WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FERNANDO MARTINEZ, *Decedent*; OLGA SALAS and DAMIAN SALAS, *Applicants*

vs.

JNR AG, INC.;
STAR INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ16035139
Bakersfield District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Rulings and Orders Admitting Evidence, Findings of Fact and Order (FF&O) issued by the presiding workers' compensation administrative law judge (PWCJ) on April 30, 2026, wherein it was found that decedent sustained an injury arising out of and in the course of his employment (AOE/COE) in the form of cardiac arrest resulting in his death on March 31, 2022, while employed by defendant as farm worker.

Defendant contends that the finding of AOE/COE was not based on substantial medical evidence.[1]

We received an Answer from applicant. The PWCJ issued a Report and Recommendation (Report), which recommends that the Petition be denied.

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

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[1] Defendant is reminded that petitions for reconsideration are limited to 25 pages. (Cal. Code Regs., tit. 8, § 10940(d).) Defendant's attempt to circumvent the page limit by single spacing and using a smaller font is noted, and defendant is cautioned that in the future, such conduct may be subject to sanctions. Moreover, the apparent contention in the Petition that the medical reporting is somehow speculative because the physician could not examine decedent because he was deceased, is not well taken and borders on frivolous. As discussed herein, we agree with the PWCJ that the medical reporting is substantial evidence and supports the finding that decedent's death was industrially caused.

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.
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> (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 July 21, 2026 and 60 days from the date of transmission is Saturday, September 19, 2026. The next business day that is 60 days from the date of transmission is Monday, September 21, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, September 21, 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.

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[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.

Here, according to the proof of service for the Report, the Report was served on July 21, 2026, and the case was transmitted to the Appeals Board on July 21, 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 July 21, 2026.

II.

With respect to the procedural history, in a stipulation approved December 17, 2025, the parties agreed that two applicants were dependent on decedent, that neither dependent would testify, and that trial would be conducted via remote video conferencing. The parties proceeded to trial on January 21, 2026 on the issues of injury AOE/COE and attorney fees. (Minutes of Hearing (MOH), January 21, 2026, p. 2, lns 17-23.)

On April 30, 2026, the PWCJ issued the FF&O, which found in part that decedent "sustained an injury arising out of and in the course of his employment in the form of cardiac arrest resulting in his death on March 31, 2022 while employed in Bakersfield, California, as a Farm Worker (Occupational Group 491)[3] by Defendant." It was also found that defendant was insured by Star Insurance Company. The issue of attorney's fees was deferred.

In the Opinion on Decision (Opinion), the PWCJ states in part that "Defendant vigorously disputes whether Decedent's fatal injury arose from the employment. In fairness, Decedent was engaged in fairly benign activities for a short period of work after time off work. He had also very substantial prior and non-industrial contributing risk factors." The PWJC also states that "reliance is placed on the expert and uncontroverted opinion of the Qualified Medical Evaluator." (Opinion, p. 4.)

He further stated with respect to the evidentiary issues that:

> Defendant objected generically to Applicant's proposed documentary exhibits as insubstantial. Pre-Trial Conference Statement 9/25/2025 p. 3. However, this confounds legal concepts. Evidence is admissible if it is relevant, competent and unprivileged. Evidence is substantial if it justifies a finding made in reliance upon it. Admission of evidence and reliance on evidence are different things that happen at different points in the adjudicative process.

[3] Although we do not rely on occupational group number in reaching our opinion, we note that decedent's occupational group number 491 is designated as "4 Heavy," which is the second most arduous strength designator out of five possible designations. (Schedule for Rating Permanent Disability, (January 2005), p. 3-27.)

> Further, it is noted that Defendant also offers most of the same evidence, particularly the QME's reports and deposition testimony. Minutes of Hearing 1/21/2026 3 lines 7-28. When evidence is offered in WCAB proceedings, it for the purpose of having a WCJ rely upon it for proof of any fact in dispute. Lab.C. §5703. Thus, under the normal rule of Invited Error, a compensation litigant may not offer evidence and then object to the same evidence as "insubstantial" i.e. not reliable to proof of any fact in dispute.

