

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

**CARITINA CABALLERO, *Applicant***

**vs.**

**CLUB DONATELLO;  
SECURITY NATIONAL INSURANCE COMPANY administered by  
AMTRUST NORTH AMERICA, *Defendants***

**Adjudication Number: ADJ14646082  
Oakland District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Award (F&A) issued on December 29, 2025 by the workers' compensation administrative law judge (WCJ), which found in pertinent part that applicant did not sustain injury arising out of and in the course of employment (AOE/COE) to the left shoulder, right upper extremity, right elbow and right wrist; that applicant sustained injury AOE/COE to her right shoulder; and that her injury caused permanent disability of 9%.

Applicant contends that the reporting of panel Qualified Medical Evaluator (PQME), John Welborn, M.D., is not substantial evidence as to causation of injury to the left shoulder, right upper extremity, right elbow and right wrist, and as to the impairment to the right shoulder.

We did not receive an answer from defendant. The presiding WCJ (PWCJ) filed a Report and Recommendation (Report) on the Petition for Reconsideration recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the PWCJ with respect thereto. Based on our review of the record, and as discussed below, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings consistent with this decision. This is not a final decision on the merits

of any issues raised in the petition, and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

### FACTS

Applicant worked for defendant employer from 1980 until October 29, 2019, as a housekeeper and claimed injury to her right shoulder, left shoulder, right upper extremity, right elbow and right wrist. Applicant filed an Application for Adjudication of Claim (Application) alleging that while employed by defendant on October 29, 2019 as a housekeeper, she sustained injury to the right shoulder.

On June 1, 2021, applicant was evaluated by Laura Sciaroni, M.D., for a primary treating physician's permanent and stationary evaluation and report (PR-4). (Joint Exhibit 101.) To Dr. Sciaroni, applicant complained of right upper extremity pain. (*Id.* at p. 3.) Dr. Sciaroni diagnosed applicant with impingement syndrome right shoulder and unspecified sprain of the right shoulder joint and declared applicant to have reached maximum medical improvement (MMI) status. She assigned applicant permanent work restrictions including no overhead work, no reaching to or above shoulder level, lifting over ten pounds and no pushing or pulling over 25 pounds, and assigned her right shoulder 11% whole person impairment including a 3% pain add-on with no apportionment, and indicated future medical care was necessary. (*Id.* at pp. 5-6.)

On June 12, 2023, Dr. Welborn conducted his initial evaluation of applicant, but he was not provided medical treatment records by any party. (Joint Exhibit 104.) Applicant complained of constant right, anterolateral shoulder pain 5-6/10 that goes to the dorsal forearm, numbness in the right hand and fingers that started in February 2023, and right hand weakness. (*Id.* at p. 2.) Further, applicant had increased pain raising her arm overhead, weakness, stiffness, pain at night, and weakness of grip to the extent that she cannot hold a cup of coffee in her right hand. (*Id.*) Based on her self-reported history and physical examination, Dr. Welborn diagnosed applicant on her right side with shoulder joint pain; medial epicondylitis; lateral epicondylitis; carpal tunnel syndrome; and rotator cuff tear. (*Id.* at p. 3.) Dr. Welborn opined:

It is my opinion, after examining her, that it appears that she had a rotator cuff repair as she tells me that she thinks she had a tendon repair, but I was not sen[t] any medical records and cannot say what her specific diagnosis is from her work injury.

It sounds like right hand and elbow symptoms started 6 weeks after her 2nd surgery and is not work related.

Causation: It is my opinion that her right shoulder injury did arise out of employment but I need medical records to determine specific diagnosis.

