WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CHRISTINE CASPER DERDERIAN, *Applicant*

vs.

VALLEJO CITY UNIFIED SCHOOL DISTRICT;
XL SPECIALTY INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ11078504
San Francisco District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on December 3, 2025 and served on December 8, 2025, which found and awarded permanent partial disability of 68 percent based on an August 23, 2012 injury to applicant's neck, thoracic spine, and psyche, and in the form of headaches. Applicant contends that (1) the WCJ erroneously rejected vocational evidence based on the fact that applicant returned to work, (2) the record requires development with a Functional Capacity Evaluation (FCE) and supplemental reporting on work capacity and vocational feasibility, (3) non-industrial apportionment of permanent disability of the thoracic spine is not supported by substantial medical evidence, (4) the WCJ's findings and opinion are inconsistent with respect to which exhibits were excluded and why, and (5) the finding of injury should have specifically included scapular winging and long thoracic nerve palsy.

Defendants have filed an answer that responds to each of applicant's contentions as follows: (1) the vocational expert's reporting is unpersuasive in its conclusion that applicant is permanently and totally disabled when she has actual ongoing employment, (2) applicant could and should have sought a functional capacity evaluation prior to the Mandatory Settlement Conference (MSC) of April 4, 2024, (3) Agreed Medical Evaluator (AME) Joel Renbaum, M.D. sufficiently explained how and why he apportioned thoracic disability, (4) the exclusion of defense exhibits does not provide a basis for applicant to seek reconsideration, and (5) AME reporting does

not provide a clear basis for applicant's request for a finding of scapular winging or long thoracic nerve palsy, and to the extent that this issue concerns applicant, she could and should have sought clarification with the AMEs in this case prior to the MSC.

The WCJ provided a Report and Recommendation on Petition for Reconsideration and Notice of Transmission to WCAB dated January 6, 2026. In the WCJ's report, she recommends that we deny reconsideration.

Former Labor Code[1] 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.

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 6, 2026 and 60 days from the date of transmission is Saturday, March 7, 2026. The next business day that is 60 days from the date of transmission is Monday, March 9, 2026 (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, March 9, 2026 so that we have timely acted on the petition as required by section 5909(a).

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[1] Any further section references are to the California Labor Code unless otherwise noted.

[2] 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.

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 WCJ's report and recommendation shall be notice of transmission.

Here, according to the proof of service of the WCJ's report and recommendation, the report was served on January 6, 2026 and the case was transmitted to the Appeals Board on January 6, 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 6, 2026.

We have considered the allegations of the petition for reconsideration, the answer thereto, and the contents of the report of the WCJ. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

I DISSENT (see attached dissenting opinion),

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 9, 2026

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

CHRISTINE CASPER DERDERIAN
LEVITZ LEGAL GROUP, A PROFESSIONAL CORPORATION
COX & ASSOCIATES, P.C.

CWF/*cs*

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

DISSENTING OPINION OF COMMISSIONER CAPURRO

I dissent. I would grant the petition for reconsideration, rescind the December 3, 2025 F&A, and order that the matter be returned to the district office for development of the record.

Although the WCJ correctly rejected vocational evidence that is deficient insofar as it does not address applicant's post-injury employment activity, the medical evidence does not support the F&A. Even though the opinions of an AME are entitled to great weight, they are not "controlling" as suggested by defendants. (See *Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114]; *Cagle v. Bank of America*, 2017 Cal. Wrk. Comp. P.D. LEXIS 82, at p. 11 (Appeals Board Panel Decision).) Even the opinions of an AME must meet basic legal requirements in order to constitute substantial medical evidence.

Any decision of the Appeals Board must be supported by substantial medical 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).) Also, a medical opinion is not substantial evidence if it is based on an incorrect legal theory. (*Id.* at 620.)

The opinions of orthopedic AME Dr. Renbaum are deficient with respect to rating and apportionment of cervical spine disability. Labor Code section 4660, subsection (b)(1) requires the use of the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition* (AMA Guides) in assessing the nature of an injury or disfigurement for purposes of determining a percentage of permanent disability. (Lab. Code, § 4660(b)(1).) Chapter 15 of the AMA Guides requires the use of the Range of Motion (ROM) method instead of a Diagnosis-Related Estimate (DRE) in cases involving more than one segment within the same region of the spine. (AMA Guides, § 15.2, pp. 379-381.) Because applicant had a prior surgery to a separate segment of her cervical spine, the ROM method should have been used to assess whole person impairment (WPI) of the cervical spine, unless the physician provided substantial medical evidence demonstrating how and why a more accurate rating required the use of another method set forth in the AMA Guides, as discussed

in the case of *Milpitas Unified Sch. Dist. v. Workers' Comp. Appeals Bd. (Guzman)* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837] (Almaraz-Guzman III). The AME did not provide the analysis required to support an Almaraz-Guzman III rating. He did not explain why the prescribed ROM method would not produce an accurate assessment of WPI in this case. Even if this was a situation where either the DRE or ROM method could be used, the doctor should have provided both assessments in order to assign the method with the higher rating as the proper WPI. Without a proper ROM-based WPI, any related apportionment assessment cannot be substantial.

The decision is also deficient with respect to apportionment of thoracic spine disability. Because the AME clearly opined that applicant's thoracic condition was a result of an industrially provided surgery to the cervical spine, the F&A should have included a discussion of the applicability of *Hikida v. Workers' Comp. Appeals Bd.*, (2017) 12 Cal.App.5th 1249 [82 Cal.Comp.Cases 679]. In *Hikida*, the Court of Appeal held that disability resulting from industrial medical treatment is not subject to apportionment. (*Hikida*, *supra*, 12 Cal.App.5th 1249 at 1252 [82 Cal.Comp.Cases 679 at 681].) Based on the holding in *Hikida*, it appears that apportionment of permanent disability of the thoracic spine should be precluded in this case.

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.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56

Cal.App.4th 389, 393-394 [62 Cal.Comp.Cases 924]; *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741, 752 (Appeals Board en banc); *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. L.A. County Metro. Transit Auth.*, 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. (Citations.)" (*McDuffie v. L.A. County Metro. Transit Auth.* (2002) 67 Cal.Comp.Cases 138, 141 (Appeals Bd. en banc).) 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.) In this case, applicant previously raised the issue of additional discovery, and in our order denying removal based on the WCJ's trial-setting order, we noted that we were not persuaded that later reconsideration would not be an adequate remedy.

I would order development of the record to obtain a substantial medical opinion that correctly applies the AMA Guides as required by section 4660, and, if appropriate, rebuts strict application of the criteria in the AMA Guides in accordance with Almaraz/Guzman III, as well as application of the holding in *Hikida*. Therefore, I dissent.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 9, 2026

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

CHRISTINE CASPER DERDERIAN
LEVITZ LEGAL GROUP, A PROFESSIONAL CORPORATION
COX & ASSOCIATES, P.C.

CWF/*cs*

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

Report and Recommendation on

Petition for Reconsideration and Notice of Transmission to WCAB

Elizabeth Dehn, Workers' Compensation Judge, hereby submits her report and recommendation on the Petition for Reconsideration filed herein

Introduction

On December 22, 2025 applicant, through her attorney of record, filed a Petition for Reconsideration of my December 3, 2025 Findings and Award, served on December 8, 2025.

Petitioner asserts that the order, decision or award was made without or in excess of my powers, that the findings were not supported by substantial evidence, and that the findings do not support the award and order. The petition was timely filed and accompanied by the verification required under Labor Code section 5902 and Regulation 10940(c). To date, I am not aware of an answer having been filed by defendants.

Facts

Christine Casper Derderian, aka Christine Casper, while employed on August 23, 2012, as a special education teacher at Vallejo, California, by Vallejo City Unified School District, sustained an injury when she was grabbed by a student and thrown to the ground. She originally sustained an injury to the cervical spine and headaches. She continued to work as a special education teacher for different employers until October 2017 when she underwent a cervical spine fusion. The parties used Dr. Renbaum as the Agreed Medical Evaluator to address her orthopedic injuries, Dr. Shalom as the AME to address headaches, and Dr. Jed Sussman as the psychiatric AME. Dr. Renbaum originally found the applicant's injury to be permanent and stationary at the time of his November 18, 2018 evaluation.

Following the cervical spine fusion, the applicant developed thoracic spine pain, which AME Renbaum found was in part a compensable consequence of the industrial injury as well as a nonindustrial fall in December, 2018. The applicant underwent a thoracic spine fusion in June, 2020. She developed bilateral scapular winging after that surgery, which Dr. Renbaum also found to be a compensable consequence of the industrial injury.

The matter ultimately proceeded to trial on August 19, 2025 on the issue of injury to parts of body, permanent disability and apportionment, the date the Labor Code section 4658(d)(2) 15% increase of permanent disability went into effect, applicant's request for additional discovery, and

attorney's fees. I ultimately referred the matter to the DEU for a formal rating, and after it was served on the parties, applicant proceeded with a cross examination of the rater. After carefully considering the documentary evidence, the parties' trial briefs and the formal DEU rating, I issued my Findings of Fact, Award and Order on December 3, 2025, which was served on all parties on December 8, 2025. My findings included that applicant sustained an injury to the bilateral shoulders but did not meet her burden of proof of injury to the lumbar spine, bilateral upper extremities and hands, that the record did not need further development, and the applicant's injury resulted in permanent partial disability of 68%. It is from this Findings and Award that applicant seeks reconsideration.

Applicant's Contention

Applicant contends that I erred in (1) not finding that the permanent disability was rebutted by vocational evidence, (2) not ordering further development of the record, (3) following the AME's opinions on apportionment for the thoracic spine, (4) requesting a finding of injury that included diagnoses rather than a finding of injury to the shoulders and (5) excluding defendant's exhibits.

Discussion

1. Applicant did not rebut the level of disability through vocational evidence.

Applicant did not meet her burden of proof in rebutting the permanent disability rating of the AMEs in this case through vocational evidence. I found that the reporting of applicant's expert, Eugene Van de Bittener, was not substantial evidence.

At the time of trial, the applicant was working full time as a teacher in a modified capacity. (Summary of Evidence, 13:3-6.) The vocational evidence shows that the applicant consistently remained employed by a variety of employers in her chosen profession as a special education teacher. Following her employment with defendant, applicant worked as a special education teacher for St Vincent's School for Boys from June, 2013 to November 2015, and then for Petaluma City Schools from November 2015 to November 30, 2018. (Applicant's exhibit 3, page 54.) Following her 2017 surgery, she worked part time as a substitute special education teacher for San Rafael City Schools from October 2020 to June 6, 2021, then from January, 2021 to June 6, 2021 as a guest support teach/aide for Ross Valley Schools, and then for the summer session she worked from June 14 to July 9, 2021. (Id. at page 70.) She also worked as a part time special education teacher in a long time substitute position, and then from August 2022 to June 2023 she worked as

a special education teacher for Petaluma City Schools, initially at a 60% position and then increasing to 70%. (Applicant's Exhibit 4, pages 12.)

Despite this history, applicant's vocational expert, Eugene Van de Bittner, opined that the applicant had a diminished labor market access of 97.36 to 100%, and had access to 0% of the jobs in the open labor market based on the reports of Drs. Shalom, Sussman, and Renbaum in his initial reporting. (Applicant's Exhibit 3, page 94.) He did not change his opinion when he prepared a supplemental report of February 23, 2024, even though he was aware that she was working full time when he prepared that report. As applicant was able to persistently seek out and obtain continued employment as a special education teacher, I did not find that his opinions that she had 97.36% to 100% diminished labor market access to be substantial evidence. Nor did I find it credible that she was restricted to a sheltered work environment given that she had been able to find jobs with multiple employers.

I also did not find that the record needed further development on the issue of the applicant's employability. Applicant requested a functional capacity evaluation (FCE) and supplemental reporting from both the AME and applicant's vocational evaluator commenting on the FCE to clarify work restrictions, functional capacity, and employability. The orthopedic AME, Dr. Renbaum, opinioned, in response to two letters from applicant's counsel, that it appeared that he was being asked to complete an FCE regarding applicant's "employability issues." (Joint Exhibit 117, page 3.)

As the employer's time to look for modified or alternative work to avoid the 15% increase in permanent disability had long since passed, the FCE was not needed to allow the employer to determine if they can provide a permanent modified position. Applicant was also working full time for an alternate employer so I did not find the need for an FCE to determine if she was, in fact, employable.

2. Substantial medical evidence supports my apportionment determination.

All three of the AMEs provided apportionment determinations in their reporting. Petitioner appears to be only challenging my finding that 30% of the applicant's thoracic spine impairment was due to the industrial injury. In his August 12, 2019 report, Dr. Renbaum stated that the applicant's thoracic spine began after a nonindustrial fall. (Joint Exhibit 103.) He reiterated that the pain began after the nonindustrial trip and fall in a subsequent report. (Joint Exhibit 106.,) However, in a later report following the review of an MRI he opined that as the degeneration in

the thoracis spine was one segment below the previously fused level it was in part related to the industrial injury. (Joint Exhibit 107.) He further expounded on why the nonindustrial fall created problems for the thoracic spine in addition to the industrial injuries. (Joint Exhibit 110.) When all of Dr. Renbaum's reports are read together, there is sufficient explanation as to make his opinions regarding apportionment for the thoracic spine substantial medical evidence.

3. Applicant's request for a finding of injury in the form of specific diagnosis was not raised as a trial issue.

The parties agreed at the time of trial that one of the issues was injury to parts of body, with applicant claiming injury to the back, upper extremities and hands. I found that the applicant did sustain injury to the shoulders, based on the diagnosis of scapular winging, but did not meet her burden of proof for injury to the back, upper extremities and hands. Applicant is contending that I should have made a finding of the various diagnosis made by the AME involving the scapular winging, instead of a finding of injury to the bilateral shoulders. This issue was not raised at the time of trial. In addition, my finding of injury to the bilateral shoulders encompassed the pathology identified by the AME. My finding of injury to specific body parts, rather than diagnosis, is also consistent with the practice of finding injury to body parts rather than making a finding on a specific diagnosis.

4. The Findings and Award properly excluded two of defendant's proffered exhibits.

At the time of trial, transcripts of the applicant's deposition were marked for identification. As they were not used for impeachment or attempted impeachment of the applicant, I did exclude them from evidence as impermissible hearsay. I did have a typographical error in my opinion when identifying the exhibits, however my Findings and Order correctly identified the deposition transcripts as Exhibit D and Exhibit E, as marked at the time of trial and as identified in the electronic file management system.

Recommendation

For the foregoing reasons, I recommend that applicant's Petition for Reconsideration, filed herein on December 22, 2025, be denied. This matter is being transmitted to the Appeals Board on the service date indicated below my signature.

Elizabeth C. Dehn
Workers' Compensation Judge
Workers' Compensation Appeals Board

Date: January 6, 2026