

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

BRIAN BARRICK, *Applicant*

vs.

**CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, legally uninsured,
adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ11190499
Redding District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.¹ We now issue our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O) issued on July 5, 2022, wherein the workers' compensation administrative law judge (WCJ) found that applicant's amended Application for Adjudication (Application) dated October 21, 2021 does not add new body parts to the claim but repeats previously alleged body parts; that the question of whether the applicant's brain, nervous system and body systems suffered cumulative injuries arising out of and in the course of employment (AOE/COE) from July 7, 2017 through January 30, 2018 was previously decided in the Findings and Award dated June 4, 2021; that applicant did not appeal the prior decisions; that the June 4, 2021 Findings and Award are final; and that applicant is barred from re-litigating the question of body parts injured AOE/COE due to res judicata/collateral estoppel; and ordered that applicant's October 21, 2021 Amended Application be dismissed without prejudice.

¹ Commissioner Sweeney, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

Applicant contends that his claims of injury in his Amended Application are not barred by res judicata or collateral estoppel, and that he must be provided with an opportunity to litigate those claims.

We have not received an answer from defendant.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record, as our decision after reconsideration, we will rescind the WCJ's decision, substitute new findings and orders, and return this matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

Applicant filed an Application on February 7, 2018, claiming cumulative injury, while employed by defendant as a contract manager from July 7, 2017 through January 30, 2018, to his psyche, brain, nervous system, and other body systems. (Joint Exh. H, 2/7/18 Application, at pp. 2 and 9.)

On September 10, 2020, applicant filed a Petition for Order to Medical Unit to Issue List of Neurology and Oncology QMEs. (Applicant's Exh. 9, 9/10/20 Petition for Order to Medical Unit.)

The matter proceeded to trial on January 12, 2021, on the issues of: AOE/COE; body parts injured; temporary disability; permanent disability; apportionment; need for further medical care; attorney fees; and whether the AME reporting is substantial evidence. (1/12/21 MOH, at p. 2.) The parties stipulated that applicant "claims to have sustained injury arising out of and in the course of employment to the psyche, brain, stress, nervous system and body SMS." (*Ibid.*) The matter was submitted for decision on March 30, 2021. (3/30/21 MOH, at p. 1.)

In the Findings and Award, Order, and Opinion on Decision, issued June 8, 2021 (6/8/21 FA&O) the WCJ found:

1. Brian Barrick, born [], while employed on 1/30/2018 as a contract manager by California Department of Public Health, legally uninsured, at Sacramento, California, sustained injury arising out of and in the course of employment to the psych.
2. The industrial injury to the psych has caused 49% industrial permanent disability.

3. Temporary disability is owed from 1/10/18 to the date applicant formally retired.
4. Future medical treatment to the psych is needed.
5. Applicant's attorney is entitled to a reasonable fee from temporary and permanent disability of 15%.

(Joint Exh. I, 6/8/21 FA&O, at p. 1.)

The WCJ issued an award in favor of applicant, for temporary disability, permanent disability, attorneys fees, and future medical treatment to the psyche. (*Id.* at p. 2.) The WCJ made no findings, orders or award regarding applicant's other claimed body parts.

The WCJ ordered,

The parties are hereby ordered to adjust the applicant's proper temporary disability rate, and the date the applicant went off work on disability retirement, with jurisdiction reserved. All other issues are deferred, with jurisdiction also reserved.

(*Ibid.*)

Defendant State of California, Department of Public Health – Federal, by and through its adjusting agent SCIF, filed a Petition for Reconsideration of the June 8, 2021 decision, challenging the findings and award regarding applicant's psychiatric injury. (7/2/21 Petition for Reconsideration.) On August 30, 2021, the Appeals Board issued an Opinion and Order Denying Petition for Reconsideration. (Joint Exh. K, 8/30/21 Opinion Denying Reconsideration.)

Applicant did not file a petition for reconsideration regarding the 2021 FA&O.²

On September 15, 2021, applicant's attorney filed a DOR requesting that the WCJ act on applicant's prior request for QME panels in neurology and oncology. (9/15/21 DOR; 9/10/20 Petition for Order to Medical Unit.)

The matter was heard for a mandatory settlement conference on October 13, 2021, wherein the WCJ directed applicant file an amended application specifying new body parts. (Joint Exh. L, 10/13/21 Minutes.)

