause of the psyche injury. (Lab. Code § 3208.3(b)(3).) Defendant has not met their burden that the good faith personnel defense is applicable to this case.

Additionally, although we do not need to go any further in the good faith personnel defense analysis, defendant also has not met its burden to show that the termination was lawful, nondiscriminatory, and in good faith. Applicant was terminated as defendant could not accommodate his work restrictions. (12/20/24 MOE/SOE, pp. 3-4, 9; 4/28/25 MOH/SOE, pp. 3, 5.) An employer should not discriminate against workers who are injured in the course and scope of their employment. (Lab. Code, § 132a.)

Therefore, applicant has a compensable industrial injury to his psyche as he showed by a preponderance of the evidence that actual events of employment predominantly caused the psychological injury based on Dr. Hirsch’s reporting (Lab. Code, § 3208.3(b)(1)) and the good

faith personnel action defense is not applicable to him. 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." (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

On the other hand, there must be some solid basis in the medical report for the doctor's ultimate opinion; the Appeals Board may not blindly accept a medical opinion which lacks a solid underlying basis, and must carefully judge its weight and credibility. (*National Convenience Stores v. Workers' Comp. Appeals Bd. (Kesser)* (1981) 121 Cal.App.3d 420, 426 [46 Cal.Comp.Cases 783].) In other words, the Appeals Board must look to the underlying facts of a medical opinion to determine whether or not that opinion constitutes substantial evidence, and accordingly, the expert's opinion is no better than the facts on which it is based. (*Turner v. Workers' Comp. Appeals Bd.* (1974) 42 Cal.App.3d 1036, 1044 [39 Cal.Comp.Cases 780].) We will not disturb the WCJ's conclusion that substantial medical evidence by QME Dr. Hirsch supported the finding of compensable psyche injury in the F&A of July 21, 2025.

Accordingly, we deny defendant's Petition for Reconsideration of the July 21, 2025 F&A.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the July 21, 2025 Joint Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 20, 2025

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

**LORENZO TORRES
SOLOV & TEITELL
NIGEL SCOTT BAKER, ESQ.**

JMR/abs

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

JOINT REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

1. Applicant's Occupation: Painter
 Applicant's Age: 43-44 (depending on injury date)
 Alleged Dates of Injury: June 21, 2019; January 31, 2017-January 31, 2020
 Parts of Body Injured: Lumbar Spine and Psyche; Right and Left Shoulder
2. Identity of Petitioner: Defendant.
 Timeliness: The petition was timely filed.
 Verification: The petition was verified.
3. Date of Issuance
 Of Findings and Order: July 21, 2025
4. Petitioner's Contentions: (1) By the order, decision or award, the WCAB acted without or in excess of its powers, and (2) the findings of fact do not support the Award and Order

II

FACTS

The following facts are undisputed. The applicant has an accepted, work-related injury to his low back (lumbar spine) on June 21, 2019. The applicant also alleged injuries to his shoulders, hips, and psych for this date of injury. The applicant also alleged a cumulative trauma ("CT") for the period January 31, 2017-January 31, 2020, involving the back, shoulders, tailbone, psyche, and hands.

The applicant's most recent primary treating physician ("PTP") was Khalid Ahmed, M.D., who authored a Permanent and Stationary ("P&S") report, dated April 27, 2023. (Applicant's Exhibit 1.)

The parties also utilized Peter Alexakis, M.D., as an orthopedic Panel Qualified Medical Evaluator (“PQME”). (See Defense Exhibits E, F, G, and H.)

The applicant was also evaluated by psychologist, Seth Hirsch, Ph.D., who prepared multiple reports, culminating in a P&S report, dated February 2, 2024. (Applicant’s Exhibits 16 (P&S Report), 17, and 18.)

Trial occurred on September 16, 2024, October 23, 2024, December 30, 2024, and April 28, 2025. Post Trial Briefs were requested from the parties. This matter stood submitted on May 30, 2025, the date the Post Trial Briefs were due.

The Joint Findings, Award and Order was issued on July 21, 2025. In relevant part, the applicant was found to have a June 21, 2019 specific injury that resulted in compensable injuries to the lumbar spine and psyche. This resulted in 14% permanent disability (“PD”) for the lumbar spine (based on the opinions of PQME Alexakis) and a period of temporary disability (“TD”) from December 2, 2022 through February 2, 2024 due to the applicant’s psyche injury (based on the opinions of Dr. Hirsch).

The applicant was further found to have a CT from January 31, 2017-January 31, 2020 that resulted in compensable injuries to the right and left shoulders. This resulted in 3% PD for the right shoulder and 4% PD for the left shoulder. While the shoulder injury is based on the opinion of PQME Alexakis, the PD percentage is extrapolated from the P&S report of PTP Ahmed.

It is noted that the undersigned found the opinions of PQME Alexakis to be the most persuasive substantial medical evidence from the range of medical evidence offered by the parties. However, the reporting of PTP Ahmed was also utilized to extrapolate the applicant’s impairment.

The defendant’s verified Petition for Reconsideration (“Petition”) seeks reconsideration of these findings and was timely filed on August 8, 2025.