*(Id.)*

He noted that the objective factors of disability included right shoulder loss of motion, positive impingement and speed test, and shoulder tenderness. *(Id. at p. 4.)* Since applicant was less than six months post-operative, Dr. Welborn did not think she was MMI, but she would be at twelve months post operative or by December 2023. *(Id. at pp. 3-4.)*

On March 8, 2024, Dr. Welborn reevaluated applicant and reviewed 799 pages of medical treatment records. (Joint Exhibit 103, at pp. 3-5.) Dr. Welborn diagnosed applicant with rotator cuff tear as improved. *(Id. at p. 5.)* On examination, applicant's cervical spine was normal. *(Id. at pp. 1-2.)* Applicant complained about her right upper extremity as follows:

On a scale of 0-10, she rates her right shoulder as 2-5/10 that is constant. She has pain in the right shoulder is superiol-lateral [*sic*] and goes [down] her arm to the dorsal forearm. She has numbness in the right hand in all her fingers that started in Feb, 2023. She has increased pain raising arm overhead and weakness and has stiffness. She has increased pain at night. She [has] weakness of grip in the right hand and cannot hold a cup of coffee with the right hand and has to use her left hand more.

*(Id. at p. 2.)*

On examination, applicant's right elbow was non-tender with full range of motion and negative for Tinel's at cubital tunnel. *(Id.)* Applicant's right hand was negative for Tinel's with sensation intact to 2 pt at 10 mm for all digits, but Jamar grip strength was markedly reduced compared to the non-dominant left. *(Id. at p. 1.)* On page 5 of his report, Dr. Welborn did not offer a causation analysis about the applicant's right upper extremity elbow and wrist, however, as factors of disability, he offered:

She has decreased right hand strength noted on Jamar which I cannot explain she does not have any specific radiculopathy [*sic*] symptoms or evidence of CTS. She does have subectie [*sic*] numbness in all of her fingers so perhaps there is mulitlevel [*sic*] nerve compression in her neck which should[] be worked up on a non-industrial basis.

*(Id. at p. 6.)*

Applicant complained about having to use her left hand more because of her right upper extremity condition. *(Id. at pp. 2-3.)* On examination applicant had tenderness all over the left shoulder and a flexion measurement of 170. *(Id. at p. 2.)* Concerning causation for the left shoulder

injury, Dr. Welborn stated: “I do not think she has a subsequent injury to her left shoulder from overuse as her left shoulder pain did not start till Oct, 2023.” (*Id.* at p. 5.)

Dr. Welborn declared applicant to be MMI, assigned her permanent work restrictions including no lifting over ten pounds and no pushing or pulling over 30 pounds, assigned her right shoulder 5% whole person impairment including a 1% pain add-on, and indicated that no future medical care was necessary as applicant had no improvement with two surgeries, physical therapy or the functional restoration program (FRP). (*Id.* at pp. 5-6.) Regarding apportionment, Dr. Welborn indicated no section 4663 was appropriate, however, pursuant to section 4664 any “granted impairment” related to the prior, 2013 industrial injury should be subtracted from this impairment. (*Id.* at p. 6.)

On April 27, 2024, Dr. Welborn issued a supplemental report. (Joint Exhibit 102.) Applicant’s diagnoses were updated on her right side as follows: assessed rotator cuff tear as stable; assessed carpal tunnel syndrome, as stable; assessed lateral epicondylitis, as stable; assessed medial epicondylitis, as stable; assessed shoulder joint pain, as stable. (*Id.* at p. 1.) Dr. Welborn was specifically asked why he determined applicant’s left shoulder and neck to be non-industrially injured. Dr. Welborn responded as follows:

The left shoulder is not a subsequent or compensable injury because she did not start having pain her left shoulder until Oct, 2023. Her right shoulder surgeries were on 9-10-20 and 12-29-22. She had limited use of her right hand and arm for only 2-3 months post op, therefor I do not think the pain she is having her [] left shoulder in Oct, 2023 is due to over use.

She did not complain of neck pain. She had unexplained right hand numbness which is not due to her to right shoulder injury that started in Feb, 2023. Her right hand numbness was not due to carpal tunnel syndrome. She also has hand weakness of grip. It was my opinion that her right hand weakness and numbness could be due to cervical radiculopathy [*sic*]. I do not think she had a neck injury that was caused by her shoulder injury or surgery. It actually seems that she is using her left hand more due to her right hand numbness and weakness, rather than due to the right shoulder. It continues to be my opinion that her right hand problems should be worked up on a non-industrial basis.

(*Id.* at pp. 1-2.)

On June 2, 2025, Dr. Welborn was deposed. (Joint Exhibit 105.) At the end of his deposition, Dr. Welborn confirmed that none of his prior opinions changed since his March 2024 report. (*Id.* at p. 39:3-7.) However, Dr. Welborn testified that applicant did not complete an FRP,

but a PRP or platelet-rich plasma injection.<sup>1</sup> (*Id.* at p. 19:9-17.) Additionally, Dr. Welborn speculated that applicant, aged 67 years old, could have age related arthritis in her right elbow and right hand, and age related left shoulder degeneration. (*Id.* at pp. 31:8-11; 33:10-21; 37:19-23.)

Dr. Welborn confirmed that objectively applicant is positive for right elbow tendonitis. (*Id.* at p. 11:9-12:6.) However, he does not believe applicant's right elbow tendonitis is industrial in nature and she needs to treat non-industrially for it beginning with an X-ray to check for arthritis, followed by cortisone injections to the tendons and if the cortisone injections are not helpful it's not tendonitis, potential work-up for right elbow joint is necessary. (*Id.* at pp. 37:1-38:6.)

Dr. Welborn confirmed that applicant has "numbness and weakness in the right hand," but he believes that it is "not work related." (*Id.* at p. 37:12-14.) Dr. Welborn confirmed that he retracted his prior right carpal tunnel syndrome diagnosis. (*Id.* at p. 32:3-7.) Dr. Welborn testified that he is "not sure what's causing her right hand weakness." (*Id.* at p. 31:3-4.) He testified that it is possible that cervical radiculopathy is causing the applicant's right hand numbness and weakness. (*Id.* at p. 32:8-18.) It is possible that arthritis is causing the applicant's right hand weakness. (*Id.* at p. 31:8-11.) When asked how best to diagnose applicant's right hand grip weakness and numbness, Dr. Welborn offered the following testimony:

A Well. I would recommend starting off with some X-rays of her right hand, see if there's arthritis in there. Very commonly, arthritis in the digits in a 67-year-old female can cause hand weakness.

Q Okay. And how about regarding the numbness that she has -- or right hand numbness that she has complained about? What type of tests would be necessary to run there to determine the cause of the right hand numbness?

A I'd recommend an EMG.

Q Okay.

A Yeah. All that needs to be done -- on a non-industrial basis. It started when she was not working.

(*Id.* at p. 31:5-20.)

Dr. Welborn agreed that applicant was "using her left side hand, arm, and shoulder in a more dominant way than she did before" her industrial right shoulder surgeries. (*Id.* at p. 29:11-

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<sup>1</sup> Dr. Sciaroni confirmed applicant completed an FRP. (Joint Exhibit 101, at pp. 3, 5; Applicant's Exhibit 1, at pp. 2-3.) In his records summary, Dr. Welborn lists multiple dates for an FRP in 2021. (Joint Exhibit 103, at p. 5.)

18.) However, Dr. Welborn maintained that applicant did not have any left shoulder subsequent injury because left shoulder pain began one year after her last surgery.<sup>2</sup> (*Id.* at p. 30:8-15.) Dr. Welborn testified that a compensable left shoulder injury would have occurred within one to two months after surgery because that is when the other arm is being overused. (*Id.* at p. 35:14-22.) To Dr. Welborn, applicant did not report that any specific left shoulder injury occurred in October 2023; he does not know how the left shoulder injury in October 2023 occurred. (*Id.* at pp. 22:8-23:13.) Applicant could have age related left shoulder degeneration. (*Id.* at p. 33:10-21.) To diagnose applicant's left shoulder condition, an X-ray, physical therapy, cortisone injections and an MRI may be needed. (*Id.* at pp. 32:24-33:9; 38:7-20.)

Finally, regarding applicant's prior 2013 industrial injury, Dr. Welborn testified that he did not the medical records for this date of injury and he does not think he needs to review them. (*Id.* at p. 36:3-9.)

The matter proceeded to trial on December 3, 2025, on multiple issues including parts of body injured, with applicant claiming left shoulder, right upper extremity, right elbow and right wrist, and right shoulder permanent disability. It is from the corresponding F&A that applicant seeks reconsideration.

## **DISCUSSION**

### **I.**

Preliminarily, we note that former Labor Code<sup>3</sup> 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.

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<sup>2</sup> On December 29, 2022, applicant underwent a third rotator cuff repair with a dermal graft. (Joint Exhibit 103, at p. 1.) To Dr. Welborn, applicant reported her pain began in October 2023.

<sup>3</sup> All further 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 January 23, 2026 and 60 days from the date of transmission is March 24, 2026. This decision was issued by or on March 24, 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 and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the WCJ, the Report was served on January 23, 2026, and the case was transmitted to the Appeals Board on January 23, 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 January 23, 2026.

## II.

The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers’ Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a), 3202.5.) The Supreme Court of California has long held that an employee need only show that the “proof of industrial causation is reasonably probable, although not certain or ‘convincing.’” (*McAllister v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) “That burden manifestly does

not require the applicant to prove causation by scientific certainty.” (*Rosas v. Workers’ Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].)

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].) 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).) “Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board’s findings if it is based on surmise, speculation, conjecture or guess.” (*Hegglin v. Workmen’s Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Here, we consider the issue of injury to applicant’s claimed body parts of right elbow, right wrist, right hand and left shoulder.

Dr. Welborn has diagnosed applicant with right elbow tendonitis, but he does not know the cause of it. Dr. Welborn indicated that applicant may have right elbow arthritis but if this is not confirmed with an X-ray, applicant may need further workup of the right elbow joint. Nonetheless, with multiple potential diagnoses, Dr. Welborn continued to opine that any right elbow injury is non-industrial in nature.

Initially, for the right wrist/hand, Dr. Welborn diagnosed applicant with carpal tunnel syndrome. At his deposition, Dr. Welborn confirmed this diagnosis was retracted as of his March 8, 2024, report. Nonetheless, applicant has right hand numbness and weakness. On March 8, 2024, Dr. Welborn indicated cervical radiculopathy could be the cause of right hand numbness and weakness. Furthermore, he speculated that arthritis can cause hand weakness, and he stated that to confirm cervical radiculopathy and arthritis, neck X-rays, an EMG and right hand X-ray would be necessary. Yet, without any confirmed diagnoses for right wrist and hand, Dr. Welborn continued to opine that the conditions are non-industrial injuries because the symptoms began in February 2023.

Lastly, applicant has objective factors of left shoulder injury, but Dr. Welborn has offered no left shoulder diagnosis to date. Dr. Welborn understands that applicant was using her left upper extremity more after her right shoulder surgeries and he is not aware of any specific injury to the applicant's left shoulder in October 2023. Nonetheless, Dr. Welborn does not believe applicant's left shoulder injury is industrial in nature because her symptoms began about one year after her last right shoulder surgery in October 2023. Hence, without confirmed diagnoses for the right upper extremity elbow, wrist, hand, and left shoulder, Dr. Welborn determined all related conditions are non-industrial. Dr. Welborn's reporting is simultaneously speculative and conclusory in nature.

Additionally, Dr. Welborn has not set forth the reasoning for these non-industrial determinations except for speculating as to causation based on when the symptoms arose, specifically the right upper extremity symptoms began in February 2023 and the left shoulder symptoms began in October 2023. Applicant's right upper extremity symptoms began six weeks after her final right shoulder surgery. Applicant's left shoulder symptoms began about ten months after her final right shoulder surgery. After the third right shoulder surgery on December 29, 2022, applicant's symptoms have remained similar.

On June 12, 2023, Dr. Welborn reported that applicant had constant right shoulder pain 5-6/10 that goes to the dorsal forearm, numbness in the right hand and fingers that started in February 2023, and right hand weakness. On March 8, 2024, Dr. Welborn reported that applicant had constant right superior lateral shoulder pain 2-5/10 that goes to the dorsal forearm and she has numbness in the right hand in all her fingers that started in February 2023. Dr. Welborn has failed to explain how applicant's constant right shoulder pain, which he described as "mild to moderate," affected her right elbow, right wrist, right hand and left shoulder. That is, applicant's pain has been constant and increasing, and not just for a few months post-operatively. This is an important question that requires substantial medical evidence, especially in light of applicant's 39 years of employment as a housekeeper who returned to work, at full duty, for another five or six years after her first rotator cuff repair in 2013.

Next, Dr. Welborn's history needs to be clarified. Specifically, Dr. Welborn has yet to review the medical treatment records related to applicant's claimed 2013 date of injury, and appears to lack an understanding of how to determine the period of cumulative trauma, taking into

account the number of injuries and whether there is apportionment. He also needs to clarify whether applicant treated with platelet-rich plasma injection or completed an FRP.

Finally, and perhaps most problematically, regarding diagnostic testing to confirm right upper extremity diagnoses, Dr. Welborn testified as follows:

Yeah. All that needs to be done -- on a non-industrial basis. It started when she was not working.

(Joint Exhibit 105, at p. 31:19-20.)

Hence, Dr. Welborn testified that applicant's right upper extremity elbow, wrist and hand symptoms began after she stopped working, which would imply that injuries to those body parts are not industrial in nature. This not only appears to be speculative, but also to be based an incorrect legal theory as to causation and about the nature of compensable consequence injuries.

Based on the foregoing, we agree with applicant that Dr. Welborn's reporting is not substantial medical evidence. We next address applicant's request that a regular doctor be appointed for a medical evaluation. (Petition, at p. 6:19-20.) While we agree that his reporting may not be curable, this issue should be considered by the WCJ in the first instance.

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) Per *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138, 142 (Appeals Board en banc), the preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. If the existing physicians cannot cure the need for development of the record, the selection of an agreed medical evaluator (AME) should be considered by the parties. (*Id.*) If the parties cannot agree to an AME, the WCJ can appoint a physician to evaluate applicant pursuant to section 5701. (*Id.* at pp. 142-143.)

Therefore, upon return of this matter to the trial level, we recommend the parties initially conduct further discovery with Dr. Welborn. If Dr. Welborn is unable to adequately address the issues in dispute, the parties should be given another opportunity to agree to an AME to develop the record, the second preferred method under *McDuffie*. If the parties are unable to agree to an AME, then the WCJ may appoint a physician to evaluate applicant per section 5701.

Since we are rescinding the decision and returning the matter for further development of the record so that further medical reporting can be obtained, we do not consider the issue of whether Dr. Welborn's reporting was substantial evidence on the issue of permanent impairment to applicant's right shoulder. We observe that Dr. Welborn's opinion as to whether applicant has the need for further medical treatment to her right shoulder is at best speculative, and is based on an incorrect understanding of the law regarding defendant's obligation to provide reasonable and necessary medical treatment to cure or relieve applicant from the effects of her industrial injury. (See Lab. Code, § 4600(a).)

In conclusion, we grant applicant's Petition for Reconsideration, rescind the F&A and return this matter to the trial level for further proceedings consistent with this opinion. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the decision of December 29, 2025, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of December 29, 2025, is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ PAUL F. KELLY, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**March 24, 2026**

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

**CARITINA CABALLERO  
FETTNER & LEMMON, INC.  
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

**SL/abs**

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