

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

**CATRINA WASHINGTON, *Applicant***

**vs.**

**TIME WARNER CABLE (NOW CHARTER COMMUNICATIONS); NEW  
HAMPSHIRE INSURANCE COMPANY, administered by GALLAGHER BASSETT  
*Defendants***

**Adjudication Number: ADJ10642765  
Marina Del Rey District Office**

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

Applicant seeks reconsideration of the February 9, 2026 Findings and Orders (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a Direct Sales Representative from June 26, 2014 to June 13, 2016, sustained industrial injury to her left knee. The WCJ found in relevant part that the body parts alleged in applicant's Petition to Reopen had no relation to her industrial injury; that applicant had not sustained any increase in impairment; and denying applicant's request for additional panels of Qualified Medical Evaluators (QMEs).

Applicant contends that there is good cause to develop the evidentiary record.

We have not received an answer from any party. 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 of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the Findings of Fact that relate to the question of new and further

disability, and substitute a new Order that the issue of whether applicant has sustained new and further disability as alleged in her Petition to Reopen dated April 13, 2021, is deferred.

## **FACTS**

Applicant sustained admitted industrial injury to her left knee while employed as a Direct Sales Representative by defendant Time Warner Cable (now Charter Cable) from June 26, 2014 to June 13, 2016. The parties selected Jeffrey Berman, M.D., as the orthopedic Agreed Medical Evaluator (AME). In a report dated July 1, 2019, the AME identified industrial causation and permanent disability. Based thereon, the parties filed Stipulations with Request for Award on March 22, 2021, and the WCJ issued a corresponding Award on March 24, 2021.

On April 13, 2021, applicant served a Petition to Reopen alleging “additional injuries and possible [permanent disability].” (Petition to Reopen, dated April 13, 2021.) The parties thereafter selected Robert Samson, M.D., as the orthopedic QME.

On April 18, 2023, Dr. Samson evaluated applicant and opined that applicant had not sustained additional impairment beyond that identified by former AME Dr. Berman. (Ex. A, Report of Robert Samson, M.D., dated April 18, 2023, at p. 37.)

On July 21, 2023, applicant filed an Amended Application for Adjudication, alleging additional body parts/systems including the lower extremities, knee/patella, back, psychiatric injury and injury to the circulatory system. (Application for Adjudication of Claim, dated July 21, 2023, at p. 3.)

On October 28, 2025, the parties proceeded to trial on applicant’s Petition for New and Further disability, and framed for decision parts of body injured, temporary disability, the need for further treatment, and attorney fees. The parties further placed in issue “applicant’s request for additional panels.” (Minutes of Hearing, dated October 28, 2025, at p. 3:2.) The WCJ continued the matter to hear testimony from the applicant on December 16, 2025, and again on January 27, 2026, at which time the parties submitted the matter for decision.

On February 9, 2026, the WCJ issued the F&O, determining in relevant part that “applicant’s newly alleged body parts of shoulder, neck, lumbar spine, psyche/stress, circulatory system, head/brain, hair loss, jaw and teeth are found to have no relation to this claim and stipulated award.” (Finding of Fact No. 7.) Although the WCJ did not enter a separate finding of no increase in applicant’s underlying left knee impairment, the WCJ determined that no attorney fees were due

as there was “no increase in impairment.” (Finding of Fact No. 9.) The WCJ granted applicant’s Petition for New and Further Disability for the limited purpose of amending the award of future medical care to include a possible total knee replacement subject to Utilization Review. (Finding of Fact No. 9 & 11.) Finally, the WCJ denied applicant’s request for additional panels. (Finding of Fact No. 12.)

In the Opinion on Decision, the WCJ explained that QME Dr. Samson had identified no increase in impairment attributable to applicant’s left knee, and that applicant had not submitted medical evidence to support injury to any additionally claimed body parts. (Opinion on Decision, at p. 1.) With respect to applicant’s request for additional panels of QMEs, the WCJ observed the applicant’s failure to conduct timely discovery precluded a finding of good cause for the WCJ to order additional panels. (*Id.* at p. 2.)

Applicant’s Petition contends that Dr. Samson’s reporting identified new disability in the form of sleep disturbance, and that applicant testified at trial that she had received medical advice as to the relationship between her anxiety, back pain, and neck pain, and her industrial left knee injury but that she was not sure when she had received such advice. (Petition for Reconsideration, dated March 6, 2026, at p. 4:12; 5:6.)

## DISCUSSION

### I.

Former Labor Code<sup>1</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.
  - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

---

<sup>1</sup> All further references are to the Labor Code unless otherwise noted.

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 March 18, 2026, and 60 days from the date of transmission is Sunday, May 17, 2026. The next business day that is 60 days from the date of transmission is Monday, May 18, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Monday, May 18, 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 workers’ compensation administrative law judge, the Report was served on March 18, 2026, and the case was transmitted to the Appeals Board on March 18, 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 March 18, 2026.

## II.

Pursuant to section 5410, an injured worker who has previously received workers’ compensation benefits either voluntarily paid by the employer or pursuant to an award is entitled

---

<sup>2</sup> WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

to claim benefits for “new and further disability” within five years of the date of injury. (*Sarabi v. Workers’ Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920, 925 [72 Cal.Comp.Cases 778].) If a petition to reopen is filed within the five-year period, the Board has jurisdiction to decide the matter beyond the five-year period. (*Ibid.*)

Section 5410 provides:

Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period. This section does not extend the limitation provided in Section 5407.

(Lab. Code, § 5410.)

Workers’ Compensation Appeals Board (WCAB) Rule 10536 (Cal. Code Regs., tit. 8, § 10536) provides, in relevant part, that “the jurisdiction of the Workers’ Compensation Appeals Board under Labor Code section 5410 shall be invoked by a petition setting forth specifically and in detail the facts relied upon to establish new and further disability.”

To recover additional benefits, the injured worker must not only file a timely petition to reopen but must also have suffered a “new and further disability” within that five-year period, unless there is otherwise “good cause” to reopen the prior award. (*Applied Materials v. Workers’ Comp. Appeals Bd.* (2021) 64 Cal.App.5th 1042, 1080 [86 Cal.Comp.Cases 331], citing *Sarabi, supra*, 151 Cal.App.4th at p. 926.) “New and further disability” means disability resulting from some demonstrable change in the employee’s condition, including a gradual increase in disability, a recurrence of TD, a new need for medical treatment, or the change of a temporary disability into a permanent disability. (*Ibid.*)

Section 5410 requires applicant to establish that “the original injury has caused *new and further* disability.” (Italics added.) California case law has applied section 5410 to cases involving new and further disability to the *original body part* (e.g., *Sarabi v. Workers’ Comp. Appeals Bd., supra*, 151 Cal.App.4th 920, 922–923, 926–927 [industrial injury to right shoulder with additional claimed period of temporary disability related to worsening condition and need for further surgery on right shoulder]) or injury to a *new body part* which is alleged as a compensable consequence of the original injury. (See *Southern California Rapid Transit Dist., Inc. v. Workers’ Comp. Appeals Bd. (Weitzman)* (1979) 23 Cal.3d 158 [44 Cal.Comp.Cases 107] [employee injured in car accident

on the way home from delivering required work release note for prior compensable injury] (*Weitzman*); *Liberty Mutual Ins. Co. v. Industrial Accident Com. (Walden)* (1964) 231 Cal.App.2d 501, 504, [29 Cal.Comp.Cases 293] [development of asthma found to be directly attributable to industrial injury to the back].) However, irrespective of whether the Appeals Board's continuing jurisdiction is invoked because of new and further injury to an *original* body part or injury to a *new* body part as a compensable consequence of the original injury, the new and further disability must be a result or an effect of the prior compensable injury. (*Applied Materials, supra*, 64 Cal.App.5th 1042, 1080; *Sarabi, supra*, 151 Cal.App.4th at p. 926; *Weitzman, supra*, 23 Cal.3d 158.)

Applying these principles to the matter at bar, we first observe that applicant has timely invoked the continuing jurisdiction of the Workers' Compensation Appeals Board (WCAB). The parties have stipulated that applicant's injury was sustained from June 26, 2014 to June 13, 2016. (Minutes of Hearing, dated October 28, 2025, at p. 2:12.) Applicant's Petition to Reopen was filed on April 13, 2021, which is within five years of applicant's original injury. Accordingly, the Petition for New and Further Disability timely invokes the continuing jurisdiction of the WCAB. (Lab. Code, § 5410; Cal. Code Regs., tit. 8, § 10536.) Once invoked, the jurisdiction granted the WCAB by section 5410 continues until such time as the underlying petition is resolved.

We also observe that applicant is alleging new and further disability arising out of injury to both *original* and *new* body parts. The March 24, 2021 Award noted applicant had sustained injury to her left knee. Applicant's amended application filed July 21, 2023, alleges additional body parts/systems including the lower extremities, knee/patella, back, psychiatric injury and injury to the circulatory system. (Application for Adjudication of Claim, dated July, 2023, at p. 3.) These newly claimed body parts may be compensable if applicant can establish that they are compensable consequence injuries sustained as a result or an effect of the prior compensable injury arising within five years of the original injury date. (*Applied Materials, supra*, 64 Cal.App.5th 1042, 1080; *Sarabi, supra*, 151 Cal.App.4th at p. 926; *Weitzman, supra*, 23 Cal.3d 158.)

Applicant's alleged symptoms with respect to her left knee and body parts claimed as a compensable consequence of the original injury are reflected in both the trial testimony and in the medical record. Applicant's trial testimony indicates that following the finalization of her Award in 2021, she experienced an increase in symptoms, including clicking in the left knee and the knee giving way unexpectedly. (Minutes of Hearing and Summary of Evidence, dated December 16,

2025, at p. 2:22.) Applicant testified to additional symptoms including the bilateral lower extremities, depression, low back, anxiety and weight gain. (*Id.* at p. 2:17.) Applicant testified that she reported her symptoms to her PTP. (*Id.* at p. 3:3.)

The corresponding records of applicant's PTP Koruon Daldalyan, M.D., reflect applicant's musculoskeletal complaints across multiple body parts, including lumbar, thoracic and cervical spine pain with corresponding reduction in range in motion and compromise in activities of daily living. (Ex. 4, Report of Koruon Daldalyan, dated December 28, 2023, at pp. 2-3, 5.) Dr. Daldalyan diagnosed "musculoskeletal injuries involving the cervical spine, thoracic spine, lumbar spine, bilateral shoulders, bilateral wrists, bilateral hands, bilateral hips, [and] bilateral knees," as well as "internal derangement of the left knee, status post surgical repair with reinjury," and depressive and anxiety disorders. (*Id.* at pp. 8-9.) Dr. Daldalyan opined that "some of these diagnoses are industrial in origin and are either initiated or aggravated by the patient's employment and are, therefore, industrial in origin." (*Id.* at p. 9.)

QME Dr. Samson has evaluated applicant and determined that applicant has not sustained additional disability with respect to her left knee. (Report at p. 3; Ex. A, Report of Robert Samson, M.D., dated April 18, 2023, at p. 37.) However, the report of Dr. Samson also notes applicant's abnormal Epworth Sleepiness Questionnaire and Iowa Fatigue Questionnaire results. (Ex. A, Report of Robert Samson, M.D., dated April 18, 2023, at p. 9.) Applicant also reported symptoms of depression requiring ongoing treatment with a psychologist. (*Id.* at p. 8.)

In addition, the records of F&M Radiology Medical Center document applicant's contemporaneous complaints of panic attacks, bilateral knee pain and low back pain as early as March, 2021, and continuing, immediately following the finalization of applicant's Award. (Ex. 3, Record of F&M Radiology Medical Center, various dates.) The May 21, 2021 report of applicant's treating physician includes diagnoses of cervical and thoracolumbar myofasciitis, bilateral knee pain, and anxiety, tension and depressed mood arising out of chronic and posttraumatic pain. (*Id.* at p. 24.) The record thus contains contemporaneous evidence that applicant sought medical treatment for the body parts alleged as compensable consequence injuries within five years from the date of injury. However, beyond the reporting of QME Dr. Samson addressing applicant's left knee, the record offers no substantive medical opinions evaluating the alleged compensable consequence injuries.

The WCJ's Report observes that despite amending her claim in 2023, applicant has not obtained comprehensive medical-legal reporting addressing whether she has sustained new and further disability to any alleged body parts beyond the left knee. (Report, at p. 5.) Although applicant now requests the issuance of additional panels of QMEs to address contested body parts, the WCJ states that applicant's lack of diligence in obtaining reporting responsive to the petition for new and further disability militates against such action. We acknowledge the WCJ's analysis in this regard and agree that the failure to undertake timely discovery is indeed relevant to any evaluation of good cause for development of the record.

However, we also observe that the WCJ and the Appeals Board have an *affirmative duty* to further develop the record when there is insufficient evidence to adjudicate an issue. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924] (*Tyler*); *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The WCAB 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].) Accordingly, the WCJ or the Board may not leave undeveloped matters within its acquired specialized knowledge (*Id.* at 404). In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that "[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record ... the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete." (*McDuffie, supra*, at p. 141.) The affirmative duty to develop the record is triggered when "neither side has presented substantial evidence on which a decision could be based." (*San Bernardino Community Hospital v. Workers. Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986] (*McKernan*)). The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie, supra*, at p. 141.)

Here, applicant has alleged both a worsening of her original left knee injury as well as new injuries to additional body parts. Although not dispositive of the issue, we observe that applicant's allegations of impacted body parts are reflected in the contemporaneous medical record and in

applicant's undisputed trial testimony. The evidentiary record, however, does not adequately address medical causation of the alleged compensable consequence injuries.

Medical evidence is thus required to ascertain whether applicant's original injury has resulted in new and further disability and whether applicant's claimed additional body parts and systems are compensable consequence injuries. (*Applied Materials, supra*, 64 Cal.App.5th 1042, 1080; *Sarabi, supra*, 151 Cal.App.4th at p. 926; *Weitzman, supra*, 23 Cal.3d 158.) While the parties have obtained reporting from QME Dr. Samson addressing applicant's left knee disability, no equivalent reporting has been obtained addressing any other of the claimed body parts/systems. Because neither side has presented substantial evidence on which a decision could be based, we conclude that the evidentiary record must be developed. (*McKernan, supra*, 74 Cal.App.4th.928; *Tyler, supra*, 56 Cal.App.4th at pp. 393-395.)

Accordingly, we will grant reconsideration, rescind the Findings of Fact that relate to the issue of new and further disability, and substitute a new Order that the issue of whether applicant has sustained new and further disability as alleged in her Petition to Reopen dated April 13, 2021, is deferred.

Upon return of this matter to the trial level, we encourage the parties to agree on a medical-legal discovery plan including agreed or qualified medical evaluators necessary to appropriately evaluate applicant's alleged body parts/systems. We note that insofar as applicant alleges a body part that is an original injury, the WCJ must determine whether applicant has sustained disability that is both new and further, that is, beyond that which existed at the time of the stipulated Award, using the standards for new and further disability described in *Sarabi, supra*, 151 Cal.App.4th 920, and *Applied Materials, supra*, 64 Cal.App.5th 1042. To the extent that applicant claims disability arising out of body parts that were *not* among the original stipulated body parts, the WCJ must determine whether the disability is a compensable consequence of the original injury. Under either analysis, the disability must be determined to have been in existence within the five-year period permitted under section 5410. Once the record has been appropriately developed pursuant to section 5701, the WCJ may then address the issues of whether applicant has met her burden of establishing new and further disability, and if so, the nature and extent of that disability.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the decision of February 9, 2026 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the February 9, 2026 Findings and Orders is **RESCINDED** with the following **SUBSTITUTED** therefor:

#### **FINDINGS OF FACT**

1. Catrina Washington, while employed during the period of June 26, 2014 to June 13, 2016, as a Direct Sales Representative, Occupational Group No. 251, at Santa Clarita, California by Time Warner Cable (now Charter Communications), sustained injury arising out of and in the course of employment to her left knee.
2. At the time of the injury, the employer was insured for workers' compensation coverage by New Hampshire Insurance Company, administered by Gallagher Basset.
3. At the time of the injury, the employee's earnings were \$1,426.79 per week, warranting indemnity rate of \$951.19 per week for temporary disability and \$290.00 for permanent disability.
4. The carrier has paid permanent disability compensation at the weekly rate of \$290.00 for the periods of July 1, 2019 to February 24, 2020 and April 18, 2023 to June 4, 2023.
5. The employer has furnished some medical treatment.
6. No attorney fees have been paid, and no attorney fee arrangements have been made with regard to the Petition to Re-Open for New and Further Disability.

**ORDER**

- A. The issue of whether applicant has sustained new and further disability pursuant to her petition dated April 13, 2021, is **DEFERRED**.
- B. Exhibits 1, 2, and 3 are admitted into evidence.

**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**

**May 18, 2026**

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

**CATRINA WASHINGTON  
EQUITABLE LAW FIRM  
LEWIS, BRISBOIS, BISGAARD & SMITH**

**SAR/abs**

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