² We note, however, as discussed subsequently in our opinion, that a lack of a finding is a non-final order, and thus there was no basis for applicant to file a petition for reconsideration, unless applicant chose to challenge the finding in his favor regarding his psyche injury.

On October 21, 2021, applicant filed an Amended Application for Adjudication, in which he pled encephalitis, meningitis, and lymphoma, in addition to the prior body parts. (Joint Exh. M, 10/21/21 Amended Application, at p. 9.)

Defendant responded with a Petition to Dismiss Amended Application, filed January 26, 2022, arguing that applicant's amended petition did not add new body parts, but only listed conditions associated with body parts pled in the original application. (Joint Exh. N, 1/26/22 Petition to Dismiss.)

On February 10, 2022, applicant filed a second Petition for Order to Medical Unit to Issue List of Neurology and Oncology-Internal Medicine QME's, reiterating the prior request that these panels issue. (Joint Exh. O, 2/10/22 Petition for Order to Medical Unit.)

On February 15, 2022, applicant filed a Second Amended Application, which added the body parts associated with the three conditions: "Encephalitis: brain, 200 neck (cervical spine), 130 eyes (sensitivity to light); Meningitis: brain and 420 spinal cord; Lymphoma: lymphatic system includes the lymph nodes (lymph glands), spleen, thymus gland and bone marrow, 820 intestines, 144 throat, 430 chest, 410 abdomen, 420 back, 850 lungs, 440 pelvi[s]." (Joint Exh. P, 2/15/22 Second Amended Application, at p. 9.)

The matter proceeded to trial on March 29, 2022. The parties stipulated that applicant sustained a cumulative injury to his psyche AOE/COE, while employed by defendant, during the time period July 7, 2017 through January 30, 2028; that employer was legally uninsured at the time of injury; and that employer has furnished some medical treatment. (3/29/22 MOH, at p. 2.) The issues framed for trial were 1) "Dismissal of the Amended Application³ on the basis of res judicata and unclean hands"; and, 2) "Whether additional panels in neurology and internal medicine medical oncology are required in this matter." (*Ibid.*) Exhibits were entered into evidence, including applicant's October 21, 2021 Amended Application, admitted as Joint Exhibit M, and applicant's February 15, 2022 Second Amended Application, admitted as Joint Exhibit P. (*Id.* at pp. 2-3.) There were no witnesses. (*Id.* at p.3.) The WCJ ordered that the matter would stand submitted in 20 calendar days, and the parties could file trial briefs during that time period. (*Id.* at p. 1.)

³ The list of issues for trial does not specify which of applicant's two Amended Applications was addressed. (7/5/22 F&O at p. 1.)

Defendant's post-trial brief argued that applicant's Amended Applications were barred by res judicata and should be dismissed, and applicant's petitions for new panels must be denied. (4/18/22 Defendant's Post-Trial Brief, at pp. 3-5.)

In the F&O, issued July 5, 2022, the WCJ found:

1. The amended application dated 10/21/21 does not in fact add new body parts to the claim, but rather medical conditions that affect body parts that have already been alleged, namely the brain, nervous system and body SMS.
2. The question of whether the applicant's brain, nervous system and body SMS suffered an injury AOE/COE during the cumulative trauma from 7/7/2017 to and including 1/30/2018 has already been decided in the Findings and Award dated 6/4/21.
3. Applicant did not appeal the original decision to set these issues for trial and close discovery, nor did applicant object to the submission of these issues for decision after trial, nor did applicant appeal the Findings of Fact that the injured body part arising out of and in the course of employment was the psyche only.
4. The Findings of Fact, Award and Order of 6/4/21 has become final.
5. Principles of res judicata/collateral estoppel bar the applicant from re-litigating the question of body parts injured AOE/COE.

(7/5/22 F&O, at pp. 1-2.)

The WCJ ordered that applicant's "amended application dated 10/21/21 is ordered dismissed without prejudice." (*Id.* at p. 2.)