(Opinion, p. 4.)

The PWCJ concluded that: "]c]ritically, contrary medical-legal evidence does not appear in the record. Most likely, an industrial death occurred." (Opinion, p. 5.)

In his Report, the PWCJ discusses the parties' contentions as follows:

> It does not appear to be disputed that Decedent's fatal heart attack occurred in the course of his employment. He was in the workplace during working hours and was performing assigned tasks with workplace tools. However, Petitioners dispute whether Decedent's fatal injury arose from his employment. Decedent had significant prior and non-industrial risk factors and was performing relatively benign activities for a short period of time after returning to the workplace following time off.
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> . . .
>
> Petitioners explain that the brief period of very light work activities performed by Decedent before his death combined with his pre-existing and non-industrial risk factors make it sufficiently unlikely that Decedents cardiac arrest arose from employment that Dr. Simon's reporting and testimony to the contrary must be speculative and inconsistent with the applicable legal standard. Pending Petition 5/05/2025 p. 6 line 22 to p. 7 line 20.
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> Petitioners also argue that Dr. Simon's analysis that Decedent probably had a significant fixed blockage in his coronary arteries which experienced a plaque rupture from the fatal work activities and "began the cascade of a heart attack and malignant arrhythemia leading to death" was bereft of "facts that rise to the level of substantial medical evidence to support this statement." Pending Petition 5/05/2026 p. 13 lines 18-27.
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> Petitioners also reviewed Dr. Simon's deposition testimony in detail and concluded that:
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> > As provided above, it is evident that the opinions provided by Dr. Simon in his deposition testimony further established that his opinions are based on surmise, speculation, conjecture and guessing and it therefore does not constitute substantial medical evidence. Pending Petition 5/05/2026 p. 25 lines 2-4.
>
> . . .

> Applicants' Answer directly addresses Petitioners' denial of the substantiality of Dr. Simon's reports and testimony. Applicants[] point out that requiring direct examination of Decedent is unreasonable such that only an coroner performing an autopsy would be able to opine regarding industrial causation. Answer to Petition for Reconsideration 5/11/2026 p. 4 lines 1-8. Dr. Simon was provided with extensive medical records (919) pages, was well aware of Decedents prior and non-industrial risk factors, underwent extensive cross-examination during his deposition regarding these factors and nevertheless opined that an industrial death was reasonably medically probably. Answer to Petition for Reconsideration 5/11/2026 p. 4 lines 9-23.
>
> It is also worth noting that Petitioners' prayer for a finding that industrial causation did not occur is unsupported by evidence. If the reports and testimony of Dr. Simon (the unrebutted medical-legal evidence) flunk the test of substantial evidence, that would warrant an order for further development of the medical-legal record rather than a denial of industrial causation.

(Report, pp. 2-4.)

III.

We first observe that both parties submitted the same evidence at trial, including the same medical evidence.[4]

With respect to the evidence surrounding how the incident occurred, the parties submitted the employer's incident report of applicant's injury (Exhibit 5, Incident Report, March 31, 2022) and the report from the Kern County Coroner (Exhibit 4, Kern County Coroner's Report, September 20, 2022).

In the incident report, employer witness Claudia Diaz wrote that:

> Employee Fernando Martinez was working when we heard him complain of an ache, when he suddenly fainted. It had been approximately 8:30 am when the accident occurred. Other coworkers and I started to do CPR immediately. Forman [*sic*] called his wife to ask about his medical history (information that ambulance would need). We here told he suffered from diabetes, high blood pressure, and had heart surgery in the past. My co-workers and I continued to do chest compressions until paramedics arrived.

(Exhibit 5, p. 5.)

[4] The record contains multiple duplicate exhibits that are identified by separate numeric and alphabetic identifiers. For ease of reference duplicate exhibits are referenced only by their numeric identifier.

Deputy Erika Gonzalez investigated the incident and prepared the coroner's report. (Exhibit 4.) Following her investigation, deputy Gonzalez reported in relevant part that:

> . . . I observed grapevine orchards and the rows of the grapevines traveled In a north/ south direction. The grapevines appeared appropriately 6 feet in height and Intertwined within each other at the top creating a tunnel. . . .
>
> . . .
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> I spoke to the J NR Ag Incorporation, Sandridges Partners Safety Officer Salvador Castellanos who was present on scene. He advised on March 31, 2022 the company which employed the decedent, was their first day back to work after having a few weeks off. The decedent and his co-workers arrived.to work at 0800 hours, and their job for the day was to remove the leaves and debris from the shrubs of the grapevines with their hands. . . .
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> . . .
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> I spoke to Claudia Diaz and Alvaro Valle who were working with the decedent during the Incident. Claudia was CPR certified person for the company and the shift. Alvaro advised he was working with the decedent on the opposite side of him; with their backs facing each other. They were talking as they were removing the leaves from the grapevines when he suddenly heard the decedent become quiet, and momentarily heard him grunt and heard as he collapsed backwards onto his back. Alvaro yelled for help, and Claudia responded from a few rows down and Initiated life saving measures. 911 was contacted and paramedics responded to the scene and took over medical aid.
>
> I spoke to Olga [Hernandez] and gathered the following Information: On the morning of the decedent's death, he woke up at 0450 hours, and got ready for work. The decedent never voiced any medical complaints. At 0540 hours, he left his residence to work on his first day, as he had been off of work for the past few weeks as his company had stopped work. The decedent had been working in the fields for the past eight years prior to his death. . . .

(Exhibit 4, p. 2.)

Deputy Hernandez concluded that: "After completing an investigation in conjunction with the Kern County Fire Department, the death of Fernando Martinez Burgos was determined to be of natural causes." (*Id.* at p. 3.)

The parties submitted medical evidence by Panel Qualified Medical Evaluator (PQME) Benjamin Simon, M.D., in the specialty of internal medicine, with a subspecialty in cardiovascular disease.

In his December 2, 2024 report, Dr. Simon states that: "[a]pproximately 915 pages of records have been received and reviewed." (Exhibit 7, Benjamin Simon, M.D., December 2, 2024, p. 1.) Under causation the doctor states:

> The applicant suffered a cardiac arrest shortly after beginning work. The applicant was employed as a farm laborer. A coworker documented that at the time of his collapse, he was performing physical activities consistent with his job duties as a farm laborer including removing leaves and debris from the shrubs of the grapevines with their hands.
>
> It is well-known that cardiac events can occur at times of physical labor due to physical activities increasing blood pressure or due to the release of catecholamines (which may also increase blood pressure). Both increasing blood pressure and/or releasing catecholamines may increase the risk of an irregular heart rhythm. These risks are obviously markedly increased in individuals with known coronary artery disease such as in the case of the applicant. It is likely that the applicant had a significant fixed blockage in his coronary arteries. The activities discussed above then led to a plaque rupture which caused an occlusion of the coronary artery. This then began the cascade of a heart attack and a malignant arrhythmia leading to death.
>
> Understanding that the applicant was performing physical labor at the time of his collapse, it would be within reasonable medical probability that the activities of his labor contributed to his cardiac arrest and subsequent death. Therefore, there is an industrial causation for the applicant's unfortunate death.

(Exhibit 7, pp. 34-35.)

In his February 17, 2025 supplemental report, PQME Dr. Simon discussed decedent's significant medical pathology and again concluded that "I continue to opine that it would be within reasonable medical probability that the physical activities that he was performing in the 30 minutes before his death were a contributing cause of his death as reviewed above." (Exhibit 8, Benjamin Simon, M.D., February 17, 2025, p. 6.)

