WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

OLATUNJI RAHEEM, ***Applicant***

vs.

CITY AND COUNTY OF SAN FRANCISCO,
permissibly self-insured, ***Defendants***

Adjudication Number: ADJ18543951
San Francisco District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the August 29, 2025 Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (ODAR), wherein the Workers' Compensation Appeals Board (WCAB) granted applicant's Petition for Reconsideration and rescinded the May 20, 2025 decision of a workers' compensation judge (WCJ) finding that applicant did not sustain his burden of proof necessary to establish injury arising out of and in the course of employment (AOE/COE). We substituted findings of fact that applicant, while employed as a union laborer track maintenance worker on September 30, 2023, sustained industrial injury to his left knee.

Defendant contends applicant's assertion of industrial injury is not supported by contemporaneous medical evidence and that to the extent the opinions of the Qualified Medical Evaluator are based on applicant's uncorroborated testimony, the reporting does not constitute substantial medical evidence.

We have received an Answer from applicant. Because defendant seeks reconsideration of a decision of the WCAB, the WCJ has not prepared a Report and Recommendation on Petition for Reconsideration (Report).

We have considered the Petition for Reconsideration and the Answer, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

FACTS

The relevant factual background is set forth in the ODAR as follows:

> Applicant claimed injury to his left knee while employed as a union laborer track maintenance worker by defendant on September 30, 2023. Defendant denies injury AOE/COE.
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> The parties have selected Albert Retodo, M.D., as the Qualified Medical Evaluator (QME) in orthopedic medicine. On March 7, 2024, Dr. Retodo evaluated applicant and issued a report dated April 15, 2024 in which he noted that applicant had a symptomatic history of gout. Nonetheless, the QME determined that applicant sustained a "[s]pecific industrial injury to the left knee, dated [September 30, 2023], strain/sprain injury, with [April 12, 2024] MRI evidence of lateral patellar tilt and subluxation with patellofemoral degenerative change and chondral thinning and moderately large joint effusion and small popliteal cyst with distal patellar tendinosis." (Ex. 1, Report of Albert Retodo, M.D., dated April 15, 2024.)
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> On October 13, 2024, Dr. Retodo issued a supplemental report and record review. Therein, the QME noted that applicant's medical record was positive for a history of a specific industrial injury to the left knee in 2014, and the development of right knee pain in 2015. (Ex. 2, Report of Albert Retodo, M.D., dated October 13, 2024, at p. 17.) Following his review of the records, however, the QME found no cause to change his prior opinions. (*Ibid*.)
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> On January 2, 2025, Dr. Retodo issued a supplemental report following a review of records relevant to applicant's prior knee injuries and diagnosis of gout. (Ex. 3, Report of Albert Retodo, M.D., dated January 2, 2025, at p. 2.) The QME concluded that while the records regarding prior injury "may be significant when Mr. Raheem does reach a point of maximal medical improvement … all opinions in my [April 15, 2024] report stand as is." (*Id.* at p. 20.)
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> On February 20, 2025, the parties proceeded to trial on the issues of injury AOE/COE to the left knee and the need for further medical treatment. (Minutes of Hearing and Summary of Evidence (Minutes), dated February 20, 2025, at p. 2:23.)
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> Applicant testified, in relevant part, that he was engaged in his normal duties on September 30, 2023, walking alongside trolley tracks "checking pulleys and beams that pull the trolleys" when he heard a "snap like something popped out of place" in his left knee. (*Id*. at p. 5:10.) Four days later, applicant sought medical treatment from Methodist Hospital, and later the same day, at Kaiser Permanente. Applicant testified that he was not aware that the diagnosis entered in the contemporaneous reporting attributed causation to applicant's preexisting gout condition. (*Id*. at p. 6:25.) Applicant testified to his recollection that the

physicians at Kaiser "told the applicant he did not believe that gout was the cause of the injury because gout doesn't last that long." (*Id*. at p. 6:41.)

On May 20, 2025, the WCJ issued the F&O, determining in relevant part that applicant claimed injury on September 30, 2023 to his left knee (Finding of Fact No. 1), but that "applicant has not demonstrated by a preponderance of the evidence the occurrence of a compensable injury arising from the employment identified in Finding of Fact No. 1." (Finding of Fact No. 4.)

The WCJ's Opinion on Decision explained that while he found QME Dr. Retodo's attribution of a non-gout injury to the left knee to be persuasive, the record did not support applicant's contention that the injury of September 30, 2023 was the non-gout injury identified by the QME. (Opinion on Decision, at p. 14.) The WCJ was not persuaded that applicant "told providers at Methodist Hospital of a mechanism of injury consistent with that of his testimony at trial," and that the subsequent records from Kaiser Permanente documented applicant's reporting of an "atraumatic" injury. (*Id*. at p. 15.) The WCJ noted that applicant's medical records from October, 2023 denied the development of pain in the left knee following the alleged injury, which was incompatible with applicant's trial testimony of the immediate onset of pain causing him to discontinue work. (*Ibid*.) Following a review of the evidentiary record, the WCJ concluded that applicant's trial testimony was not credible, and on that basis, that applicant had not met his affirmative burden of establishing injury AOE/COE. (*Id*. at p. 17.)

Applicant's Petition asserts that pursuant to the Supreme Court's decision in *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500], the WCJ's credibility determination cannot override uncontradicted medical evidence. (Petition, at p. 6:17.) Applicant further contends that the MRI studies taken in April, 2024 offer objective support for the QME's opinions in support of industrial causation, and that the totality of the evidentiary record meets and exceeds applicant's burden of establishing industrial injury to a preponderance of the evidence. (*Id*. at p. 9:1.)

(ODAR, at pp. 2-3.)

On August 29, 2025, we issued our ODAR which granted applicant's petition, rescinded the May 20, 2025 Findings of Fact, and substituted new Findings of Fact that applicant had sustained his burden of establishing injury AOE/COE to the left knee. We noted that QME Dr. Retodo had concluded that applicant sustained industrial injury following an extensive review of records and a competent clinical evaluation. (ODAR, at p. 9.) While the QME acknowledged the potential for nonindustrial apportionment in light of applicant's history of gout, the QME's conclusion that applicant sustained industrial injury was reasonably explicated, was consistent across multiple reports, and was stated to a reasonable medical probability. We also acknowledged

the WCJ's concerns regarding the lack of contemporaneous reporting as to the alleged mechanism of injury, but following a review of the entire record, determined that "the QME's medical-legal determination as supported in the medical record and applicant's unchallenged trial testimony supports a finding of industrial injury, to a preponderance of the evidence." (*Id.* at p. 11.)

DISCUSSION

I.

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.
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> (b)
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> (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.
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> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on October 10, 2025, and 60 days from the date of transmission is December 9, 2025. This decision is issued by or on December 9, 2025, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides

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

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 our review of the record, we did not receive a Report and Recommendation by a workers' compensation administrative law judge. However, a notice of transmission was served by the district office on October 10, 2025, which is the same day as the transmission of the case to the Appeals Board on October 10, 2025. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1), and consequently they had actual notice as to the commencement of the 60-day period on October 10, 2025.

II.

Defendant's Petition avers we erred in "dismissing" the WCJ's determination that applicant was not credible because "there is [not] a single piece of contemporaneous evidence or testimony supporting that an industrial incident took place." (Petition, at p. 4:3.) Defendant observes that a WCJ's credibility determinations are generally entitled to great weight and should only be rejected upon a showing of evidence of considerable substantiality. (*Id.* at p. 4:9.) Defendant observes that applicant's stated mechanism of injury involving a "snap" or a "pop" in the left knee after pulling up a storm drain is not mentioned in any of the contemporaneous medical records, and that an incident of that magnitude would logically be reported to the evaluating physicians shortly after the alleged date of injury. (*Id.* at p. 6:1.) Defendant further contends that in the absence of contemporaneous documentation of the alleged mechanism of injury, the reporting of Dr. Retodo is unreliable insofar as it relies on applicant's version of events. (*Id.* at p. 7:1.) Defendant asserts that "it is clear that PQME Retodo's reports do not constitute substantial medical evidence in that he relied heavily, almost exclusively, on applicant's statements during the evaluation that an alleged injury occurred to his left knee and did not rely on the contemporaneous medical records." (*Id.* at p. 7:24.)

