WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

VANESSA HANOUM, *Applicant*

vs.

RITE AID by ACE AMERICAN INSURANCE COMPANY (Corvel) and TRAVELERS, *Defendants*

Adjudication Number: ADJ12495517
Lodi 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 except as noted below, and for the reasons discussed below, we will deny reconsideration.

I.

Preliminarily, we note that 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.

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

> (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 6, 2025 and 60 days from the date of transmission is December 5, 2025. This decision is issued by or on December 5, 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 6, 2025, and the case was transmitted to the Appeals Board on October 6, 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 6, 2025.

II.

In addition to the reasons given by the WCJ in the Report, we note that every party holding the affirmative of an issue bears the burden of proof. (Lab. Code, § 5705.) 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 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).) We further note that applicant failed to cite to the record with any specificity, which is an additional basis for denial. (Cal. Code Regs., tit. 8, § 10945.)

We do not adopt or incorporate the section of the Report with the heading "3. Acceptance of Both Thumbs:" on page six. An "injury" is defined as an "injury or disease arising out of the employment" (Lab. Code, § 3208) which "results in lost time beyond the employee's work shift at the time of injury or which results in medical treatment beyond first aid…." (Lab. Code, § 5401.) Therefore, had applicant met her burden of proof to establish industrial causation for her thumbs, she would be entitled to a finding of industrial injury even if the symptoms had resolved after receiving medical treatment. Evidence that the thumbs had been "cured" by that medical treatment would go to the issue of disability. Nevertheless, we agree that applicant did not meet her burden of proof to establish industrial causation for the claimed injury to her thumbs.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 5, 2025

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

VANESSA HANOUM
LAURA G. CHAPMAN & ASSOCIATES
MANNING, & KASS ELLROD, RAMIREZ, TESTER LLP
EMPLOYMENT DEVELOPMENT DEPARTMENT

PAG/bp

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

Report and Recommendation

I. Introduction:

The above-entitled matter was heard and submitted, and a findings and award and opinion on decision was served on the parties on 08/28/2025. Applicant, Ms. Hanoum, born […], while employed from December 24, 2007 through May 1, 2019 as a pharmacy technician for Rite Aid, sustained injury arising out of and in the course of employment to her left and right wrists and claimed to have sustained injury to her thumbs, neck, head, stress, anxiety, depression, and PTSD. I found she is entitled to occupational group number 220.

She has timely filed a Petition for Reconsideration. It was filed approximately 28 days after the decision. Per Labor Code 5903, there is a 20-day deadline for filing a petition for reconsideration. Given 8 CCR 10605(b), and since Ms. Hanoum lives outside of the State of California, she is entitled to a 10-day extension for service deadlines prescribed by the Labor Code. Therefore, her Petition for Reconsideration appears to be timely. Applicant alleges the following grounds for her petition: Medical delays and 5814 penalties; underpayment/missing wages; acceptance of both thumbs; inadequate legal representation and defense misconduct; and union membership and bargaining contract protections. I issued findings and awards on some of these points, as they were framed as issues at the trial.

II. Statement of Facts:

Applicant, Ms. Hanoum, proceeded with a two-day trial, and the most recent trial date was 07/31/2025. I issued a decision thereafter, and she has filed a timely appeal. The evidence she submitted is in EAMS. They are compilations of different types of exhibits including her W-2's, relevant medical records, and relevant legal documents. In her W-2's, there is evidence of additional wages at her other job around the time of the injury (The Stag Bar), and she testified to making tips weekly. I deferred that issue due to her stipulation and order resolving temporary disability, which is dated March 29, 2022. I opined that made her wages relevant only to EDD reimbursement. I deferred EDD's lien as I need further information from them and defendant about claims notices to each other to assess defendant's liability to EDD. EDD backdated payments to applicant after she resolved her TD periods via the stipulated order of March 29, 2022, per EDD exhibits in EAMS.

Applicant has made a claim for penalties on several species of benefits. She testified about her complaints regarding delay of medical benefits. She testified about her carpal tunnel surgery, saying it originally was authorized around October 8, 2019 and not actually being performed until September 9, 2021. (See MOH/SOE Part 2 of Trial, Pages 3-4, Lines 15-13). I awarded her a 25% penalty on the SJDB Voucher, because I found it was not timely issued. There was a slight delay by defendant to issue retro PD to applicant. Retro PDA's were paid to applicant on 07/23/2022. The basis for that payment was the Dr. Sommer Med-Legal report, which was not served until 06/10/2022. I found no penalty for this delay, as I found it was not unreasonable.

III. Discussion:

I stand by and presently reaffirm all of my prior findings and awards, and provide this report and recommendation in response to each of her points listed in the petition for reconsideration:

1. <u>Medical Delays and 5814 Penalties:</u>

I addressed 5814 penalties in full in my decision. I did award penalties on a late SJDB Voucher, as there was no evidence that it had been timely issued and no reasonable explanation for the delay.

As for medical delays, applicant made no specific claims and provided no specific evidence that her medical treatment was delayed. I have no evidence from the applicant of a specific treatment that was delayed, and the proof of said delay is her burden of proof. I therefore have no bases to impose a penalty on medical treatment. She did provide testimony that her surgery itself took a while to perform. She testified about it initially being authorized around October 8, 2019 and not actually being performed until September 9, 2021. (See MOH/SOE Part 2 of Trial, Pages 3-4, Lines 15-13). However, no further specifics were given about this and there is no corroborating documentary evidence of any such delay. The surgery was authorized by the defendant from the outset, so they never took any action to delay the actual performance of the surgery. The COVID pandemic caused a delay, so that already was not defendant's fault. Then, there was an unexplained delay, perhaps related to some confusion by the doctors about the left hand being involved in this claim. That is what applicant testified to. I do not find that defendant acted unreasonably here, or otherwise any delay of the surgery. From her testimony, it sounds like the doctors and applicant did not follow up with the surgery properly, and could have at anytime since it was authorized on or around October of 2019. Also, the 2 year Statute of Limitations under 5814(g) would likely apply to this claimed penalty, due to the date the surgery was initially authorized. I do not see any other specific treatment that she is claiming was delayed.

Applicant further claimed 5814 penalties for Temporary Disability (TD) more than 2 years after the 104 weeks had already been paid, so no penalty can be assessed under Labor Code 5814(g) due to the two-year statute of limitations on penalties imposed by that provision. Her penalty petition was filed 05/25/2023.

Penalties on Permanent Disability (PD) would only be possibly considered for the 12% PD rating, not the 14%, as I had to utilize my discretion to impose a higher occupational code, warranting the 14% rating. Defendant should not be held liable for a penalty based on an issue that is subject to judicial discretion, especially where they had a reasonable argument for the lower occupational code number to apply. I found applicant's higher occ code to be more reasonable, not that defendant's position was unreasonable. I do not think their position was unreasonable. As for the 12% due for PD, they started picking up PD nearly one month after their receipt of Dr. Sommer's ratable report. That is a brief delay, but they had to consider and assess various issues surrounding PD, such as an occupational code dispute, calculate multiple ratings for multiply body parts, and consider reasonableness of the opinion to see if there was an objective medical basis for PD to be due. Applicant may have also been out of state by this time or at least had a record of working another job, and therefore could have had other wages that defendant needed to verify first. Therefore, I feel their brief delay in the issuance of retro PD was reasonable, and do not think a penalty is due on the PD paid as of 07/23/2022, which is $8,303.40.

2. Underpayment/Missing Wages:

It is correct that applicant had wages from another source (The Stag Bar) and possibly tips. She was claiming that it raised her AWW from Defendant's estimate of $762.02 to her estimated amount of $998.00 instead. I deferred the determination on this issue because it was relevant only to EDD's reimbursement, not to the reimbursement of the applicant. Applicant signed a stipulation and

order dated March 29, 2022 that indicated it was settling all periods of temporary disability. Earnings, as far as applicant was concerned at the trial, were therefore only relevant to the previously settled periods of temporary disability. Those settled periods already reached the 104-week cap, so there were no additional TD periods that could be claimed. Further, even if one were to find a way around the stip and order from March 29, 2022, EDD has already paid applicant a total of $30,160. They back paid her after she settled her TD via the stip and order. Her additional wages would give her additional TD totaling $16,361.28 (104 weeks multiplied by the difference between her AWW's TD rate and the defendant AWW's TD rate). Since EDD paid in excess of that, then awarding her additional benefits when she has already been paid by both EDD and Defendant for many of the same periods would amount in her receiving an undue windfall. Wages and Earnings are therefore only relevant now to the EDD lien, so I deferred that issue (as I need more information from the parties about EDD notices to assess defendant's liability to EDD).

….

4. Inadequate Legal Representation and Defense Misconduct:

Inadequate legal representation cannot be claimed in workers' compensation cases to provide some sort of remedy or relief to the applicant on appeal. She fired her attorney via substitution of attorney dated 05/25/2023. Applicant appeared ready and willing to go to trial when I spoke to her after the case was transferred to me from Judge Sarah Lopez, and I then set it for a separate trial date. This issue was not specifically raised at that time, nor was it raised as an issue at the trial below. Therefore, I do not see this should be entertained as an issue at this time. Also, ineffective assistance of counsel claims are based on a right afforded under the 6th Amendment to the US Constitution. However, it appears based on the plain language of that amendment that such a right applies only to criminal trials, not civil or administrative proceedings.

As for defense misconduct, that would only lead to a remedy by way of a claim for sanctions or penalties. I have addressed all issues for penalties in my original opinion on decision and again above, and find no basis for most of the penalty claims, other than the SJDB Voucher issue. I do not see that any claim for sanctions was made previously by the applicant. Sanctions were not made an issue at trial, nor is there a petition for sanctions on file from applicant for any alleged misconduct by the defendant. I do not find misconduct by defendant at this time, beyond what I already discussed and imposed penalties for in my decision.

5. Union Membership and Bargaining Contract Protections:

This would appear to be an issue that mostly relates to employment law, and that is not something the Board has authority over. Of course, pre-negotiated union wage increases could be relevant to earnings, but that issue was waived by her upon signing the stip and order, as noted above. Otherwise, union membership and bargaining contract protections generally is not something that will be operative in the determination of entitlement to workers' compensation benefits. Applicant provided me with the collective bargaining contract, and I see no other bargaining contract terms in the record. I did consider her union bargaining contract under my earnings discussion. I just deferred the issue as it is not relevant to her TD, but instead potentially relevant to liabilities between EDD and Defendant. It is incorrect that her bargaining contract

was not considered. I do not feel it would otherwise apply to serve as a basis to award benefits in this case.

IV. Recommendation:

The substantive points of her appeal are addressed above, except for her 6th point entitled "relief requested." I recommend that no requested relief be granted and Applicant's Petition for Reconsideration be denied.

DATE: October 6, 2025

Parker Shelton
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE