WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

EUGENE KARRER, *Applicant*

vs.

ALAMEDA ELECTRIC; AMERICAN ZURICH INSURANCE COMPANY, adjusted by SEDGWICK, *Defendants*

Adjudication Number: ADJ22167079
Goleta District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of August 6, 2026, wherein it was found that while employed as a truck loader during a cumulative period ending October 19, 2025, applicant sustained industrial injury to the lumbar spine and cervical spine causing the need for further medical treatment. All other body parts and issues were deferred. In the Opinion on Decision, the WCJ wrote "of particular significance were the email exhibits authenticated by both Applicant and Defense witnesses, which directly supports the finding of industrial injury on an orthopedic basis."

Defendant contends that the WCJ erred in finding industrial injury, arguing that there was not substantial medical evidence of industrial causation. Defendant also seeks clarification regarding the reference to "email exhibits," given that screenshots of text messages were placed into evidence, but no emails. We have received an Answer from applicant, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report). In the Report, the WCJ clarifies that he mistakenly stated "email" when he meant text messages.

As explained below, we agree that there is no substantial medical evidence of industrial causation. Therefore, we grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further development of the medical record and decision.

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909, which states 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 August 28, 2026 and 60 days from the date of transmission is October 27, 2026. This decision is issued by or on October 27, 2026, so that 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 28, 2026, and the case was transmitted to the Appeals Board on August 28, 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 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 August 28. 2026.

II.

Turning to the merits, applicant testified to symptoms that he alleges were caused by his employment, and these complaints were also recorded in the medical reporting. Additionally,

treating physician orthopedist Alan Moelleken, M.D. records range of motion deficiencies with regard to the spine. However, none of the medical reporting, including the reporting of Dr. Moelleken, contains any discussion of the issue of industrial causation of the alleged lumbar and cervical spine injury.

"Expert testimony is necessary 'where the truth is occult and can be found only by resorting to the sciences.' [Citation.]" (*Peter Kiewit Sons v. Ind. Acc. Com. (McLaughlin)* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].) Although the WCJ found the applicant's testimony credible, lay testimony alone cannot establish industrial causation in a cumulative injury case. As the *McLaughlin* court explained:

> If a painter falls to the ground as the result of a scaffold collapse, breaking his leg, common sense dispenses with medical evidence of causation. Other sources of disability are less available to lay discernment. In *City & County of San Francisco v. Industrial Acc. Com. [(Murdock)* (1953)] 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103], the court annulled a finding of industrial causation of a fatal heart attack, asserting the necessity of medical evidence. *Guarantee Ins. Co. v. Industrial Acc. Com. [(Tuban)* (1949)] 88 Cal.App.2d 410 [13 Cal.Comp.Cases 264], held that lay evidence was not adequate to establish impairment of vision by arc welding flashes. In *Pacific Employers Ins. Co. v. Industrial Acc. Com. [(Collins)* (1941)] 47 Cal.App.2d 494 [6 Cal.Comp.Cases 270], the connection between an industrial leg trauma and varicose ulcers was held to be outside the competence of lay witnesses.
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> Examples might be multiplied. They condense into the general proposition that the medical cause of an ailment is usually a scientific question, requiring a judgment based upon scientific knowledge and inaccessible to the unguided rudimentary capacities of lay arbiters.

(*McLaughlin, supra*, 234 Cal.App.2d at p. 839.)

The *McLaughlin* court noted that, "[b]ack disabilities in particular shout loudly for expert advice." (*Id.*)

Any findings by the WCAB must be based on substantial evidence. (*LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620 [Appeals Board en banc].) In order to constitute substantial evidence upon which the WCJ may base his or her decision, a medical opinion may not be based upon surmise, speculation, conjecture or guess. It is not substantial evidence if it is known to be erroneous, based upon facts no longer germane, based upon an incorrect legal theory, or based upon an inadequate medical history and examination. (*Hegglin v. Workmen's Comp.*

Appeals Bd. (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 1993]; *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 801 [33 Cal.Comp.Cases 358].) There must be a solid and reasonable basis in the medical report for the physician's final conclusion. It is not sufficient for the WCJ to blindly accept a medical opinion that lacks a solid underlying basis. Instead, the WCJ must carefully judge the report's weight and credibility; the evidence must have some degree of probative force. (*National Convenience Stores v. Workers' Comp. Appeals Bd. (Kessler)* (1981) 121 Cal.App.3d 420, 427 [46 Cal.Comp.Cases 783].)

Here, there was no medical evidence supporting industrial causation of the cervical and lumbar spine injury. The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) medical evidence on an issue. 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].) In accordance with that mandate, we will grant reconsideration, rescind the WCJ's decision and return this matter to the trial level for further development of the medical record and decision.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings and Award of August 6, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of August 6, 2026 is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 27, 2026

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

EUGENE KARRER
JOSEPH LOUNSBURY
SINGERMAN LAW P.C.

DW/bp

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