WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

BRIAN INGRAM, *Applicant*

vs.

H2L GROUND DELIVERY, INC.;
SECURITY NATIONAL INSURANCE COMPANY,
administered by AMTRUST, *Defendants*

Adjudication Number: ADJ19844397
Sacramento District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact, Award, and Opinion on Decision (F&A) issued by the workers' compensation administrative law judge (WCJ) on August 7, 2026. The WCJ found, in relevant part, that 1) on September 29, 2023, while employed by defendant as a driver, applicant sustained injury arising out of and in the course of employment (AOE/COE) to his right ankle and right foot; 2) the injury caused permanent disability (PD) of 28%; 3) the PD in the case was 100% industrial; 4) the January 30, 2026 report by panel qualified medical evaluator (QME), Dr. Ambrose, constitutes substantial medical evidence; 5) applicant is in need of further medical treatment; and 6) the reasonable value of services rendered by applicant's attorney is 15% of the PD award, to be commuted from the "far end" of the Award.

Defendant, in essence, contends the WCJ erred by relying on the January 30, 2026 report by QME Dr. Ambrose, which does not constitute substantial medical evidence. More specifically, defendant argues the QME's opinion regarding impairment and PD is not based on substantial evidence and the appropriate rating is 8% PD.

We have received an Answer from applicant.

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

We have considered the allegations of defendant's Petition and the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, we will deny reconsideration.

FACTS

The WCJ stated the relevant facts in his Report as follows:

> The Applicant, Brian Ingram, sustained an industrial injury to his right ankle and right foot on September 29, 2023. He was 32 at the time of the injury and was employed as a Driver. At the time of the injury, the Applicant earned $950.00 per week, warranting indemnity rates of $633.33 for temporary disability and $290.00 per week for permanent disability.
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> The claim was accepted for AOE/COE. On January 30, 2026, the Applicant was found to be permanent and stationary by QME Dr. Ambrose, who found 6% whole person impairment based on Range of Motion Impairment to the Right Ankle. Dr. Ambrose also noted that the strict rating did not accurately reflect the Applicant's impairment and found 19% whole person impairment based on Station and Gait Disorders, applying *Almaraz/Guzman II.*
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> Based on the strict AMA Guides rating of the Right Ankle, the case rated out to 8% permanent disability, worth $6,960.00. Based on the Almaraz/Guzman II rating of Station and Gait Disorders, the case rated out to 28% permanent disability, worth $34,437.50. In both cases, the QME found the injury to be 100% industrial.
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> The case proceeded to Trial on June 11, 2026. The Defendant contended that the case rated out to 8% permanent disability based on the strict AMA guides rating of the Right Ankle. The Applicant contended that the case rated out to 28% permanent disability based on the *Almaraz/Guzman II* analysis of Station and Gait Disorders.
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> The Court found that Dr. Ambrose's January 30, 2026 report constituted substantial medical evidence. 19% whole person impairment was appropriate because Dr. Ambrose remained within the four comers of the AMA Guides while finding that Station and Gait Disorders more accurately described the Applicant's impairment than Range of Motion Impairment. It is from this Award that the Defendant has filed a Petition for Reconsideration.

(Report, at pp. 2-3.)

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to 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.
> >
> > (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 11, 2026, and 60 days from the date of transmission is November 10, 2026. This decision is issued by or on November 10, 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 11, 2026, and the case was transmitted to the Appeals Board on September 11, 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 11, 2026.

II.

As stated by the WCJ in his Report:

QME Dr. Ambrose's Reporting Constitutes Substantial Medical Evidence

Dr. Ambrose's report first provides a strict rating of 6% whole person impairment based on Range of Motion Impairment to the Right Ankle. Dr. Ambrose then provides 19% whole person impairment based on Station and Gait Disorders, applying *Almaraz/Guzman II.* Dr. Ambrose's report constitutes substantial medical evidence as he correctly established the impairment rating pursuant to the AMA Guides, and then explains how and why applying Almaraz/Guzman II is more appropriate than using the strict AMA Guides rating.

Almaraz/Guzman II held that an impairment rating under the AMA Guides could be rebutted by evidence that a different chapter, table or method in the AMA Guides more accurately describes the impairment while remaining within the four corners of the AMA Guides. *Milpitas Unified School Dist. V WCAB (Guzman)* 187 Cal.App.4th 808, 827. To be substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and must set forth reasoning to support the expert conclusions reached. *E.L. Yeager v. WCAB (Gatten)* (2006) 145 Cal.App.4th 922, 928; *Escobedo v. Marshalls* (205) 70 Cal. Comp. Cases 604 (Appeals Board en banc).

