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

**DAMON ROBERTSON, *Applicant***

**vs.**

**CITY AND COUNTY OF SAN FRANCISCO,**
**permissibly self-insured, *Defendant***

**Adjudication Number: ADJ16340745**
**San Francisco District Office**

# OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant City and County of San Francisco seeks reconsideration of the Findings of Fact and Award (F&A) issued by a workers' compensation arbitrator (WCA) on April 27, 2026. In that decision, the WCA found, in relevant part, that applicant could self-procure medical treatment without going through the employer's Medical Provider Network (MPN) or making a demand on defendant for the treatment, and that the disc replacement surgery that applicant self-procured, was reasonable and necessary, and should be reimbursed by defendant, based upon the medical report of Independent Medical Evaluator (IME) Steven Feinberg, M.D. The WCA issued an award to applicant of reimbursement for self-procured medical expenses regarding applicant's low back surgery in Germany, in an amount to be adjusted between the parties with the WCA retaining jurisdiction in case of a dispute.

Defendant contends that the WCA erred in his findings by awarding such reimbursement as applicant did not first contact defendant to request authorization for additional treatment within the MPN, and further, in the absence of notice or a request for authorization (RFA) issued by a physician, they were deprived of the ability to conduct Utilization Review (UR) of any treatment recommendation.

Applicant filed an Answer to the petition. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCA recommending that the Petition be denied.

We have considered the allegations in the Petition for Reconsideration, the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated in the arbitrator's Report, and for the reasons stated below, we will deny the Petition.

**I.**

Preliminarily, we note that 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 June 8, 2026 and 60 days from the date of transmission is August 7, 2026. This decision was issued by or on August 7, 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.

[1] All further references are to the Labor Code, unless otherwise stated.

Here, according to the proof of service for the Report and Recommendation by the WCA, the Report was served by the WCA upon the Office of the Ombudsperson on June 3, 2026, delegating service to that Office to effect service of the Report upon the parties, and the case was transmitted to the Appeals Board on June 8, 2026. Thus, it is unknown whether service of the Report and transmission of the case to the Appeals Board occurred on the same day, as there is no proof of service of the Report on the parties. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on June 8, 2026.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on June 8, 2026.

## II.
## BACKGROUND

We previously issued an Opinion and Decision after Reconsideration (Opinion) on January 3, 2025, in which we affirmed the April 22, 2022 findings of the WCA that applicant's claim was not barred by the statute of limitations. As stated in that Opinion, the facts of the case are as follows:

> 1. Damon Robertson, while employed as a firefighter for the City and County of San Francisco, sustained an industrial injury to his low back on August 14, 2017.
>
> 2. On October 19, 2017, Damon Robertson submitted a DWC Form-1 alleged (*sic*) industrial injury to the low back on August 14, 2017 arising out of and occurring in the course of his employment with the City and County of San Francisco.
>
> ` 3. Defendant accepted the claim and paid benefits.
>
> 4. Applicant was off work and paid full salary from August 21, 2017 through March 12, 2018.
>
> 5. Applicant was provided medical treatment by the primary treating physician, Monte Bible, M.D., which treatment was paid for and authorized by the City and County of San Francisco.

6. On April 2, 2018, the applicant was discharged from care by the primary treating physician and, according to his medical report, there was no permanent disability and no need for medical treatment.

7. On April 3, 2018, defendant issued a notice entitled Notice Regarding Denial of Permanent Disability Benefits.

8. In March 2019, the applicant had lumbar disc replacement surgery in Germany, which he paid for. Applicant returned to full duty smartly (*sic*) after the surgery.

9. On October 14, 2019, Damon Robertson filed an Application for Adjudication of Claim with the Workers' Compensation Appeals Board alleging an industrial injury to the low back, while employed by the City and County of San Francisco on August 14, 2017.

***

(Opinion, January 3, 2025, p. 2.)

After the issuance of our decision, the parties continued discovery, and, through the provisions of the Alternate Dispute Resolution agreement (ADR) between the City and County of San Francisco and the San Francisco Firefighters' Association Local 798 made in accordance with section 3201.7, they selected Dr. Feinberg as IME for purposes of disputed issues, including those relating to medical treatment disputes. Dr. Feinberg issued three medical reports and was deposed by the parties. While the parties were in agreement with Dr. Feinberg's permanent disability and apportionment determinations as set forth in his reporting dated September 27, 2021, in his supplemental reporting of July 8, 2025, Dr. Feinberg was specifically asked to consider and opine as to applicant's need for disc replacement treatment, as well as the reasonableness and efficacy of same. He was also asked for his opinion as to the level of disability that would have occurred if he had recommended fusion versus disc replacement. In response to same, Dr. Feinberg opined:

1. The disc replacement surgery was a reasonable alternative for fusion.
2. He had an excellent result from that surgery.
3. The impairment level is the same for disc replacement or a fusion surgery at 1 level.
4. The next question is whether his impairment level would have been higher having undergone a fusion rather than the disc replacement surgery. There is no way to answer this question. He might have an excellent outcome from the fusion surgery as well. If he had not had such a good outcome, the impairment rating might have been a DRE IV at 23% WPJ with an additional 3% for chronic pain. There is no way to know whether this would have been the case or not though. To provide such a judgment would be speculative.

(Jt. Exh. B, at p. 5.)

Dr. Feinberg was deposed on August 4, 2025, and he confirmed his opinion that applicant's disc replacement surgery was a reasonable alternative to a back fusion, and that the fact he was able to return to firefighting duties would support that opinion. He further confirmed such treatment was reasonable from a purely medical standpoint since it was so successful. (Jt. Exh. C, Deposition of Steven Feinberg, M.D., 8/4/25, at. pp. 8:7-15, 15:9-14.)

The parties thereafter attempted mediation to resolve the issue of reimbursement to applicant for the expense of his disc replacement surgery in Germany, but were unsuccessful.

On February 25, 2026, a trial was held before the WCA on the sole issue of "[W]hether the applicant is entitled to reimbursement for self-procured medical expenses regarding his back surgery in Germany." The parties were going to submit Stipulations with Request for Award (Stipulations) for all "normal issues, permanent disability, future medical treatment, et cetera, at a later date." (Transcript of Proceedings, February 25, 2026, at p. 6:2-11.) Exhibits were offered and admitted, and applicant and a witness for defendant testified. The issue was to be submitted for decision upon receipt of the Transcript from the arbitrator. (*Id.,* at p. 37:5-8.)

On March 13, 2026, the parties submitted, and WCA Kahn approved, the parties' Stipulations for 16% permanent disability to the lumbar spine, with future medical care, based upon the reporting of IME Dr. Feinberg's report dated September 27, 2021. (Stipulations, 3/13/26, pp. 8-9.)

On April 27, 2026, the WCA issued the F&A.

## III.

## DISCUSSION

An employer or its insurer is obligated to provide all medical treatment "that is reasonably required to cure or relieve the injured worker from the effects of his or her injury." (Lab. Code, § 4600(a).) "In the case of his or her neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment." (Lab. Code, § 4600(a).) An employer will not be relieved of the duty to furnish medical care absent good cause, and section 4600 has been liberally interpreted in favor of the employee's right to obtain reimbursement. [Citations.] (*Knight v. United Parcel Service* (2006) 71 Cal.Comp.Cases 1423 (Appeals Board en banc.)

If an employer has established an MPN, the employer is only liable for treatment by a physician from within its MPN. (Lab. Code, §§ 4600(c), 4616 et seq.) However, if the employer neglects or refuses to provide reasonably necessary medical treatment, whether through an MPN or otherwise, then an employee may self-procure medical treatment at the employer's expense. (Lab. Code, § 4600(a).)

Where an employee seeks entitlement to treatment outside a defendant's MPN, they hold the burden of proof to show a neglect or refusal to provide treatment by an employer. (Lab. Code, §§ 3202.5; 5705; *Amezcua v. Westside Produce* [2013 Cal. Wrk. Comp. P.D. LEXIS 93, *8]; *Cornejo v. Solar Turbines, Inc.* [2013 Cal. Wrk. Comp. P.D. LEXIS 479, *4]; *San Diego Unified School Dist. v. Workers' Comp. Appeals Bd*. (*Robledo*) (2013) 79 Cal.Comp.Cases 95, 96 (writ denied).)[2] If an employer neglects or refuses to provide reasonably necessary medical treatment, whether through an MPN or otherwise, then an employee may self-procure medical treatment at the employer's expense. (*Knight, supra,* at p. 1434; *McCoy v. Industrial Acc. Com.* (1966) 64 Cal.2d 82, 87-88 [31 Cal.Comp.Cases 93]; *Wei v. Grand Oak Tree, LLC* [2024 Cal. Wrk. Comp. P.D. LEXIS 467, *8-9].)

Notwithstanding applicant's burden of proof, employers have long been obligated to provide notice of workers' compensation information to their employees as part of the obligation to provide reasonable medical treatment under section 4600. The duty to provide notice of workers' compensation information begins before the report of an injury. An employer is required to provide new employees with written notice of information about the workers' compensation process and about where and how to obtain medical treatment at the time of hire or before the end of the first pay period. (Lab. Code, § 3551; Cal. Code Regs., tit. 8, § 9880.) The employer is also obligated to post conspicuous notice in the workplace of information about the workers' compensation process and where and how to obtain medical treatment. (Lab. Code, § 3550; Cal. Code Regs., tit. 8, §§ 9881 and 9881.1.) The failure to properly post such notice "shall automatically permit the

[2] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

employee to be treated by his or her personal physician with respect to an injury occurring during that failure." (Lab. Code, § 3550(e).)

Additional notice obligations are triggered at the time of an industrial injury. Within one working day of receiving notice of injury, the employer must provide the employee with a claim form, information about benefits available to the employee and the workers' compensation process. (Lab. Code, §§ 5401 through 5402; Cal. Code Regs., tit. 8, §§ 9810 through 9812; see also Lab. Code, §§ 138.3 and 138.4.) The failure to properly provide such notice may toll the statute of limitations. (*Reynolds v. Workers' Comp. Appeals Bd.* (*1974*) 12 Cal.3d 726 [39 Cal.Comp.Cases 768]; *Buena Ventura Gardens v. Workers' Comp. Appeals Bd.* (*Novak*) (*1975*) 49 Cal.App.3d 410 [40 Cal.Comp.Cases 434].)

In the context of the provision of medical treatment, failure to provide other required notices may be a neglect or refusal to provide medical treatment that renders the employer or insurer liable for self-procured medical treatment. (*Knight*, *supra*, at p. 1434.)

With regard to notice, the burden of proof rests on the party holding the affirmative of the issue. (Lab. Code, § 5705.) In the event of a dispute about whether the injured worker was provided notice of rights under an MPN, the employer carries the burden of proof. In this case, defendant not only failed to carry its burden of proving that it provided notice to applicant of his rights under the MPN, the evidence established that its failure to provide such notice was a neglect or refusal to provide reasonable medical treatment rendering it liable for applicant's self-procured treatment.

At trial, applicant testified that he sustained an injury to his low back on August 17, 2017 while employed by defendant as a firefighter. Applicant received medical treatment after his industrial injury until April 2018 at Kaiser when he was released from care, after which time he returned to work. (Transcript, at p. 9:14-24.)

After this release, he had increased symptoms and returned back to Kaiser for treatment. (*Id.* at pp. 9:25, 10:1-8, 11:1-21.)

He recalls meeting with spine specialists at a Spinal Center in Oakland, which was a Kaiser facility, to discuss the issue of having a spinal fusion. He knew that a spinal fusion meant that he could not be a firefighter anymore, and he desperately wanted to be one. (*Id.* at pp. 11:24-25, 12:1-8.)[3]

[3] Applicant's recall was assisted by his wife, who was sworn in for her testimony, due to an unrelated brain injury affecting his memory.

When asked by counsel whether the doctors knew that his treatment was for a workers' compensation injury, he advised he did not know. (*Id.* at p. 12:9-21.)

Applicant testified that a firefighter friend of his advised him that there was a new disc replacement surgery in Germany, and he spoke with the Kaiser doctor about the procedure. He was informed that they only performed disc fusions. (*Id.* at pp. 12:22-25, 13:1-2,25, 14:1-2.) He thereafter ended up going to Germany to get the disc replacement because he wanted to go back to work. After the disc replacement surgery, he returned back to his full duties at work. (*Id.* at pp. 14:13-25, 15:1.)

He was asked if he understood the concept of a medical provider network for workers' compensation, and answered, "I guess not." (*Id.* at p. 15:12-14.) The doctors who he went to see were with Kaiser, and when questioned as to whether he understood the distinction between Dr. Bible and the other doctors as far a workers' compensation was concerned, replied, "I just filled out a workers' compensation claim, but I didn't think there was anything different. Like Kaiser is Kaiser." (*Id.* at p. 15:20-25.)

Defendant's witness was adjuster Jason Kim. Mr. Kim testified that he reviewed applicant's file and that applicant did not treat within the City and County's workers' compensation system after his last report from Dr. Bible issued on April 2, 2018, and that there were no requests for authorization submitted in the case, no utilization reviews, and that prior to the applicant's demand for reimbursement, there were no written demands or requests for reimbursement for the treatment in Germany. (*Id.* at pp. 21:4-25, 22:1.4.) He further testified that Kaiser was one of three or four different designated clinics in their MPN. When asked if most workers' compensation claimants know the difference between Kaiser, meaning Kaiser workers' compensation and Kaiser in general, he advised that he "believed that the injured worker should know because they are directed by their departments as to the options that are the available occupational clinics." (*Id.* at pp. 23:17-25, 24:1-12.

No notices were offered into evidence by defendant documenting that applicant was advised as to his rights under the MPN, or was apprised of his "options" regarding available occupational clinics. This is contrary to the requirement that an employee be notified "in writing about the use" of the MPN prior to its implementation and at the time of injury. (Cal. Code Regs., tit. 8, § 9767.12(a).) Moreover, there is no evidence applicant was ever provided notice of his right to be treated by an MPN physician of his choice after the first visit as required by section 4616.3(b),

or of his right under section 4613(c) to dispute an MPN diagnosis and to obtain second and third opinions. The record is further lacking proof applicant was apprised of his ability to avail himself of the MPN Independent Medical Review process (IMR) as set forth in section 4616.4 after the opinion of a third physician regarding a treatment or diagnostic service that remains in dispute. (Lab. Code, § 4616.4(b).)

Further, the sole notice to applicant proffered by defendant at trial is the April 3, 2018 Notice Regarding Permanent Disability Benefits Denial. This notice apprised applicant of his right to a QME to dispute the disability findings of Dr. Bible in his report of April 2, 2018, but provided no guidance on how he was supposed to obtain additional medical treatment within the MPN in the event of an exacerbation.

Information about how to access medical treatment, how to choose and change physicians, how to obtain independent medical review, and, thus, how to generally and specifically "use" the MPN, are all crucial to the provision of reasonable medical treatment.

The record reflects that when applicant returned to Kaiser in September 2018 for a flare up of his back, he discussed his condition with Scott Edward Pinner, M.D., and requested additional studies and a new MRI and X-rays for his back. He received steroid block injections to the L-3, 4, and 5 levels in October, as well as the requested diagnostics.

Applicant also was seen for an office visit in the orthopedic spine surgery department for a consultation. He was evaluated by Yacob Alem, M.D., on December 10, 2018, who recommended that applicant continue with “non-operative intervention.” Dr. Alem further indicated that applicant was “requesting lumbar disc replacement surgery; does not want fusion as he says he wouldn’t be able to go back to work as a firefighter; is considering doing the M6-lumbar disc replacement surgery in Germany.” After discussing that such a surgery may not be a good idea, applicant advised Dr. Alem he would like to meet with Dr. Bains to discuss lumbar disc replacement “here at KP as well the potential for KP to refer him to Germany.” (Def. Exh. D, selected records from Kaiser Permanente, 10/14/25, Bates stamp 0475.)

On January 3, 2019, applicant was examined by Dr. Bains, M.D., and his visit is listed as a Spine surgery consultation “second opinion.” Applicant advised Dr. Bains that he was requesting to be able to go to Germany for a M6 lumbar disc replacement surgery. Dr. Bains advised applicant that disc replacement should not be done at L5-S1, and that the “segment does well with the

fusion." Dr. Bains further noted in his report that "[p]atient has been informed that this technology in Germany will not be approved by KP." (*Id.* at Bates stamp 0479.)

While applicant's treating physician, Dr. Pinner, and consulting physicians Dr. Yacob and Bains advised applicant they would not recommend a disc replacement, applicant was unaware of his rights to the IMR process to dispute those determinations. In fact, Dr. Bains went so far as advising applicant that Kaiser (aka KP) would not approve of the technology. Shortly after this visit, on March 21, 2019, applicant decided to self-procure disc replacement surgery in Germany.

In this case, the WCA found that defendant failed to tender reasonable medical care through the MPN and further failed to provide required notice to applicant of his rights under the MPN. We find no basis upon which to disturb that finding.

**IV.**

The next issue to be determined is whether the medical treatment applicant self-procured was reasonable and necessary to help cure or relieve him from the effects of his industrial injury. After applicant, who remained unrepresented throughout his treatment for his industrial injury, was released from medical care with Dr. Bible in April 2018, he did not request a QME to dispute the doctor's findings but instead returned to work full duty. Thereafter, when his back pain flared up, he returned to Kaiser for additional treatment. Applicant testified, and the records confirm, that he wanted to return to his work as a firefighter, which was why he preferred to undergo disc replacement versus the back fusion recommended. It was only after applicant was verbally denied his preferred and requested medical treatment and self-procured it in Germany that he retained legal counsel, who then filed an Application for Adjudication of Claim (Application) on October 14, 2019 on his behalf.

Thereafter, applicant and counsel filed a request to opt into the City and County of San Francisco and San Francisco Firefighters ADR program, where Dr. Feinberg was selected as the independent evaluator on the claim. (Transcript of Proceedings, March 21, 2022, at p. 9:6-18.)

Turning to the ADR agreement, to which the parties are subject, disputes for medical treatment are governed by Sections 4.1, 6.3, and 7.2 of the Agreement.

Article 4 is entitled "Dispute Resolution Process." Section 4.1 states, in pertinent part:

> 4.1 "Disputes regarding Medical Treatment that remain after mediation shall not go to arbitration but shall be resolved through the procedures in Article 6 of this Agreement. The process described in this Article 4 is the "Dispute Resolution Process."

Article 6 is entitled "Medical Treatment." Section 6.3 states:

> 6.3 "Objections by the Applicant to the denial or modification of medical treatment that cannot be resolved between the Applicant, the adjuster, and the Ombudsperson will be addressed by an IME. The Applicant shall select the IME from the exclusive list of IMEs in an appropriate specialty, but may consult with the Ombudsperson on the selection. If the City believes the selected IME is not in an appropriate specialty, the City will raise the issue with the Ombudsperson. The ADR Director will resolve disputes on whether the selected lME is in the appropriate specialty. The IME will prepare a medical treatment plan of action in consultation with the Applicant's treating physician or specialist. The Applicant shall have the right to an examination by the IME."

Article 7, which is entitled "Medical-Legal Dispute Resolution, includes section 7.2, which states:

> 7.2 "If a comprehensive medical evaluation is required to resolve any medical-legal dispute arising from a claimed injury, either party may initiate the medical-legal dispute resolution process. The dispute will be resolved by an IME."

(Def. Exh. C, pp. 6, 9-10.)

The selected IME, Dr. Feinberg, evaluated applicant and issued three medical reports. Dr. Feinberg was also deposed. His reporting and testimony, as summarized by the WCA in his Opinion, is as follows:

> **MEDICAL REPORTS OF IME STEVEN FEINBERG, M.D.**
>
> Report dated September 27, 2021.
>
> The applicant gave a history of meeting (*sic*) injured on August 14, 2017, when he was driving the back side of a fire truck. The driver directing the front side of the truck hit a bump. He was launched into the air and landed on injured his lower back.
>
> The applicant was sent to Dr. Monty Bible at Kaiser Permanente in Petaluma.
>
> During the following six months, he continued seeing Dr. Bible. An MRI scan of the lower back was done, which showed disc compression. He was prescribed pain medication taken off work. He received physical therapy, chiropractic treatment, which provided some relief.
>
> In 2018, the applicant received radiofrequency appellation, which helped alleviate the plane (*sic*) slightly.

Later in 2018, he returned to work on full duty. He reports the pain in his lower back persisted.

In the fall of 2018, he was recommended for disc fusion surgery. However, he declined because he considered that there were more risks than benefits.

In March 2019, he traveled to Germany to see an orthopedic doctor. He underwent artificial disc replacement surgery, which provided significant pain relief. He received postoperative physical therapy for three weeks in Germany, which helped alleviate the pain and he regained some mobility.

He returned to work in April 2019. However, on August 7, 2019, he developed seizures and aphasia on the right side of his body. On August 10, 2019, he was diagnosed with brain cancer. He underwent a craniectomy on August 27, 2019, but the weakness in his by (*sic*) persisted. He was diagnosed with scoliosis. He was unable to return to work.

In 2020, he started receiving chiropractic treatment, which helped alleviate pain. He reports that the pain in his lower back Roger a lesson (*sic*) until it resolved on its own. Despite this, he continues to receive chiropractic treatment due to discomfort and weakness in his back.

According to the review of medical records, he treated with Dr. Bible in Kaiser through April 2, 2018. On April 12, 2018, Dr. Bible found no further intervention was rewarded (*sic*)and there was no readable (*sic*) impairment. The applicant was MMI. He was released from care with no permanent impairment, disability or continuing medical treatment.

The applicant is currently seen at Kaiser.

The physician finds the applicant is permanent and stationary and became so one year post his spine surgery.

Periods of temporary partial disability include time off work until permanent and stationary.

Regarding his work status, the applicant feels he could have returned to work based on his spine alone and the physician indicates he would agree.

As to apportionment, the physician found it reasonably medically probable to apportion 15% to non-industrial apportionment and 85 to the work-related causation. Of the 85% industrial apportionment, he apportioned 50% of continuous trauma and 50% of the specific injury

The physician found the applicant was in need of future medical treatment for medical management, and flareups.

The spine surgery was reasonable and necessary on an industrial basis and there was an excellent outcome.

As to permanent disability, the physician found for the disc replacement surgery a 20% Whole Person Impairment.

Medical Report of July 8, 2025.

The physician was a supplemental report. The Letter from the parties indicated that while the parties agreed with the permanent disability rating; however, they have additional issues that require their opinion in a supplemental report.

He notes that this case has been delayed by a legal issue that was recently resolved.

Mr. Parent, summarizes that the applicant received a letter from the City and County confirming that Dr. Bible at Kaiser had an (*sic*) April 2, 2018, released him back to work with no permanent disability and no need for care.

Due to the reliance on the opinion of Dr. Bible, all of the care for the most part was denied including request for radiofrequency even from Kaiser Occupational. His eight weeks of German treatment, including his disc replacement surgery, was not reimbursed by the Defendant.

The applicant's out-of-pocket was approximately $35,000.00 for the treatment in Germany.

They are asking him to consider in his report not only the need for that treatment, the reasonableness and efficiency of the disc replacement, but are also asking him to comment upon the level of disability, that would have occurred had he had the recommended fusion, is loss of career and expense from that fusion versus of the success that was rendered in the disc replacement surgery.

Hypothetically, with the applicant's permanent disability rating has been higher had he not undergone the disc replacement surgery and rather had undergone recommend is fusion surgery.

In response to the letter, the physician indicated that the disc replacement surgery was a reasonable alternative for fusion. The applicant had an excellent result from the surgery. The impairment level is the same for disc replacement or fusion surgery at level I.

The next question is whether his impairment letter would have been higher having undergone rather than disc replacement surgery. There is no way to answer this question. He might have had an excellent outcome from the fusion surgery as well. If he had not had such a good outcome, the impairment rating would have been a DRE IV at 23% WPI with an additional 3% for chronic pain. There is no way to

know whether this would have been the case or not. To provide such a judgment would be speculative.

Summary of the Deposition of Stephen Feinberg M. D., dated August 4, 2025

When asked as to whether the applicant would have been able to return to work as a Firefighter, had he had a fusion, the witness testified there was no way to know what the outcome would have been.

When asked if it is his experience that a fusion would leave someone with more disability or inability to lift and carry rather than a disc replacement, he stated he could not answer that question.

There are people with fusion surgery who have complete recovery and return to heavy-duty jobs, including Firefighting or other safety officer work. It is possible.

Assuming that going through his surgery will be successful or else we would not do it, so in that sense it is medically probable.

When asked in this case, you have concluded that the disc replacement surgery that the applicant received was reasonable, the witness testified well not a surgeon, but that is a reasonable alternative, based on his experience and training.

When asked if the fact that he was able to return to firefighting duties would support that opinion, the witness testified he had a good outcome so that is the sense, yes.

When asked if he is given a Utilization Review determination as part of the request from applicant's attorney, is that right, witness testified not that he can recall.

He was not given an independent medical review determination as part of the request from the applicant's attorney.

When asked if he was aware the applicant never sought the disc surgery in Germany through workers compensation, and if he never requested it, and never talk to his doctors, witness testified he doesn't have any evidence that either way, so he assumes no. But he really does not actually know.

He has no knowledge in the records he received or the summary that he ever discussed an alternative to surgery with anyone.

He has no information that the issue ever came up. All he knows that is he was told he went to Germany and had the surgery done.

He believes it was more common in Germany before it became more common in the United States.

> He is of the opinion applicant's medical treatment was reasonable from a purely medical standpoint. We actually know that because it was so successful, if for no other reason.

(Opinion, at pp. 6 – 10.)

Here, the parties utilized Dr. Feinberg as the IME, and to the extent that he was to opine on all issues, the specific issue of the reasonableness of the disc replacement was raised to him. He found said treatment to be both reasonable and necessary, given the applicant's successful recovery. Thus, the only issue still in dispute was applicant's right to reimbursement for his surgery, if it was found that the neglect and failure of defendant to apprise applicant of his rights for treatment in this regard was tantamount to a neglect or failure of same, enabling him to self-procure and ultimately be reimbursed if such treatment proved effective.

The WCA answered both questions as to neglect by defendant and the reasonableness of treatment in the affirmative and awarded applicant reimbursement for "self-procured medical expenses regarding applicant's low back surgery in Germany, in an amount to be adjusted by the parties with the Arbitrator retaining jurisdiction in case of a dispute." We see no basis upon which to overturn such findings.

For the foregoing reasons,

**IT IS ORDERED** as the Petition for Reconsideration of the Findings, Order and Award issued by the WCA on April 27, 2026 is **DENIED.**

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

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

**August 7, 2026**

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

**DAMON ROBERTSON**
**SAN FRANCISCO CITY ATTORNEY**
**BROWN & DELZELL**
**MARK L. KAHN, ARBITRATOR**

**LAS/cm**

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