In the Opinion on Decision, the WCJ's discussion of the body parts pled by applicant addressed only the body parts as listed in applicant's Amended Application ("110-encephalitis, meningitis, and 800-lymphoma") filed October 21, 2021, and failed to mention or discuss the more detailed list of body parts ("Encephalitis: brain, 200 neck (cervical spine), 130 eyes (sensitivity to light); Meningitis: brain and 420 spinal cord; Lymphoma: lymphatic system includes the lymph nodes (lymph glands), spleen, thymus gland and bone marrow, 820 intestines, 144 throat, 430 chest, 410 abdomen, 420 back, 850 lungs, 440 pelvi[s]") in applicant's Second Amended Application filed a month before trial on February 15, 2022. (7/5/22 Opinion, at p. 3.) Based only on the first Amended Application, the WCJ concluded that "[t]he amended application therefore does not add new body parts, but rather conditions and diseases that the parties have already been aware of since the beginning of the case." (*Ibid.*)

Applicant's Petition for Reconsideration followed.

DISCUSSION

I.

In this case, we are first tasked with determining whether applicant's claims in his Amended Application and Second Amended Application are barred by res judicata and/or collateral estoppel. Collateral estoppel falls under the rubric of res judicata, which refers to both claim preclusion and issue preclusion. "Claim preclusion, the 'primary aspect' of res judicata, acts to bar claims that were, or should have been, advanced in a previous suit involving the same parties. Issue preclusion, the 'secondary aspect' historically called collateral estoppel, describes the bar on relitigating issues that were argued and decided in the first suit." (*Hudson v. Foster* (2021) 68 Cal.App.5th 640, fn. 10.)

The requirements for collateral estoppel were discussed by the California Supreme Court in *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 943 [38 Cal.Rptr.3d 220] (*Pacific Lumber*) as follows:

"Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings." (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 [272 Cal. Rptr. 767, 795 P.2d 1223].) The doctrine applies "only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. [Citations.] The party asserting collateral estoppel bears the burden of establishing these requirements." (*Id.* at p. 341.)

Parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "one of 'the rudiments of fair play' assured to every litigant...." (*Id.* at p. 158.) As stated by the Supreme Court of California in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission ... must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.* at p. 577.) A fair hearing includes, but is not limited to, the opportunity

to call and cross-examine witnesses, to introduce and inspect exhibits, and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4 703, 710 [57 Cal.Comp.Cases 230].)

Section 5313 provides, in relevant part, that the WCJ shall:

Within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties.

(Lab. Code, § 5313.)

Section 5815 provides:

Every order, decision or award, other than an order merely appointing a trustee or guardian, shall contain a determination of all issues presented for determination by the appeals board prior thereto and not theretofore determined. Any issue not so determined will be deemed decided adversely as to the party in whose interest such issue was raised.

(Lab. Code, § 5815.)

Taken together, sections 5313 and 5815 require the WCJ to “make and file findings upon all facts involved in the controversy” and to issue a corresponding award, order or decision that states the “reasons or grounds upon which the [court’s] determination was made.” (Lab. Code, §§ 5313, 5815; see also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621 (Appeals Bd. en banc) [“It is the duty of the WCAB to make ‘findings upon all facts involved in the controversy’”].) The WCJ’s decision “must be based on admitted evidence in the record” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc)), and the decision must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers’ Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

A petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)*

(1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1075 [65 Cal.Comp.Cases 650].)

Here, the WCJ’s 2021 findings did not comply with the requirement in section 5313 that the WCJ “make and file findings upon all facts involved in the controversy.” (Lab. Code, § 5313; Cal. Code Regs., tit. 8, § 10787(c)(5); *Blackledge, supra*, 75 Cal.Comp.Cases at p. 621.) In the 2021 proceeding, there were multiple body parts framed as issues for trial, including psyche, brain, stress, nervous system and body SMS. (5/7/25 MOH, at p. 2.) The 2021 FA&O, however, addressed only the issue of applicant’s psychiatric injury. (Joint Exh. I, 6/8/21 FA&O, at p. 1.) The 2021 FA&O included no findings regarding the additional body parts at issue here. Moreover, that FA&O included an order that “All other issues are deferred, with jurisdiction also reserved.” (*Id.* at p. 2.) Thus, although the body parts were listed as issues in the minutes of hearing, and discussed in the Opinion on Decision, those issues were not actually “decided on the merits,” as required. (*Pacific Lumber, supra*, 37 Cal.4th at p. 943.) This lack of a “final order” regarding these body parts precluded applicant from filing a petition for reconsideration regarding those body parts at that time, since there were no findings that could be challenged as to applicant’s claimed body parts other than psyche.

We note that in the Report, the WCJ indicated that in the 2021 proceeding, “all alleged body parts were addressed.” (Report, at p. 5.) He asserted that the 2021 Opinion on Decision included an “extensive discussion of why the psyche was an industrially injured body part” and “[n]o evidence was presented to show industrial injury to any other body part.” (*Id.* at p. 2.) The WCJ erred, however, in concluding that a discussion of the at-issue body parts in the Opinion on Decision constitutes a finding on the merits as to those body parts. There were no findings, in the June 4, 2021 F&A, regarding the body parts other than psyche. Without findings, there is nothing legally enforceable with respect to the brain, nervous system and body SMS.

Here, the doctrine of collateral estoppel, rather than *res judicata*, is at issue, since the question is not whether applicant’s issues were raised at trial in 2021, but rather, whether those issues were decided by the WCJ at that time. (See *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824 [2015 Cal. LEXIS 4652] [“issue preclusion applies...after final adjudication...of an identical issue...actually litigated and necessarily decided in the first suit...”].) As discussed above,

for collateral estoppel to be found applicable, and thus to preclude an issue being relitigated, the party arguing in its favor (the defendant, in the present case) must prove five elements: 1) that the issue sought to be precluded from relitigation is identical to that decided in a former proceeding; 2) that this issue must have been actually litigated in the former proceeding; 3) that it must have been necessarily decided in the former proceeding; 4) that the decision in the former proceeding must be final and on the merits; and 5) that the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. (*Pacific Lumber, supra*, 37 Cal.4th at p. 943.) Here, defendant has failed to meet its burden of proof regarding the third and fourth elements. The third element, that the issue must have been necessarily decided in the former proceeding, is not met because the June 4, 2021 FA&O did not include findings about applicant's body parts other than psyche, and ordered "all other issues are deferred, with jurisdiction also reserved." (Joint Exh. I, 6/8/21 FA&O, at p. 2.) Thus, the question of whether applicant sustained injury AOE/COE to his claimed body parts other than psyche was not "decided." Regarding the fourth element, the 2021 decision was final as to the psyche claim, but did not address the merits of applicant's additional claims, so there was no final order as to the body parts other than psyche. Thus, we conclude that applicant's claims are not barred by the doctrine of collateral estoppel. Applicant is therefore free to litigate the additional claims, as needed, until such time as final findings as to each claimed body part are issued.

II.

Even if we had determined that collateral estoppel was applicable, we would have reversed the July 5, 2022 F&O for two additional reasons. First, the WCJ's finding that applicant's claims were barred was based only on the body parts listed in applicant's Amended Application of October 21, 2021, while disregarding the more detailed list of body parts in applicant's February 15, 2022 Second Amended Application. The WCJ's conclusion in the Opinion that "[t]he amended application therefore does not add new body parts, but rather conditions and diseases that the parties have already been aware of since the beginning of the case" was based on this incomplete reading of the record, that ignored the Second Amended Application despite the fact that it had been entered into evidence at trial as Joint Exhibit P. (OOD, at p. 4.) The body parts raised in the Second Amended Application should have been addressed in the July 5, 2022 F&O; since they were not, those body parts are deferred.

Second, the F&O issued July 5, 2022 must be reversed because the WCJ based his findings, in part, on the allegations in applicant's applications, rather than on the medical evidence. The WCJ wrote "The amended application dated 10/21/21 does not in fact add new body parts to the claim, but rather medical conditions that affect body parts that *have already been alleged*, namely the brain, nervous system and body SMS." (7/5/22 F&O, finding 1 at p. 1, emphasis added.) As discussed below, applications and other pleadings are presumed amended according to proof, so ultimately, only the medical evidence, not the claimed body parts in an application, is relevant.

Section 5709 states that:

No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division. No order, decision, award, or rule shall be invalidated because of the admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure.

(Lab. Code, § 5709.)

WCAB Rule 10517 states that:

Pleadings shall be deemed amended to conform to the stipulations and statement of issues agreed to by the parties on the record. Pleadings may be amended by the Workers' Compensation Appeals Board to conform to proof.

(Cal. Code Regs., tit. 8, § 10517.)

In our recent en banc opinion in *Perez v. Chicago Dogs* (2025) 90 Cal.Comp.Cases 830, 838 ("*Chicago Dogs*"), we held that: "In workers' compensation proceedings, pleadings are liberally construed and may be amended to conform to proof."

We reiterated that:

The workers' compensation system "was intended to afford a simple and nontechnical path to relief." [citation] Generally, "the informality of pleadings in workers' compensation proceedings before the Board has been recognized." [citation] "[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee's entitlement to rehabilitation benefits." [citation] Courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. [citation] "Necessarily, failure to comply with the rules as to details is not jurisdictional." [citation]

Therefore, in workers' compensation proceedings, it is settled law that (1) pleadings may be informal. [citation]; (2) claims should be adjudicated based on substance rather than form [citation] (3) pleadings should liberally construed so as not to defeat or undermine an injured employee's right to make a claim [citation]; and (4)

technically deficient pleadings, if they give notice and are timely, normally do not deprive the Board of jurisdiction [citation].

(*Ibid.*)

In workers' compensation, findings of injury are not based on allegations in pleadings. We emphasize that here, whether the body parts were correctly identified in the Applications, the Petitions or at trial, ultimately, the determination of which body parts were injured must be based on substantial medical evidence. Only then are the pleadings presumed amended to conform to proof. Only findings based on substantial medical evidence, not on the allegations in the pleadings, are relevant.

III.

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb, supra*, 11 Cal.3d 274; *Garza, supra*, 3 Cal.3d 312; *LeVesque, supra*, 1 Cal.3d 627.) "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.) Further, decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set [] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th

1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Here, applicant requested orders directing the Medical Unit to provide QME panels in neurology and oncology, on September 10, 2020 and again on February 10, 2022. In the September 10, 2020 request, applicant explained that the request for the two QME panels was based on the recommendation of Agreed Medical Evaluator (AME) Dr. Albert Kastle, who recommended in his deposition that additional medical experts evaluate applicant’s claims of lymphoma and encephalitis. (Applicant’s Exh. 9, 9/10/20 Petition for Order to Medical Unit, at p. 3.) The record indicates that no action was taken on this petition. A second petition, filed February 10, 2022, reiterated the request for an order that these QME panels issue. (Joint Exh. O, 2/10/22 Petition for Order to Medical Unit.) Although this request was listed as an issue for trial at the March 29, 2022 proceeding, no findings or orders were entered as to this issue in the July 5, 2022 F&O. (3/29/22 Minutes; 7/5/22 F&O.) Thus, to date, it appears that panels in neurology and oncology have not issued.

As the law requires that the record must be further developed where there is insufficient evidence on an issue (*McClune, supra*, 62 Cal.App.4th at pp. 1121-1122), we grant applicant’s February 10, 2022 Petition for Order to Medical Unit to Issue List of Neurology and Oncology-Internal Medicine QMEs, to provide applicant with an opportunity to be evaluated by physicians in each of these areas and to meaningfully develop the record regarding these claimed injuries.

Accordingly, as our decision after reconsideration, we rescind the WCJ’s July 5, 2022 decision, substitute new findings and orders as indicated below, and return this matter to the WCJ for further proceedings.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued July 5, 2022 is **RESCINDED**, the following is **SUBSTITUTED** in its place, and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

FINDINGS

1. The Amended Application dated 10/21/21, and Second Amended Application dated 2/15/22 added body parts to applicant's claims that were not previously decided.
2. The question of whether the applicant's psyche suffered an injury AOE/COE during the cumulative trauma from 7/7/2017 to and including 1/30/2018 has already been decided in the Findings and Award dated 6/4/21.
3. The Findings of Fact, Award and Order of 6/4/21 has become final.
4. Principles of res judicata/collateral estoppel do not bar the applicant from litigating the question of body parts injured AOE/COE, including as listed in the 10/21/21 Amended Application and 2/15/22 Second Amended Application, except for the body part of psyche which was previously decided.

ORDERS

1. The body parts other than psyche in the Amended Application dated 10/21/21, and Second Amended Application dated 2/15/22 are deferred.
2. The February 10, 2022 Petition for Order to Medical Unit to Issue List of Neurology and Oncology-Internal Medicine QME's is granted, and those QME panels shall issue.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 23, 2026

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

**BRIAN BARRICK
SHATFORD LAW
STATE COMPENSATION INSURANCE FUND**

MB/ara

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

CS