On June 5, 2025, defendant took the deposition of PQME Dr. Simon, who responded to a question about causation by stating:

> Well, it was -- the information that was provided to me was that he was beginning to do farm labor work. Whether it -- how physical it was, I don't know. I wouldn't be able to obtain that information. Activity increases -- the blood pressure increases the heart rate, and that is a contributing factor to raise the blood pressure, which causes increases of likelihood of plaque rupture causing a heart attack.

(Exhibit 9, Deposition of Benjamin Simon, M.D., p. 22, lns 5-12.)

PQME Dr. Simon further explained:

> Well, activity increases blood pressure. I get up and walk across the room, and my blood pressure will change. My heart rate will change. All those things can cause human dynamic changes. Activity of work no matter what that work is does change hemodynamics. We' re talking about that he was – he wasn't at rest. He was in the course of his employment doing activities, and those activities do change his hemodynamics.

(*Id.* at p. 23, lns 9-17.) He further responded that: "As I discussed previously, activity increases the blood pressure. Whether it increased to a pathological level, which I think would be unlikely or just increased to whatever level is without question what occurs with any activity." (*Id.* at p. 37, lns 14-18.)

PQME Dr. Simon did not change his opinions despite extensive cross examination which included questions such as: "While that may be true, Doctor, you don't know and cannot say with medical certainty that the 30 minutes that this applicant was picking up leaves was the cause of that activity?" and also "[t]hen you cannot state with medical certainty that this activity actually was the cause of his death?" (*Id.* at p. 42, lns 11-14; p. 44 lns 23-24.)

IV.

As a preliminary matter we note the caption of the FF&O contains an obvious clerical error where it lists defendant's insurance as "AMERITRUST GROUP," despite the parties' stipulation at trial that the insurer is Star Insurance Group. The FF&O finding number 2, however, correctly lists the insurer as Star Insurance Company. This finding is consistent with the other pleadings, including the PWCJ's report. As the error is cosmetic and does not affect the findings or orders in this matter, correction is not required but the error is noted for clarity.

If an injury causes death the employer shall be liable for the reasonable expenses of the employee's burial and a death benefit payable to the dependents. (Lab. Code, §§ 3600, 4701.)[5] The applicant bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5, 5705.) Medical evidence that industrial causation was reasonably probable, although not certain, constitutes substantial evidence for finding injury AOE/COE. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408,

[5] Unless otherwise stated, all further statutory references are to the Labor Code.

417 [33 Cal.Comp.Cases 660].) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Worker's Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].)

Indeed, it is a well-settled legal principle that the causation requirement of workers' compensation is satisfied where the connection between the employment and injury or death is a contributing cause of the injury or death. (*Clark*, *supra*, 61 Cal.4th at p. 298.)

The issue of industrial causation "may run a gamut from the blatantly obvious to the scientifically obscure." (*Peter Kiewit Sons v. I.A.C.* (*McLaughlin*) (1965) 234 Cal.App.2d 831, 839 [30 Cal.Comp.Cases 188].) "[T]he 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." (*Ibid*.)

Here, the basic facts surrounding the claimed injury are not disputed. Applicant was employed as a farm laborer performing physical activities and suffered cardiac arrest shortly after beginning work. (Exhibit 7, pp. 34-35; see Exhibits 4, 5.) Because the cause of cardiac arrest is a scientific question it requires "a judgment based upon scientific knowledge and inaccessible to the unguided rudimentary capacities of lay arbiters." An expert medical opinion is required. (*McLaughlin*, *supra*, at p. 839.) The medical opinion provided in this case was evidently by way of the PQME process resulting in opinions by PQME Dr. Simon. (See Lab. Code, §§ 4060 et. seq.)

PQME Dr. Simon discussed what he described as the well-known cardiac events that can occur at times of physical labor before concluding "it would be within reasonable medical probability that the activities of his labor contributed to his cardiac arrest and subsequent death" and that "there is an industrial causation for the applicant's unfortunate death." (Exhibit 7, pp. 34-35.)

It is clear PQME Dr. Simon understood the nature of the evidence available to him and as such he stated:

> Well, it was -- the information that was provided to me was that *he was beginning to do farm labor work*. Whether it -- *how physical it was, I don't know*. I wouldn't be able to obtain that information. *Activity increases -- the blood pressure increases the heart rate, and that is a contributing factor to raise the blood pressure, which causes increases of likelihood of plaque rupture causing a heart attack.*

(Exhibit 9, p. 22, lns 5-12, emphasis added.) And further:

> Well, activity increases blood pressure. I get up and walk across the room, and my blood pressure will change. My heart rate will change. All those things can cause human dynamic changes. *Activity of work no matter what that work is does change hemodynamics*. We' re talking about that he was – *he wasn't at rest. He was in the course of his employment doing activities, and those activities do change his hemodynamics*.

(*Id.* at p. 23, lns 9-17, emphasis added.)

In the Petition, defendant seeks to focus on the decedent's limited work activities on the day of death and in doing so invites the trier of fact to arrive at a contrary medical conclusion. That is not the correct application of law in a workers' compensation case. The trier of fact, as a lay person, is charged to *determine the facts*. Here there is no dispute as to the facts, but only a medical question as to whether those facts result in an industrial injury. In all but the simplest cases the question of industrial causal connection requires expert medical opinion. (*McLaughlin*, *supra*, at p. 839.)

"Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Although defendant takes great umbrage with PQME Dr. Simon's opinions, defendant does not identify errors in the reporting other than an ultimate difference of opinion on causation. Defendant does not raise any issues with PQME Dr. Simon's reporting that would call into question its substantial nature. (*Hegglin*, *supra*, at p. 169.) We concur with the PWCJ that the opinions of PQME are substantial evidence. This is because, in part, evidence in the form of a medical opinion is required to be reasonably medically probable, not certain. (*McAllister*, *supra*, at p. 417; see *Rosas*, *supra*, at p. 1701.)

At heart, it appears the true nature of defendant's objection arises from a misunderstanding as to the nature of proof required to establish industrial causation for a workers' compensation injury. Defendant appears to be of the opinion that a finding of industrial injury requires medical certainty. This position is evidenced by defendant asking the doctor at deposition the questions: "While that may be true, Doctor, you don't know and cannot say with *medical certainty* that the 30 minutes that this applicant was picking up leaves was the cause of that activity?" and also

"[t]hen you cannot state with *medical certainty* that this activity actually was the cause of his death?" (Exhibit 9, p. 42, lns 11-14; p. 44 lns 23-24, emphasis added.)

The requirement for medical certainty posited by defendant would preclude a finding of causation in many, if not all, industrial injuries, including the injury claimed before us. Unfortunately for defendant, medical certainty is not the required standard.

Again, it is well established that a reasonable medical probability, although not certain, is substantial evidence for finding injury. (*McAllister*, *supra*, at p. 417, see *Rosas*, *supra*, at p. 1701.) Indeed, the standard of proof for causation only requires that an injured worker show that employment is a contributing cause of the injury or death. (*Clark*, *supra*, at p. 298.) Indeed, "[a] corollary of the no-fault principles of workers' compensation is that 'an employer takes the employee as he finds him at the time of the employment.' [Citations.]" (*Id*., at p. 300.) Here, even when we take defendant's lay opinion into consideration that the activities were minimally taxing, it is clear from PQME Dr. Simon's substantial opinions that decedent's work activities were to a reasonable medical probability a contributing cause of death.

Accordingly, we deny defendant's Petition for Reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 21, 2026

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

OLGA SALAS
DAMIAN MARTINEZ SALAS
CHAIN COHEN CLARK
FLOYD SKEREN MANUKIAN LANGEVIN

PS/oo

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