III

DISCUSSION

The Applicant’s Psych Injury Is Supported by Substantial Medical Evidence

The applicant psych injury is based on the opinions of Dr. Hirsch. Petitioner asserts that the opinions and reporting of Dr. Hirsch are not substantial medical evidence. The term “substantial evidence” means evidence “which if true has probative force on the issues.” (Braewood Convalescent Hospital v. WCAB (Bolton) (1983) 34 Cal.3d 159, 164 [48 CCC 566].) An award must be supported by substantial evidence. The term substantial means evidence must be of “ponderable legal significance” and must be “reasonable in nature, credible, and of solid value. It cannot be just ‘any’ evidence. It must be substantial proof of the essential which the law requires. It is more than a scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (Id.) Further, a medical opinion must disclose the underlying basis for its conclusions in order to constitute substantial evidence. (National Convenience Stores v. WCAB (Kesser) (1981) 46 CCC 783, 786.)

The applicant was evaluated by Dr. Hirsch for the psych injury. Dr. Hirsch's reporting and opinions regarding the applicant's psych injury are adequate. Although the undersigned did find that the opinions of Dr. Hirsch were somewhat sparse, this analysis was reasonable in nature, credible, and of solid value. Dr. Hirsch demonstrated a good enough understanding of the applicant's history and condition to support his conclusions about the applicant.

In his P&S report, Dr. Hirsch reiterated his opinion that the applicant had a psych injury that resulted from the applicant's employment with Koos Manufacturing. This psych injury resulted in a Global Assessment of Function score of 65, which equates to an 8% whole person impairment ("WPI"). The injury was apportioned 20% to disability as a result of his termination, 20% to harassment by coworkers, and 60% to depression and agitation associated with his chronic pain. (Applicant Exhibit 16.) As such, all components of the applicant's psych injury derives from his employment of Koos and/or the physical injuries that occurred as a result of that employment, which makes the applicant's psych injury compensable. However, since the predominate basis for the psych injury is the applicant's chronic physical pain, additional impairment for the psych injury does not apply. (Labor Code § 4660.1(c)(1).) However, other compensation, including TD and medical treatment is not prohibited or excluded.

Since the applicant's psych injury is supported by substantial medical evidence by Dr. Hirsch, the applicant's TD based on Dr. Hirsch's opinions is also justified. In summary, the applicant was deemed Temporarily Partially Disabled by psychologist Dr. Hirsch from December 2, 2022 through February 2, 2024. (Applicant's Exhibits 16-18.) This is a period of 428 days. During this period, the applicant was no longer working modified duties with the employer, Koos Manufacturing, Inc. This potential TD should be offset by other income earned by the applicant during this same period.

Lumbar Spine Impairment

Per PQME Alexakis, the applicant has a Diagnosis Related Estimate ("DRE") Category III based WPI of 11% for the lumbar spine caused by the specific injury of June 19, 2019. PQME further apportions 10% of this amount to nonindustrial causes. The undersigned rated this impairment as follows: **Lumbar Spine: 90% (15.03.01.00-11-[1.4]15-330F-15-16) 14% PD**

Petitioner contends that the WPI for the lumbar spine should be reduced to a DRE Category II WPI of 8% based on the iRatings' report. (Defense Exhibit N.) It is noted that while the iRatings exhibits were admitted into evidence, the undersigned was not required or compelled to replicate the iRatings ratings in the Findings and Award.

As for the Petitioner's contention that while there was a positive imaging study...there were no documented findings of sensory loss, motor loss, loss of reflexes, or atrophy concordant with the diagnostic studies, it is noted that PQME Alexakis did address this issue in his January 22, 2021 Supplemental report by stating "although I take into account the EMG and nerve conduction findings, it is my experience that compared to the findings of an MRI, MRIs are a much more reliable way in my opinion of rating injuries to a specific area than the findings of an EMG/NCS." (Defense Exhibit F at page 5.)

Bilateral Shoulder Impairment

Compensable injury for the applicant's right and left shoulders was found for the CT claim based on the opinions of PQME Alexakis. The basis for the shoulder impairment provided by PQME Alexakis was insufficiently supported as PQME Alexakis improperly utilized pain as the sole basis for the impairment. In an effort to more expeditiously move the parties toward a final determination addressing permanent disability impairment, the undersigned utilized the range of evidence and borrowed from PTP Ahmed's opinions regarding the applicant's right and left shoulder and rated the shoulder as follows: **Right Shoulder --100%(16.02.01.00-2-[1.4]3-330F-3-3) 3% PD & Left Shoulder: 100% (16.02.01.00-3-[1.4]4-330F-4-4) 4% PD.**

This impairment combines to be 7% PD for the CT date of injury. In consideration of expeditiously moving the parties toward resolution without unreasonable encumbrance, the resulting PD for the bilateral shoulders is a practical solution.

IV.

RECOMMENDATION

For the reasons stated above, it is respectfully recommended that Defendant's Petition for Reconsideration be denied.

Notice is hereby given that this matter was transmitted to the Reconsideration Unit on the below date.

Respectfully submitted,

DATE: August 21, 2025

Gene W. Lee
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE