WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

PAUL JANIKOWSKI, ***Applicant***

vs.

TESLA MOTORS, INC., ***Defendants***

Adjudication Number: ADJ13228350
Oakland District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant Tesla Motors, Inc. seeks reconsideration of the April 1, 2025 Findings, Order and Award, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant has met his burden of proof that he is entitled to increased compensation as a result of defendant's serious and willful misconduct under Labor Code, section 4553.[1]

Defendant contends that applicant Paul Janikowski did not meet his burden of proof because defendant had safety protocols in place for the operation that applicant worked on and safety rules were taken into consideration. Defendant further contends that the alleged safety complaints were generalized and not specific to the cause of applicant's injury; the operation in question was implemented according to Cal OSHA/industry standards; and there is no evidence of a prior injury at the jobsite where applicant was working (defendant alleges that the WCJ's finding of one prior injury generally involved conveyor and skids that run throughout the entire facility). Defendant maintains that applicant incorrectly turned the machine to manual mode and proceeded to cross through a "danger zone." Defendant also takes issue with the WCJ failing to admit Defendants Exhibit D through H on the basis that witness statements were not necessary because the witnesses appeared and testified at trial.

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

We have received an answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, Answer, and the contents of the Report, and we have reviewed the record in this matter. Based on the Report, which we adopt and incorporate, and for the reasons discussed below, we deny reconsideration.

I.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

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

Here, according to Events, the case was transmitted to the Appeals Board on May 13, 2025 and 60 days from the date of transmission is Saturday, July 12, 2025. The next business day that is 60 days from the date of transmission is Monday, July 14, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, July 14, 2025, so that we have timely acted on the petition as required by section 5909(a).

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

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 May 13, 2025, and the case was transmitted to the Appeals Board on May 13, 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 May 13, 2025.

II.

In the seminal case of *Mercer-Fraser Co. v. Industrial Acc. Com.* (1953) 40 Cal.2d 102, 117 [18 Cal.Comp.Cases 3], serious and willful conduct is defined as conduct that "necessarily involves deliberate, intentional, or *wanton* conduct in doing or omitting to perform acts, with knowledge or appreciation of the fact, on the part of the culpable person, *that danger is likely to result therefrom*." (emphasis in original.) "Wilfulness necessarily involves the performance of a deliberate or intentional act or omission regardless of the consequences." (*Ibid.*)

"'Wilful misconduct' means something different from and more than negligence, however gross. The term 'serious and wilful misconduct' is described . . . as being something 'much more than mere negligence, or even gross or culpable negligence' and as involving 'conduct of a *quasi* criminal nature, the intentional doing of something either with the knowledge that it is likely to result in serious injury, or with a wanton and reckless disregard of its possible consequences' . . . The mere failure to perform a statutory duty is not, alone, wilful misconduct. It amounts only to simple negligence. To constitute 'wilful misconduct' there must be actual knowledge, or 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.

which in the law is esteemed to be the equivalent of actual knowledge, of the peril to be apprehended from the failure to act, coupled with a conscious failure to act to the end of averting injury. . . ." (*Mercer-Fraser, supra,* at 117.)

In comparison, "Negligence is an unintentional tort, a failure to exercise the degree of care in a given situation that a reasonable man under similar circumstances would exercise to protect others from harm. (Rest. Torts, secs. 282, 283, 284; Prosser, Torts, secs. 30 et seq.) A negligent person has no desire to cause the harm that results from his carelessness, (Rest. Torts, sec. 282(c)), and he must be distinguished from a person guilty of willful misconduct, such as assault and battery, who intends to cause harm. (Prosser, Torts, p. 261.) Willfulness and negligence are contradictory terms. . . . [Citations.] If conduct is negligent, it is not willful; if it is willful, it is not negligent. It is frequently difficult, however, to characterize conduct as willful or negligent. A tort having some of the characteristics of both negligence and willfulness occurs when a person with no intent to cause harm intentionally performs an act so unreasonable and dangerous that he knows, or should know, it is highly probable that harm will result. (Rest. Torts, sec. 500 et seq.; Prosser, Torts, pp. 260, 261.) Such a tort has been labeled 'willful negligence,' 'wanton and willful negligence,' 'wanton and willful misconduct,' and even 'gross negligence.' It is most accurately designated as wanton and reckless misconduct. It involves no intention, as does willful misconduct, to do harm, and it differs from negligence in that it does involve an intention to perform an act that the actor knows, or should know, will very probably cause harm. . . . [Citations.] Wanton and reckless misconduct is more closely akin to willful misconduct than to negligence, and it has most of the legal consequences of willful misconduct." (*Mercer-Fraser, supra,* 40 Cal.2d at 116-117.)

"The basis for serious and wilful misconduct has been aptly summarized as including three alternatives: '(a) a deliberate act for the purpose of injuring another; (b) an intentional act with knowledge that serious injury is a probable result; or (c) an intentional act with a positive and reckless disregard of its possible consequences.' [citation omitted] It follows that an employer guilty of serious and willful misconduct must know of the dangerous condition, know that the probable consequences of its continuance will involve serious injury to an employee, and deliberately fail to take corrective action." (*Johns-Manville Sales Corp. v. Workers' Compensation Appeals Bd.* (*Horenberger*) (1979) 96 Cal.App.3d 923, 933 [44 Cal.Comp.Cases 878] citing *Mercer-Fraser, supra,* 40 Cal.2d 102; *Hawaiian Pineapple Co.* v. *Ind. Acc. Com*.

(1953) 40 Cal.2d 656 [18 Cal. Comp. Cases 94]; *Dowden* v. *Industrial Acc. Com.* (1963) 223 Cal.App.2d 124, 130-131 [1963 Cal. App. LEXIS 1507]; 2 Hanna, Cal. Law of Employee Injuries and Workmen's Compensation (2d ed. 1979) § 17.02 [2][a].)

Furthermore, "the minimum level of care required of the employer to avoid being found guilty of serious and willful misconduct is not constant. As the peril to the employee intensifies, the minimum level of care required by the employer rises. Inattention to lethal danger may constitute serious and willful misconduct, while inattention to a mild hazard may only constitute negligence." (1-10 Hanna, Cal. Law of Employee Injuries & Workers' Comp. (2017) § 10.01, citing *Dowden, supra,* 223 Cal.App.2d at 131 and *Johns-Manville, supra,* 96 Cal.App.3d at 934.)

For a conduct to be serious and willful, "the conduct must be with knowledge of the peril to be apprehended, or done with a positive and active disregard of the consequences." (*Hawaiian Pineapple, supra,* 40 Cal.2d at 663.) "A 'reckless disregard' of the safety of employees is not sufficient in itself unless the evidence shows that the disregard was more culpable than a careless or even a grossly careless omission or act. It must be an affirmative and knowing disregard of the consequences. Likewise, a finding that the 'employer knew or should have known had he put his mind to it' does not constitute a finding that the employer had that degree of knowledge of the consequences of his act that would make his conduct wilful. The standard requires an act or omission to which the employer *has* 'put his mind.'" (*Ibid.*)

"It is significant that the statute works both ways—hence the importance of correctly defining its terms. While section 4553 provides for an additional one-half of the normal compensation where the employer's 'serious and wilful misconduct' causes the injury, section 4551 provides that 'Where the injury is caused by the serious and wilful misconduct of the injured employee, the compensation otherwise recoverable therefor shall be reduced one-half. . . .' The words 'serious and wilful misconduct' must be given the same meaning in each section." (*Id.* at 664 citing *Parkhurst v. Industrial Acc. Com.* (1942), 20 Cal.2d 826, 831 [7 Cal.Comp.Cases 228] and *E. Clemens Horst Co. v. Industrial Acc. Com.* (1920) 184 Cal. 180, 188 [120 Cal. LEXIS 307].)

We agree with the WCJ's analysis of the facts in finding that defendant engaged in serious and willful misconduct. (Report, pp. 4-9.) Defendant's witness, Kelsea Allenbaugh, did not refute the testimonies of applicant and the other two witnesses who were assigned to do the job in question. (Report, p. 7.) While Ms. Allenbaugh testified as to general safety trainings and general

protocols on where to safely cross a conveyor, Ms. Allenbaugh did not refute the testimony that the workers were not provided with any safety training to do the particular job in question that required them to move in front of an energized conveyor with skids that weighed a ton each. (Minutes of Hearing and Summary of Evidence (MOHSOE) dated October 22, 2024, pp. 6:43-7:7; 11:31-32; 12:5, 15; MOHSOE dated December 16, 2024, pp. 3-8:18; MOHSOE dated February 24, 2025, pp. 4:15-19; 8:12-20.) More troubling is that the workers consistently testified to complaining to management about the safety of this particular job to no avail. (MOHSOE dated October 22, 2024, pp. 9:32-34, 44; 10:16-22; 12:15-18; MOHSOE dated December 16, 2024, p, 3:32-42; MOHSOE dated February 24, 2025, p. 5:7-10.) We further agree that it was a reckless disregard to employee's safety to reduce the workforce from a two-person job to a one-person job, especially when the job required the cleaning and oiling of skids on both sides of the conveyor and because the controls for the conveyor was only located on one side, forcing the employee to cross the conveyor to access the controls. (Report, pp. 8, 9; MOHSOE dated October 22, 2024, pp. 6:47-7:8; MOHSOE dated December 16, 2024, p. 3:4-11; MOHSOE dated February 24, 2025, pp. 3:39-4:3.) Accordingly, for these reasons and those set forth in the Report, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant Tesla Motors, Inc.'s Petition for Reconsideration of the April 1, 2025 Findings, Order and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 14, 2025

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

PAUL JANIKOWSKI
PARK GUENTHART

LSM/*pm*

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION WITH NOTICE OF TRANSMISSION

I. INTRODUCTION

Body Parts/Date of Injury	bilateral legs and left ankle/11-13-2019
Occupation:	production associate, occupation code 370
Petitioner:	Defendant Tesla, Inc.
Timeliness:	The petition, filed on 04-25-2025
Verification:	The petition is verified

Petitioner's Contention: Defendant/petitioner Tesla petitions for reconsideration of the finding of serious and willful misconduct on behalf of Defendant giving rise to Applicant's serious injury to his legs.

II. FACTS

On 11-13-2019, Applicant Paul Janikowski was employed as a production associate on the assembly line by Tesla electric automobile factory in Fremont, California, when he sustained a serious injury to his legs and left ankle. At the time of injury, defendant/employer Tesla was insured by Zurich North America who administered the workers' compensation case. Zurich North America was represented by the law firm Colantoni Collins of San Francisco.

For the case in chief, Applicant was first represented by attorney Michael Ullrich of the Farber Law Firm in Oakland (which changed names to Pacific Workers Oakland) and this firm filed the Application for Adjudication on 05-13-2020 alleging injury on 11-13-2019 to the ankle foot, legs, and lower extremities because "Applicant was injured when he was struck be an object due to a machine malfunction." (EAMS Doc. ID. number 32439969.) At the time of injury, Applicant was working alone at Job 1911 cleaning skids, which hold car bodies on the conveyor line, when he suffered a severe injury to his legs when the skids conveyer activated while he was in front of it, crushing his legs and dragging him. As the result of the crush injury to both legs, Applicant had four surgeries and has a plate and screws in his right leg, and a deformed left leg. Defendant filed an Answer date 11-22-2022 denying any and all facts alleges, aside from the date of injury.

Applicant changed his attorney to Stuart Woo of Mastagni Holstedt in Sacramento and the case in chief was settled by Stipulations for 42% permanent disability and an Award issued on 03-30-2023. On 01-18-2024, Applicant filed a Notice of Dismissal of Attorney dismissing Attorney Woo thereby becoming unrepresented.

The Petition for Serious and Willful misconduct was originally filed on 11-20-2020. On 11-22-2022, Colantoni Collins Law filed an Answer to the Petition for Serious and Willful Misconduct denying liability. (EAMS Doc. ID No. 44013676.)

On 03-07-2024, Applicant filed another Petition for Serious and Willful Misconduct (Amendment). (EAMS Doc. ID no. 77726091.) In relevant part, Applicant alleged that Manager Shaun Boone, supervisor John Villierme, and lead Danny Carroll had workers work in very unsafe conditions, that they "lied that it was OSHA approved, and there was no fence or emergency stop, with only one person in the area against OSHA regulations." Further, Defendant Tesla did not report his accident to OSHA and there was no investigation and no fine. After the accident, it was alleged that Tesla completely stopped the operation, built a fence around the area, and installed emergency stops.

At the trial for serious and willful misconduct, Defendant Tesla was represented by Purinton Law South San Francisco by attorney Jay Shergill. The trial took place over three separate dates: 10-22-2024, 12-16-2024 and 2-24-2025 and Minutes of Hearing/Summary of Evidence are were filed and served by the undersigned after each day of trial.

The instant Petition for Reconsideration was filed by Tesla's newest firm, Park Guenthart by attorney Samantha Burwell, after a Substitution of Attorney was filed on 04-11-2025. The Petition for Reconsideration lists "Pertinent Facts" on pages 1 and 2 as well as direct quotes throughout, however, citations to the Minutes of Hearing/Summary of Evidence are incomplete in that they fail to identify the page numbers or nonexistent. The main arguments offer quotes without citations of the record. As there is voluminous evidence elicited over three days, it is not possible to know whether Petitioner has fairly stated the facts in the Petition for Reconsideration.

Generally, it is Defendant's contention that the evidence did not meet the burden of proof to show that the employer is liable for serious and willful misconduct. Defendant contends that the cleaning skids operation, Job 1911, was created in compliance with Cal OSHA and the evidence does not show that there is a causal connection between the injury and the serious and willful misconduct alleged.

Applicant filed his Answer on 05-08-2025.

III.
DISCUSSION

A practitioner must ensure that a petition for reconsideration contains a statement of facts that is neither false nor misleading; the statement must be grounded in the record. (Cal Code of Regs., tit. 8, §10421(b)(5)(A)). Further, Labor Code section 5902 requires that the petitioner "set forth specifically and in full detail the grounds upon which the petitioner considers the final order, decision, or award ... to be unjust or unlawful." The petition, alleging facts but failing to reference the record, should be dismissed for violation of section 5902.

In the alternative, Findings and Award with Opinion on Decision issued on 04-01-2025 should be upheld and reconsideration should be denied. Labor Code Section 4553 for serious and willful misconduct provides that the amount of compensation otherwise recoverable shall be increased on-half, together with costs and expenses not to exceed $250.00, where the employee is injured by reason of serious and willful misconduct of any of the following:

> (a) The employer, or his managing representative.
>
> (b) If the employer is a partnership, on the part of one of the partners or a managing representative or general superintendent thereof.
>
> (c) If the employer is a corporation, on the part of an executive, managing officer, or general superintendent thereof.

Over the course of three days of trial, Applicant testified and presented two witnesses, former co-workers William Paine and Michael Clary. Defendant presented one witness Kelsea Allenbaugh. On 11-13-2019, Applicant's started work at 5:00 a.m. and the injury occurred at about 8:30 a.m. (Minutes of Hearing, hereinafter "MOH/SOE" of 10-22-2024 at p. 6/lines 30-41) Applicant started work at 5:00 a.m. in North Paint, performing machining from 5:00 a.m. until 8:00 a.m. (Id.) At the time of injury, employees from Applicant's team were scheduled to work at 1911 Mezzanine in shifts throughout the day. (Id.) Applicant testified that a worker would be assigned to a two-hour shift in 1911 Mezzanine from 6:00 a.m. to 8:00 a.m., then 8:00 a.m. to 10:00 a.m., then from 10:00 a.m. to 12:00 p.m., etc. (Id.) After applicant finished his shift at 1911

Mezzanine, he would go back to South Paint which is in a different building. (Id.) Applicant was assigned to work Job 1911 alone.

Job 1911 was to lubricate the bolts on the sides and also chip off any paint or debris on the skids. The lubrication was done with petroleum jelly applied by a caulk gun which the workers testified was the main aspect of the operation. (MOH/SOE of 02-24-2025 at p. 3/39 to p. 4/3.)

When Applicant started employment in July of 2019, this job did not exist. (MOH/SOE of 10-22-2024 at p. 7/36-42.) It was introduced by the assistant manager Shaun Boone and supervisor John Villierme and, at first, it was a two-person job with each person cleaning one side of the skids. (Id.) Then, maybe two or three weeks after the Applicant started doing the job, he had to do the job by himself. (Id.) At the time of injury, only one person at a time was assigned to do this job. (Id.) Applicant's witness Mr. Paine was asked when they changed the job from a two-person job to one person and does not know the timeline but testified that it "was definitely changed at some point" per John Villierme who said that they did not have a full team, that there was limited manpower. (MOH/SOE of 02-24-2025 at p. 5/12-19; p. 5/37-40.) This was Mr. Clary's testimony as well. (Id., at p. 3/31-37.)

To do Job 1911, Applicant had to stop the conveyer to clean and service the skids, stacked up to a maximum of three. He stopped the conveyer to clean the left sides of the skids; then he had to crossline in front of the skids to clean the right sides. (MOH/SOE of 10-22-2024 at p. 6/43 – p. 7/11.) For the maximum of three skids, the evidence shows that he would clean between 12 and 24 bolts. He would clean from each side of the conveyer and go to the electrical box to reset the conveyer. (Id.) The accident occurred after he pressed the button to reset the conveyor and was crossing in front of the skids to his starting position to turn the switch on to let the line go. (Id.) As he was crossing the line to the starting position, the conveyer just started by itself, when he was directly in front of the three skids. (Id.) He testified clearly that he had turned the conveyor to stop. He does not know why it started and assumed that it malfunctioned.

Applicant was between the tracks on the conveyance when the accident occurred. The tracks are about two feet high, 24 inches high, and there are about five feet between tracks. The skids were wider than the track. Applicant had to go over the tracks four times per operation to clean the skids. (Id.) At the end of each operation, he would turn the conveyor on to advance the skids.

The Petition for Reconsideration references testimony of defense witness Kelsea Allenbaugh who is a staff environmental health and specialist currently based in Austin, Texas. (MOH/SOE of 02-22-2025 at p. 6/ 21-26.) At the time of Applicant's injury, Ms. Allenbaugh had the same position for the Fremont facility. (Id.) She testified that she was familiar with Job 1911 and that it operated as "finger safe" at a safe conveyance limit speed. (Id., at p. 8/lines 1-10.) She testified that the job was necessary to hammer off debris on the skids bolts to prevent loss of cars, which may become dislodged from the bolts. (Id., at p. 9/ 4-8; p. 11/16-20.) She did not testify to the necessity of using a caulk gun with Vaseline to also lubricate the bolts. She denied that there was any prior record of problems with the equipment and reiterated that the machinery was operating within safety parameters. (Id., at p. 9/ 42 to 10/2; p. 11/37-39.)

Ms. Allenbaugh did not have any role in managing Applicant or his workgroup, nor with management of Job 1911, nor any role in investigating Applicant's accident. She testified she was "familiar with the investigation" which was shared with her division Environmental Health and Safety, but she did not testify to the validity of any particular document, and none was introduced by Defendant. (Id., at 12/10-16.) In fact, defendant presented no witness or evidence to refute the testimony Applicant or his witnesses.

Applicant testified he turned the conveyor to off. He testified to this with certainty. Defendant's witness could only offer her opinion from review of Mr. Paine's testimony that because Mr. Paine stopped the machine, Applicant must have turned the machine on "to allow movement" and then Applicant must have used the danger zone to walk between the roller bed and turn table by walking in a danger zone. (Id., at 9/line 32-35.) Defendant's witness does not negate applicant's testimony. If anything, the testimony shows Applicant or anyone working on Job 1911 could not know whether the conveyance was turned on or off.

In order to prove that the employer is guilty of serious and willful misconduct, the employee must show that the employer: (1) knows of the dangerous condition; (2) knows that the probable consequence of its continuance will involve serious injury to the employee; and (3) deliberately fails to take corrective action.

Clearly, element (1) is proven. Any operation involving crossing the energized conveyor in front of stacks of moving skids in the Tesla factory is inherently dangerous.