First, Dr. Ambrose had provided a rating of 6% whole person impairment based on Range of Motion Impairment to Ankle, Tables 17-11 and 17-12. Pursuant to *Almaraz/Guzman II*, Dr. Ambrose was required to provide the strict AMA Guides rating first. He based the AMA Guides rating on based on Plantar flexion = 3% WPI, Dorsiflexion/Extension = 3% WPI, Inversion = 1% WPI, and Eversion = 1% WPI, which add to 6% WPI *(JOINT EXHIBIT I, PAGES 8-9, EAMS DOC ID# 64525145).* In addition to providing the strict AMA Guides rating, Dr. Ambrose went on to explain that based upon the Applicant's subjective and objective findings, the Applicant "should be permanently precluded from prolonged weightbearing, prolonged walking or walking incline planes, walking on uneven terrain, any squatting, quickly ascending or descending stairs or ladders as well as any running, jogging, jumping or other commensurate activities." *(JOINT EXHIBIT 1, PAGE 8, EAMS DOC ID# 64525145).* In this case, a 6% whole person impairment rates as follows:

Right Ankle: 17.07.07.04.00 - 6[1.4] – 8 350G 9 – 8

8% permanent disability is 24 weeks x $290.00 per week, or $6,960.00. Dr. Ambrose also finds that "within reasonable medical probability, 100% of this

applicant's condition is attributable to the industrial injury in question." *(JOINT EXHIBIT 1, PAGE 10, EAMS DOC ID# 64525145).*

However, Dr. Ambrose's analysis of the Applicant's impairment did not end with the strict AMA Guides rating. The *Almaraz/Guzman II* decision mandates that Dr. Ambrose show that the rating derived from the AMA Guides could be rebutted by evidence that a different chapter, table or method in the AMA Guides more accurately describes the impairment while remaining within the four comers of the AMA Guides.

Instead of simply stating that another rating based on the *Almaraz/Guzman II* decision was more appropriate in a conclusory manner, Dr. Ambrose goes on to note that the strict rating did not accurately reflect the Applicant's impairment. He cites "significant pain on a frequent to constant basis. He has a marked compromise in his ability to function, he suffers work impairment in the. work environment, he is certainly unable to do many, if not most, recreational activities and he has marked compromise in his ADLs." *(JOINT EXHIBIT 1, PAGE 9, EAMS DOC ID# 64525145).* Of importance, Dr. Ambrose didn't just conclude that the Applicant was 19% whole person impairment based on his training and experience. Dr. Ambrose found a more appropriate rating, based on Station and Gait Disorders, Tables 13-15, Page 336, and finds Class 2 impairment, 10-19% Whole Person Impairment. Class 2 Impairment is described as "Rises to standing position, walks some distance with difficulty and without assistance, but is limited to level services." He finds 19% Whole Person Impairment. *(JOINT EXHIBIT 1, PAGE 9, EAMS DOC ID # 64525145).*

In this case, a 19% whole person impairment rates as follows:

Right Ankle: 17.07.07.04.00 -19[1.4] - 27 - 350G - 30 – 28

28% permanent disability is 118.75 weeks x $290.00 per week, or $34,437.50. Dr. Ambrose also finds that "within reasonable medical probability, 100% of this applicant's condition is attributable to the industrial injury in question." *(JOINT EXHIBIT 1, PAGE 10, EAMS DOC ID# 64525145).*

Dr. Ambrose's analysis *starts* with the Applicant's pain levels. The Court disagrees with the Defendant's assertion that the basis provided by QME Ambrose to why the highest WPI was utilized to reflect impairment is simply conclusory. The Applicant reported "pain increases to 9-10 upon prolonged walking greater than 20 minutes, walking incline planes greater than 5 minutes of walking on uneven terrain, any squatting, quickly ascending or descending stairs or ladders as well as any running, jogging, jumping or other commensurate activities." (*JOINT EXHIBIT 1, PAGE 4, EAMS DOC ID# 64525145*). The Applicant had surgery on July 19, 2024 "1. Right ankle arthroscopy with synovectomy. 2. Repair of lateral ankle ligament with bone anchors. 3. Removal of talar bone." (*JOINT EXHIBIT 1, PAGE 3, EAMS DOC ID# 64525145*). While the MRI post-surgically was "unremarkable", an October 24,

2025 CT scan of the right ankle showed "postsurgical change compatible with ACL ligament repair." (*JOINT EXHIBIT 1, PAGE 3, EAMS DOC ID# 64525145*).

