

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

DEBRA MCCRACKEN, *Applicant*

vs.

**THE STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS &
REHABILITATION, legally uninsured and
administered by STATE COMPENSATION INSURANCE FUND, *Defendant***

**Adjudication Numbers: ADJ12239672; ADJ13283843
Salinas District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact and Orders of February 20, 2026 in case ADJ12239672, wherein it was found that while employed on September 9, 2016, applicant sustained industrial injury to the psyche causing permanent total (100%) disability.

Defendant contends that the WCJ erred in finding permanent total disability arguing that applicant is not permanent and stationary because her condition could improve and that the opinions of qualified medical evaluator psychologist Nataliya Belfor did not constitute substantial evidence because she did not evaluate apportionment to applicant's "orthopedic injuries." Defendant asks that a "regular physician" be appointed pursuant to Labor Code section 5701 to evaluate apportionment. We have received an Answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

For the reasons stated by the WCJ in the Report, which we adopt, incorporate, and quote below and for the additional reasons stated below, we will deny the defendant's Petition.

Preliminarily, we note that former Labor Code 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, Labor Code 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 Labor Code 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 26, 2026 and 60 days from the date of transmission is Monday, May 25, 2026. Monday, May 25, 2026 coincided with the Memorial Day holiday, so the next business day that is 60 days from the date of transmission is Tuesday, May 26, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on May 26, 2026, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 26, 2026, and the case was transmitted to the Appeals Board on March 26, 2026. Service of the Report and transmission

¹ 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.

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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on March 26, 2026.

Turning to the merits, we will deny reconsideration for the reasons stated in the Report. We note that although the WCJ discusses the issue of causation of injury and the case *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc) at length in the Report, these issues were not raised in the defendant's Petition.

With regard to the issue of applicant's permanent and stationary status, while applicant is still receiving (belated) medical treatment due to an acute issue, Dr. Belfor made clear that her condition would likely never improve compared to the status at the permanent and stationary date of May 1, 2023. Dr. Belfor testified at her April 4, 2025 deposition that "the situation has been getting progressively worse" (p. 85). As noted by Dr. Belfor, "If she continues to get worse at the point where her function is at a GAF of 25 having a reevaluation of her is completely useless." (p. 85.) Dr. Belfor stated that she could "state with high degree of medical certainty that she's not going to improve. Unlikely to improve within a year given that she hasn't received proper treatment for psychiatric symptoms and currently probably will not be able to tolerate the treatment. But if I also have to state that she's unlikely to decline then I cannot state that because she continues to decline." (April 4, 2025 deposition at p. 92.) Applicant's disability was already sufficiently low to cause permanent total disability, so any further decline is not relevant to her permanent disability rating. Since Dr. Belfor unequivocally stated that applicant's condition was not likely to improve compared to the May 1, 2023 baseline, applicant was properly considered permanent and stationary for rating purposes even though her condition could continue to decline.

With regard to the issue of apportionment, "The burden of proving apportionment falls on the [defendant]...." (*Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229].) Contrary to defendant's arguments, Dr. Belfor did address the areas of apportionment raised by the defendant in its Petition. With regard to the issue of "pain and limitations from orthopedic injuries," Dr. Belfor states in her final report that "These conditions may have increased subjective distress but did not independently cause permanent psychiatric disability." (December 24, 2025 report at p. 13.) Previously, Dr. Belfor had testified that applicant's impairment was "not related to [physical] pain but related to psychological

maltreatment at work and intrusive thoughts of past injury.” (April 26, 2024 deposition at p. 59.) Thus, Dr. Belfor did address apportionment given the history and records and lines of inquiry presented to her. Dr. Belfor repeatedly stated that she was open to the issue of apportionment if documentation of applicant’s psychiatric state and treatment records were provided to her. However, during the life of the litigation, defense counsel acknowledged that Dr. Belfor had not been provided with the records sought. (August 18, 2023 deposition of Dr. Belfor at pp. 39-40.) We note that the only issue of apportionment raised in defendant’s Petition is the issue of any apportionment to applicant’s “orthopedic injuries.” Dr. Belfor did address this line of inquiry and defendant does not raise any other issue as a basis for apportionment.