Applicant's Answer responds that defendant's Petition essentially raises no contentions that were not previously addressed in our ODAR. (Answer, at p. 2:8.) Applicant asserts defendant's Petition "re-packages arguments the Board has already considered and resolved,

mischaracterizes the medical record, and advances credibility challenges that cannot overcome substantial, uncontradicted medical evidence supporting industrial causation as well as Applicant's sworn testimony." (*Ibid*.)

It is well established that decisions by 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, 319 [35 Cal.Comp.Cases 500, 505]); *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) To constitute substantial evidence "... a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Bd. en banc).) Applicant bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.)

Following our review of the record occasioned by defendant's Petition, we remain persuaded that applicant has reasonably met his burden of establishing industrial injury by a preponderance of the evidence. (Lab. Code, § 3202.5.) The parties have selected QME Dr. Retodo to prepare a comprehensive medical-legal report addressing, inter alia, whether applicant sustained injury arising out of and in the course of employment. (Lab. Code, § 4060.) The QME has accomplished a competent clinical evaluation of applicant and has reviewed relevant diagnostic imaging relevant to applicant's claimed left knee injury. (Ex. 1, Report of Albert Retodo, M.D., dated April 15, 2024.) The QME has reviewed the extensive medical records submitted by the parties and has acknowledged and addressed applicant's history of prior knee injury and gout. (*Ibid*.; Ex. 2, Report of Albert Retodo, M.D., dated October 13, 2024, at p. 17; Ex. 3, Report of Albert Retodo, M.D., dated January 2, 2025.) Having considered the clinical presentation, applicant's alleged mechanism of injury, the medical history and supporting medical record, and the relevant diagnostic imaging studies, the QME has concluded that "with a reasonable medical probability, that Mr. Olatunji Raheem did sustain a specific industrial injury to the left knee on [September 30, 2023], while working for San Francisco Municipal Railway." (Ex. 1, Report of Albert Retodo, M.D., dated April 15, 2024, at p. 8.)

Defendant contends that the QME fails to adequately discuss the actual mechanism of injury as described by applicant (Petition, at p. 3:18), and that the imaging studies cited by the QME reflect degenerative changes which defendant avers "are more than likely related to the old injuries." (*Id.* at p. 3:23.) Defendant asserts that the QME's reliance on applicant's physical examination findings are "just as likely limitations due to his flare of gout as any alleged industrial injury." (*Id.* at p. 6:18.) However, these assertions are inherently speculative, and to the extent that defendant invites the WCAB to substitute its judgment for that of the evaluating QME, we decline to do so. (See *E.L. Yeager v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922 [71 Cal.Comp.Cases 1687] [the Appeals Board may not substitute its judgment for that of the medical expert with respect to issues of scientific medical knowledge].) We also note that notwithstanding three compensable reports issued by the QME, defendant has not addressed its concerns to the QME in deposition or by request for supplemental reporting with regard to the specific contentions advanced herein, or interposed trial testimony refuting applicant's description of his work activities or exposures.

We again observe that the relevant legal standard is not medical certainty. It is sufficient to show that work was a contributing cause of the injury. (See *Clark*, *supra*, 61 Cal.4th at p. 298; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) Medical evidence that industrial causation was reasonably probable, although not certain, constitutes substantial evidence for a finding of injury AOE/COE. (*McAllister*, *supra*, 69 Cal. 2d at p. 417.) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Worker's Comp. Appeals Bd.* (1993) 16 Cal. App. 4th 1692, 1701 [58 Cal.Comp.Cases 313].)

We have thus considered the underlying facts of the medical opinions of the QME to determine whether the opinion constitutes substantial evidence, and we are satisfied that the QME's conclusion regarding work contribution to applicant's injury is based on reasonable medical probability. Insofar as defendant's Petition advances no arguments that were not previously addressed in our ODAR, we discern no basis to alter our previous conclusions. Based on our review of the entire record, including the substantial reporting of the QME and the unrebutted testimony of applicant, we remain persuaded that applicant has met his affirmative burden of establishing industrial injury. (Lab. Code, §§ 3202.5; 5705; *Clark*, *supra*, 61 Cal.4th at p. 298; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d at p. 319.)

We will deny reconsideration, accordingly.

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 A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 9, 2025

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

OLATUNJI RAHEEM
ARNS DAVIS LAW
OFFICE OF THE CITY ATTORNEY (SAN FRANCISCO)

SAR/abs

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