It is the Applicant's position that the main problem and misconduct of the employer was cutting workers on Job 1911 from two workers to one in the face of constant complaints about the

efficacy and safety of Job 1911. Applicant's two witnesses testified that as the result of less manpower, the operation was cut from one person to two. With two people working on each side of the skids, no one had to cross the tracks. (MOH/SOE of 10-22-2024 at p. 10/44 – p. 11/17; p. 11/29-34.) One person would work on the left side and one on the right side. (Id.) But with only one person on the job, that worker had to cross the tracks with the conveyer line fully energized, doing this twice per operation. (Id.) In two hours, he could clean between eight and 12 sets or more, and each operation required crossing the tracks twice. (Id.)

Applicant testified that the conveyor line had started spontaneously before: just a few days before the accident, it started by itself, and Applicant told this to John Villierme who responded that a contractor was injured by the machine about one year before Applicant's accident. (MOH/SOE of 10-22-2024 at p. 9/32-41.) Applicant complained to Mr. Villierme that "it is a crazy job" when the job was created. (Id., at p. 10/11-22.) Applicant testified that everyone complained that the job was dangerous and unsafe. (Id.)

Mr. Paine testified that from the beginning, he and the rest of the crew complained that the job was pointless and dangerous, because you would have to step over the active conveyor several times. (MOH/SOE of 12-16-2024 at p. 3/13-18.) Mr. Paine reported his complaints to supervisor John Villierme, and Mr. Villierme's manager was Shawn Boone, and he testified that the specific complaint was the efficacy of the job and danger level, with the paint chip debris and Vaseline on the floor. (Id., at p. 3/32-42.) He testified that if he had complaints, he would voice them with his supervisors. (Id., 7/6-8.) Mr. Paine from time-to-time voiced concern about the safety of Job 1911 to his immediate supervisor and the manager though he could not recall specific dates he raised the concerns. (Id., at 5/17-20; 7/17-27.) However, the witnesses testified credibly and there is no evidence to refute their testimony.

Further, the conveyor on/off switch is located on one side of the track. If the conveyance starts and the worker is on the other side of the track without the switch, he cannot stop the conveyance and, as was the case with Applicant, no one was in the vicinity to stop the conveyance. Despite the obvious dangers of the job and the constant complaints by the workers to the supervisor and manager, the job was changed the job from two workers to one.

The Petition for Reconsideration also asserts that the Board acted in excess of its powers by not allowing into evidence Defendant's exhibits D through H, which directly goes towards the veracity and character of the Applicant's witnesses. Specifically, Defendant contends the exhibits

evidence of false and misleading written witness statements. As reiterated in the Opinion on Decision, the parties were not able to submit a completed Pretrial Conference Statement. On the first day of trial the parties to finalize and sign the Pretrial Conference Statement (EAMS Doc. I.D. number 78502569.) As such, no exhibits were vetted by the mandatory settlement judge and initially no exhibits were admitted.

As the trial progressed, Applicant was able to present live witness testimony, thus negating any need for written statements by the witnesses. During the proceedings, Applicant and his witnesses protested against various misleading and confusing tactics by the defense counsel. Their complaints were validated during day two of trial when, during cross-examination, witness William Paine was subjected to questioning by defense counsel Jay Shergill about whether Tesla was "a stupid and wasteful company." (MOH/SOE of 12-16-2024 at p. 9/ 33-43.) During the trial, Mr. Shergill appeared remotely on the undersigned's computer and though all parties in the hearing room could hear Mr. Shergill, only the undersigned could see him. No one else in the hearing room was using a computer. During a break, attorney Shergill was eavesdropping on a conversation between Applicant and Mr. Paine and attempted to use their banter to impeach their credibility. However, Applicant and his witnessed were deemed credible. Applicant's objection to out of court evidence was sustained as irrelevant to the facts of the case and overruled on strength of the live testimony.

In sum, Defendant Tesla was aware of the dangerous conditions which gave rise to Petitioner's injury and defendant's actions to change the operation made it more dangerous for Applicant despite consistent complaints about the operation from the employees. Based upon the foregoing, Applicant is entitled to increased compensation pursuant to Labor Code section 4553.

IV.
RECOMMENDATION

It is respectfully requested that the Petition for Reconsideration be DENIED.

NOTICE OF TRANSMISSION

Pursuant to Labor Code section 5909(a), this Petition for Reconsideration was transmitted to the Appeals Board on 05-13-2025.

DATE: 05-13-2025

Therese Da Silva
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE