WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ALENA MICHELLE FONTENOT, ***Applicant***

vs.

OPTUM SERVICES, INC.;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,
administered by SEDWICK, ***Defendants***

Adjudication Number: ADJ19513880
Van Nuys District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact and Order issued by the workers' compensation administrative law judge (WCJ) on August 17, 2026. We have considered the allegations of the Petition for Reconsideration and the contents of the Report and Recommendation of Workers' Compensation Administrative Law Judge on Petition for Reconsideration (Report) of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated below, we will deny the Petition for Reconsideration

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code[1] section 5909, which states 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 September 14, 2026 and 60 days from the date of transmission is November 13, 2026. This decision is issued by or on November 13, 2026, 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on September 14, 2026, and the case was transmitted to the Appeals Board on September 14, 2026. 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 September 14, 2026.

II.

As relevant here, the WCJ stated the following in the Report:

STATEMENT OF RELEVANT FACTS:

> The parties appeared in person for trial on June 17, 2026, documentary evidence was admitted, testimony was taken, and the matter was submitted for decision. The undersigned WCJ issued a Finding of Fact finding the injury arose

out of and in the course of employment. It is from this finding that Defendant seeks relief.

DISCUSSION

THE CLAIM IS NOT BARRED BY LABOR CODE § 3600(A)(10)

The date of injury in cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment. (Cal Lab Code § 5412.) In this case, considering Applicant's training, intelligence and circumstances, she reasonably should not have known that her condition was work related until after termination.

One of the exceptions to barring a claim under Labor Code § 3600(a)(10) is if the date of injury, as specified in Labor Code § 5412, is subsequent to the date of the notice of termination or layoff. (Cal Lab Code § 3600(a)(10)(D).)

Furthermore, in panel qualified medical examiner Lee Woods, M.D.'s record review, there are several medical records of the injury: The report by Richard Butlig, M.D. dated November 29, 2022, documents pain and stiffness from mid lower back shooting to bottom of left foot with numbness/tingling occurring every day; The reports by Stephanie Yu, N.P. dated January 15, 2024 and January 30, 2024 document pain in left hip, buttock and neck since November 2023 and stiffness from the mid lower back shooting to the bottom left foot exacerbated when getting up from a chair. (Exhibit 1 at page 5.) With regard to the psychological injury, the report by Tatyana Sarkisova, M.D. dated September 6, 2018, documents headaches, major depressive disorder (MDD), and use of Zoloft since 2013. (Exhibit 1 at page 4.) This diagnosis is well before the death of Applicant's daughter. The report also states Applicant has been experiencing stress at work since the beginning of the year, but does not present work as the cause of MDD.

An exception to barring a claim under Labor Code § 3600(a)(10) is the existence of the employee's medical records existing prior to the notice of termination or layoff, that contain evidence of the injury. (Cal Lab Code § 3600(a)(10)(B).) Above are multiple medical records existing prior to the notice of termination.

APPLICANT MET HER EVIDENTIARY BURDEN OF PROOF ON ALL ISSUES BY A PREPONDERANCE OF THE EVIDENCE

The trier of fact is empowered to choose among conflicting medical reports and rely on that which he deems most persuasive (Jones v. WCAB (1968) 68 Cal. 2d 476.) In this case, there is a report by panel qualified medical examiner Lee Woods, M.D. and reports by primary treating physician F. Marina Russman, M.D. Dr. Woods documents objective findings of orthopedic impairment on pages 10 to

12. However, in his discussion, Dr. Woods finds no injury based on his misinterpretation of the medical evidence. Dr. Woods finds that Applicant worked from November 1, 2012 to February 22, 2024 without reporting injury, seeking treatment or requiring periods of temporary total or temporary partial disability. The testimony of Applicant confirms she did not report an injury. However, the medical evidence shows that she sought treatment for the orthopedic injuries and was taken off work. Richard Butlig, M.D. in his report dated June 7, 2021, documented that Applicant is not ready to return to work. (Exhibit 1 at page 4.) The Applicant sought treatment for her alleged industrial body parts, as documented by Dr. Butlig in his April 25, 2022 report. (Exhibit 1 at page 5.) The undersigned WCJ is baffled as to Dr. Woods' conclusion that Applicant never sought treatment.

Dr. Woods concludes that Dr. Butlig found no objective findings in 2018. After 2018, Applicant continued to work another 8 years. On the date of Dr. Woods' examination, in the physical examination section of the report, Dr. Woods documents limitations in range of motion equaling substantial impairment. The range of motion of the neck, thoracic spine, shoulder, wrist, index finger, and little finger show impairment. The fingers show significant hand impairment, the wrist range of motion shows significant upper extremity impairment, the neck shows approximately 12% whole person impairment, the lumbar spine shows approximately 11% whole person impairment. If there was no impairment in 2018, then work is the only documented cause of the present impairment.

For the above reasons, the undersigned WCJ found the primary treating physician's reports more persuasive than the panel qualified medical examiner's report.

APPLICANT MET HER BURDEN OF PROOF UNDER LABOR CODE § 3202.5 REGARDING INJURY AOE/COE

Pursuant to the credible medical reporting of F. Marina Russman, M.D. dated August 9, 2024 and June 2, 2025, Applicant has an industrial injury to her cervical spine, thoracic spine, lumbar spine, left knee, left leg, bilateral wrists, bilateral hands, and fingers. (Exhibit 3 at page 1 and Exhibit 2 at page 11.) Dr. Russman's findings are based on a physical examination with range of motion measurements, subjective reporting by the Applicant, and objective MRI diagnostics.

The report of Anthony Francisco, Ph.D. finds the predominate cause of the psychological injury to be work related. (Exhibit 6 at page 20.)

DR. F. MARINA RUSSMAN FOUND INDUSTRIAL INJURY TO THE WRISTS, HANDS, AND FINGERS

Dr. Russman found industrial injury to the bilateral wrists and hands without referencing the MRI studies. The undersigned WCJ's comments on the

MRI results are mere dicta, offered only to note that the MRIs support the doctor's findings.

DISCOVERY REMAINS OPEN ON NATURE AND EXTENT OF THE INJURY

The record remains open on nature and extent. Dr. Woods may correct the deficiencies in his report and may be able to justify 100% apportionment to non-industrial causes. The same applies if Defendant wishes to obtain a psychological panel.

RECOMMENDATION:

Defendant's Petition for Reconsideration filed September 9, 2026, should be denied for the above stated reasons.

(Report, at pp. 2-5.)

III.

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, we will deny reconsideration. We observe, moreover, it is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].)

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 13, 2026

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

ALENA MICHELLE FONTENOT
LAW OFFICE OF DAVID ISSAPOUR
BRADFORD & BARTHEL, LLP

PAG/cm

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