We otherwise deny reconsideration for the reasons stated in the Report, which we quote here:

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

DEFENDANT, filed a verified Petition for Reconsideration on March 17, 2026, alleging the WCJ acted without or in excess of her powers, the evidence does not justify the findings of fact and the findings of fact do not support the order, decision or Award.

Applicant filed a timely answer to the Petition for Reconsideration on March 21, 2026, asserting defendant’s petition was untimely as it was filed on March 17, 2026.

The WCJ herein believes the petition was filed timely as the Findings, Award and Order was served on February 20, 2026, and that February 21, 2026, would be the day to start counting the 20 days plus five for mailing pursuant to Labor Code section 5903 and 8 CCR 10605. As such, the petition was timely filed on the 25th day and should not be summarily dismissed.

Applicant’s answer also asserts that the WCJ acted within the powers of the Appeals Board, the evidence justifies the findings of fact, the findings of fact support the orders, decision and Award, and the Findings and Award is supported by substantial evidence and should be affirmed by the Appeals Board.

II **BACKGROUND/FACTS**

While working as a psychiatric nurse for the California Department of Corrections, applicant was involved in a “gassing incident” on 9/9/2016 when an inmate threw a cup containing bodily fluids at a guard, which also hit applicant. This caused applicant distress and she specifically alleges additional stress caused by how she was treated by her supervisors as they did not allow her to clean up, and she drove home with the bodily fluids still in her hair on her clothes. Applicant presented to Work Well five days later for an examination due to the exposure to bodily fluids. There was no lost time from work and no claim filed at this time.

A second “gassing incident” occurred on 3/21/2017, which caused additional distress. Applicant did not miss any work, or seek medical treatment for this incident. Applicant then cut and injured her leg on a metal stool on 1/25/2019, resulting in a staph infection, and MRSA, in her leg, for which she did file a workers’ compensation claim, which was accepted. Applicant retained Vic Redula as her attorney, who filed an Application for Adjudication on 3/7/2019 (ADJ11999255).

Applicant continued to work without any restrictions until 3/31/2020, when she went off work due to orthopedic injuries. She filed a DWC-1 on 4/3/2020 alleging cumulative injuries to both shoulders, back and gluteal muscles, both legs, both ankles, both feet, and both hands. She then amended the DWC-1 on 5/11/2020 to add both knees instead of both legs. The claim was accepted, and IDL was paid for one year, then TD was paid until the 104-week maximum was met. Nanci Price, D.C. was chosen as the QME, who last reported on 4/22/2022 that applicant was not MMI for her orthopedic injuries. Mr. Redula is retained as her counsel for this claim as well.

Since no DWC-1 claim forms had ever been filed for the two separate gassing incidents, the claims were denied based on the Statute of Limitations. The matter went to trial before WCJ Michael Young on 10/7/2020, who issued Minutes of Hearing and Summary of Evidence, and Findings and Order dated 11/13/2020 which are incorporated herein. Judge Young found the injury of 9/9/2016 (the subject of this trial) was not barred by the Statute of Limitations, found the QME panel to be valid, and ordered further development of the record by obtaining an evaluation by Dr. Belfor as the Panel QME in Psychology.

III **DISCUSSION**

QME DR. BELFOR REPORTS CONSTITUTE SUBSTANTIAL **MEDICAL EVIDENCE ON THE ISSUE OF APPLICANT REACHING**

**MAXIMUM MEDICAL IMPROVEMENT AND LEVEL OF
PERMANENT DISABILITY**

Petitioner first contends that Dr. Belfor's reports (and deposition testimony) are not substantial medical evidence based on her opinion that applicant has reached maximum medical improvement as she recommended inpatient psychiatric treatment, along with "urgent" need for neurocognitive evaluation in her last QME report of December 24, 2025.

However, Dr. Belfor had actually requested inpatient psychiatric treatment along with an "urgent" need for neurocognitive evaluation over a year prior in her report dated September 17, 2024 (J-11). In addition, as far back as May 16, 2022, Dr. Belfor stated the applicant required "intensive inpatient or outpatient treatment to focus on stabilizing symptoms." Applicant required medication evaluation and management. (6/15/22 report, J-8). Unfortunately, Dr. Belfor's recommendations for intensive out-patient and/or inpatient psych treatment were ignored until just recently when defendant authorized treatment with Dr. Torrez.

The sole report from Dr. Torrez dated November 17, 2025, indicated applicant failed to receive psych treatment until six years post injury. Dr. Torrez acknowledged applicant had been at Mee Memorial Hospital in a skilled nursing facility for over one year. He confirmed with hospital that the applicant had not been treated psychiatrically but had been receiving wound care for leg ulcers. And, he agreed with QME Belfor that applicant required mental health care for her psychiatric and cognitive symptoms.

While Dr. Torrez was authorized to begin psychotherapy with the applicant at Mee Memorial, Dr. Torrez recommended the transfer of care to a residential mental health facility where he could arrange for a psychiatric consultation and monitor and treat as needed (D-8, emphasis added). The status of the transfer of care and/or authorization of the transfer of care is unknown. Likewise, there is no evidence that psych treatment has been initiated.

Dr. Torrez stated in his report that "Dr. Belfor was adamant that Ms. McCracken requires mental health care of her psychiatric and cognitive symptoms before she can be found MMI." This misstates the record and Dr. Belfor's reporting at least as of May 1, 2023. Dr. Belfor initially concluded applicant was permanent and stationary at the reevaluation of May 1, 2023, with a GAF of 37 and referring to Ms. McCracken explained that, "In her current state of mental health, she is unable to perform her customary duties, nor is she able to compete for jobs in the open labor market, nor sustain the pace and persistence of employment. She urgently requires treatment and housing assistance." (J-8, @p. 16).

Applicant was re-evaluated by Dr. Belfor on August 23, 2024, who issued a report dated September 17, 2024. Per the Interval history, applicant appeared to

be in an altered state of consciousness. Did not know how long she has been hospitalized. Did not remember what happened to her cats or if she had any cats as recently as last year when she was re-evaluated in September, 2023. Her mental health decompensated further, she was upset, anxious and confused. She was unsure how long she has been in this nursing home. Appeared to be in a state of delirium and it appeared she has not been treated for her psychiatric or cognitive symptoms. Cannot verify timeline of events with applicant as she did not have the mental capacity to provide such information.

An Assessment of Disability (pp. 10-11) found her mental health had deteriorated to a GAF of 25 adding her “Behavior is considerably influenced by delusions or hallucination or serious impairment, in communication or judgment.” Dr. Belfor also stated that, “At this point Ms. McCracken should be functionally considered permanent and stationary for the purpose of this case as she is not going to receive necessary treatment and without treatment her condition is not likely to improve.” (J-11 @ p. 11, emphasis added).

Applicant was again re-evaluated by Dr. Belfor on December 5, 2025. In her report dated December 24, 2025, Dr. Belfor maintained the applicant was permanent and stationary. As previously stated in her August 23, 2024, report she found applicant significantly impaired with a GAF of 25 (J-13 @ p.39). Based on these last two evaluations of 8/23/24 and 12/5/25, more than one year apart, applicant’s GAF of 25 remained unchanged despite some improvement in applicant’s delirium. Between August 23, 2024, and December 5, 2025, her condition was well stabilized did not change substantially for more than one year.

Pursuant to 8 CCR 10152, “A disability is considered permanent when the employee has reached maximum medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment.” Dr. Belfor’s reports of 8/23/24 and 12/5/25 establish that applicant’s condition plateaued and did not substantially improve or deteriorate within that time frame. Of import, that timeframe is over one year. When and whether additional psych treatment will eventually improve applicant’s condition is an unknown, but the test for maximum medical improvement is not whether applicant could possibly improve at some point in the future, but whether a condition could be considered well stabilized, and unlikely to change substantially in the next year with or without medical treatment. Dr. Belfor’s reports constitute substantial medical evidence on the issue of applicant reaching maximum medical improvement and her level of permanent disability as of August 23, 2024.

**QME DR. BELFOR REPORTS CONSTITUTE SUBSTANTIAL
MEDICAL EVIDENCE ON THE ISSUE OF APPORTIONMENT**

Pursuant to Labor Code section 4663(c), a physician’s report must include an

apportionment determination to be considered complete on the issue of permanent disability. The physician must determine “what approximate percentage of the permanent disability was caused by the direct result of the injury arising out of and occurring in the course of employment, and what approximate percentage of the permanent disability was caused by other factors, both before and subsequent to the industrial injury.” For a medical opinion on apportionment to be substantial evidence, it must be specific as to the “how and why” requirements established in *Escobedo v. Marshalls* (2005) 70 CCC 604. Petitioner alleges that Dr. Belfor’s opinion on apportionment is not substantial medical evidence as in her last report dated 12/24/25, “she simply states, ‘100% due to industrial factors’.” (See Petition for Reconsideration @p. 8). Petitioner further alleges that Dr. Belfor did not address non-industrial or non-compensable causative factors such as compensable consequence psychiatric disability arising from applicant’s 2020 orthopedic injury claim or to the (non-industrial) leg ulcers thereby making her reports not substantial evidence on the issue of apportionment.

It should be noted that Dr. Belfor evaluated the applicant five times, and submitted eight reports, dated 02/2/2021, 06/15/2022, 5/30/23, 08/09/2-23, 01/24/2024, 09/17/2024, 02/04/2025, and 12/24/2025. In addition, Dr. Belfor was deposed five times on 10/14/2022, 12/02/2022, 08/18/2023, 04/26/2024, and on 04/04/2025, consistently supporting her opinions through her sworn testimony.

QME Dr. Belfor initially evaluated applicant on 01/25/2021 and submitted a report dated 02/23/2021 (Joint Exh. J-6). Dr. Belfor took an extensive history and performed psychological testing. She wrote, “Ms. McCracken worked as a psych technician at the State of California CDCR Soledad at the time of the injury. Her job functions included administering medications, monitoring patients, documentation, wound care, meal service and monitoring. Examinee was a victim of “gassing” when an inmate threw a cup containing a mixture of feces and urine. The mixture of bodily fluids reached her hair, neck, face, hands, went down the front of her smock and got into her shoes.” She was prevented from taking a shower or changing out of soiled clothes by her supervisors. She developed psychological symptoms as a result of this trauma that continue to affect her functioning both at work and outside of work.” (J-6 @p. 11).

Under **CAUSATION**, she wrote, “I find that the examinee’s psychiatric injury meets the 51% predominant cause threshold for occurring in the course of and being the consequence of events of employment. “Gassing” occurred when she was at work performing her duties. The incident triggered psychological symptoms. Additionally, Ms. McCracken reported she was prevented from taking a shower and changing clothes by Nursing Supervisor and Director of Nursing, this also caused psychological symptoms. These actions do not appear to fit under the “lawful personnel actions”; however, I leave this final determination to the trier of fact.” (J-6 @p. 13). Dr. Belfor advised that the report

and her conclusions were supported by the testing data, by the observations of the examinee during the evaluation, and by the results of mental status examination.

In her supplemental report dated January 24, 2024, Dr. Belfor laid the foundation of her apportionment analysis following review of 799 pages of medical records which corresponded to applicant's subsequent injury claims including a second gassing incident in 2017 (previously barred by the statute of limitations), a 2019 industrial staph infection, and 2020 orthopedic injury claim.

Dr. Belfor analyzed the treatment records beginning on 3/23/17, 6 months post psych injury claim of 9/9/2016. Specifically noting, *April 2017 applicant struggling with sleep, headaches, numbness and tingling. Gap in records from April 2017 to Jan 2019, when she contracted a leg infection at work. February 2019 report takes applicant off work for stress, sleep problems and obesity due to "medical condition". March and April 2019 document worsening of stress and anxiety and medications. Records skip to Oct. 2019, wherein applicant appeared to have returned to work, but injured shoulder 10/2/19. Returned to work again Dec. 2019, reinjuring shoulder in Feb. 2020. Returned to modified work. April 2020 report "tearful during treatment and shared she continues to have episodes where she cries thinking about the events that happened at work. Feel she is being bullied." Recommended psych counseling. QME Price 9/21/20 report noted mood disorder and recommended psych consult and treatment. 1/26/21 Dr. Panchal reported history of depression, panic attack, sleep problems, and anxiety. Also noted taking Lexapro. 4/29/21 QME Price again notes mood disorder and indicates she is now homeless. April through September 2021, Dr. Panchal treated applicant for bilateral wrist pain, but also noted mood symptoms and ordered psych screening with results listed as pending. Re-eval by QME Price in 2022 noted over one year earlier applicant kicked out of home for being a hoarder. Pain psychology specialist Dr. Rowe eval 11/23/22, diagnosis pain disorder with related psych factors, recommending CBT, but commenting she is not a good candidate due to "underlying mental illness that affects her judgment, thought processes and ability to tend to her ADLs."* Returned to Dr. Rowe a month later who reported patient is "malodorous and poorly groomed." *Patient wanted to discuss her anger at CDCR and its employees.* (1/24/24 report, J-10, emphasis added).

Dr. Belfor addressed how and why applicant worked without restrictions for three years after her 9/9/16 psych injury and maintained the predominate causation threshold was met (J-10 @p.3). As summarized above, Dr. Belfor documented psych symptoms affecting applicant's ADLs with recommendations for consults or treatment which were not provided and led to deterioration over time. Applicant developed symptoms of hoarding which have been linked to traumatic experiences in literature (study cited) leading to a catastrophic chain of events, where she lost her housing and developed multiple

physical disabilities. Chronic lack of sleep and mood disorder contributed to mental health deterioration - studies cited. (J-10)

In short, Dr. Belfor found while the applicant continued to work she showed evidence of worsening mental health and getting no treatment despite recommendations and referrals from her treating physicians. Dr. Belfor concluded it is more likely that not that her original injury and cumulative work stress (over 51 %) played a major role in her hoarding behavior, resulting in becoming homeless and over time losing the ability to work. Based on the evidence, and to a high degree of medical probability, Dr. Belfor concluded the applicant was unable to work primarily due to her psych injury. (J-10)

Of import, the review of the medical records unequivocally established that shortly after the specific gassing injury of September 9, 2016, applicant had documented psychological symptoms and the need for psychological consultations and treatment on an industrial basis that was completely ignored by defendant.

The foregoing supports Dr. Belfor's Rolda analysis in her February 4, 2025, report which found 60% of applicant's psychiatric permanent disability due to the September 9, 2016, gassing incident, and 40% following the 9/9/16 injury where applicant was prevented from changing out of soiled clothes and from taking a shower by the Nursing Supervisor and Director of Nursing. Dr. Belfor then concluded her apportionment analysis stating, "100% to industrial factors." (J-12 @p. 2).

In her deposition of April 4, 2025, Dr. Belfor conceded it was not possible to have a conversation with the applicant where she would answer questions in a meaningful way. (J-5, p. 80, lines 23-24). However, Dr. Belfor was able to clarify her opinion on apportionment when considering the mental state alone of the applicant, stating, "Based on what happened to her even without considering her other disability - other events where she got injured orthopedically because she had trauma and the trauma went untreated as part of this trauma she developed hoarding symptoms. As part of the outcome of those, she lost housing. This caused a catastrophic set of events that led to her being totally disabled. Psychiatrically totally disabled (J-5, pp. 91, line 4-12).

On December 5, 2025, Dr. Belfor re-evaluated the applicant and submitted a comprehensive report dated December 24, 2025. In this report, Dr. Belfor found 100% of applicant's disability was industrial. She reiterated that the initial injury that went untreated set her on a path of being "re-traumatized" by the second incident when an inmate threw a cup of toilet water at her. This worsened her disability, increasing conflict and diminishing trust between her and her coworkers, and creating a sense of "complaining a lot" in her medical treatment team. So, when she got infected with MRSA it was not addressed by her medical team for a long time resulting in having to take multiple courses of antibiotics

and becoming immunocompromised. *The aspects of Examinee's disability are linked together and in her opinion are connected to the 9/9/2016 injury and its treatment.*" (J-13, emphasis added).

Dr. Belfor's analysis of the entire medical file documenting a need for psychological treatment shortly after her psych injury of 9/9/16 which was ignored by defendant and led to a series of catastrophic events supports Dr. Belfor's *Rolda* analysis and opinion of 100% industrial causation. Dr. Belfor has been thorough and consistent in her opinions and her reports constitute substantial medical evidence on the issues of causation and apportionment.

IV RECOMMENDATION

For the foregoing reasons, it is recommended that the WCAB deny defendant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings of Fact and Orders of February 20, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 26, 2026

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

**DEBRA MCCRACKEN
REDULA & REDULA, LLP
STATE COMPENSATION INSURANCE FUND**

DW/oo

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