The Court also believes that the Applicant's level of pain was not just present, and Dr. Ambrose did not simply speculate as to how that pain level should apply to a higher whole person impairment. Dr. Ambrose established his opinions based upon the medical records reviewed in this case. While most of the records provided to Dr. Ambrose focused on the pain aspect, Dr. Wilkes recommended orthotics on December 11, 2025 (JOINT EXHIBIT 1, PAGE 18, EAMS DOC ID# 64525145). The most recent report from his primary treating physician on November 21, 2025 indicated restrictions of "He may not drive a commercial vehicle. No driving for work. No standing/walking longer than 30 minutes. No climbing." (*JOINT EXHIBIT 1, PAGE 18, EAMS DOC ID# 64525145*). This was following 8 sessions of post op PT and a continuation with the Home Exercise Program (*JOINT EXHIBIT 1, PAGE 18, EAMS DOC ID # 64525145*). The Applicant was soon after found to be permanent and stationary per Dr. Ambrose's reporting from the January 16, 2026 evaluation (*JOINT EXHIBIT 1, PAGE 8, EAMS DOC ID# 64525145*). It is clear that Dr. Ambrose didn't simply justify utilizing a higher rating per the *Almaraz/Guzman II* decision based on the Applicant's pain levels. He based it on the Applicant's overall functional loss, including significant ambulatory and work-related limitations.

Defendant's entire argument relies on *Martinez v. City of Santa Monica*, 2012 Cal. Wrk. Comp. P.D. LEXIS 587. Defendant argues that utilizing pain alone is not appropriate. Objective factors should be an element in support of the finding of impairment. In *Martinez*, with respect to the right knee, spine, and right upper extremity, the Applicant was initially awarded 2% permanent partial disability. *Id. at 2*. What differentiates this case is that in Martinez, there were no objective findings at all to justify any permanent impairment. "Under the AMA Guides, a meniscus tear is not a sufficient objective finding to support a whole person impairment rating." *Id. at 6*. Additionally, the QME in this case, Dr. Washington "did not comment on whether the meniscus tear was related to applicant's industrial injury". *Id*. Such an award of "nominal disability pursuant to Labor Code section 5802 is improper in this case." *Id*.

In *Martinez*, this was a case of the lack of any objective findings to provide any permanent impairment. Dr. Washington provided 1% whole person impairment due to pain. *Id. at 4*. Dr. Washington clearly failed to frame the impairment in terms of reasonable medical probability, be based on an accurate history and an examination, and must set forth reasoning to support the expert conclusions reached. The Appeals Board correctly concluded that providing a 1% whole person impairment as nominal disability with a lack of any objective factors was not appropriate.

This case is clearly different. Dr. Ambrose initially provided a rating of 6% whole person impairment based on Range of Motion Impairment to Ankle, Tables 17-11 and 17-12. He based the AMA Guides rating on based on Plantar flexion = 3%

> WPI, Dorsiflexion/Extension = 3% WPI, Inversion= 1% WPI, and Eversion = 1% WPI, which add to 6% WPI (*JOINT EXHIBIT 1, PAGES 8-9, EAMS DOC ID # 64525145*). His initial strict AMA Guides rating was based on objective factors. It was not a nominal disability based simply on pain.
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> Next, Dr. Ambrose went on to note that the strict rating did not accurately reflect the Applicant's impairment. Dr. Ambrose found a more appropriate rating, based on Station and Gait Disorders, Tables 13-15, Page 336, and found Class 2 impairment, 10-19% Whole Person Impairment. Class 2 Impairment is described as "Rises to standing position, walks some distance with difficulty and without assistance, but is limited to level services." He found 19% Whole Person Impairment. The deviation from the strict AMA Guides was based on both the Applicant's level of pain, as well as Applicant's overall functional loss, including significant ambulatory and work-related limitations, rather than just pain alone.

(Report, at pp. 2-6.)

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the WCJ's decision issued on August 7, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 6, 2026

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

BRIAN INGRAM
SMOLICH & SMOLICH
THE LAW OFFICES OF RICHARD K. GREEN

JL/abs

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