

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

**IRMA LOYOLA, *Applicant***

**vs.**

**STORYTELLER CHILDREN'S CENTER, INC.; ILLINOIS MIDWEST AGENCY,  
administered by PRO CENTURY INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ11832412  
Santa Barbara District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Defendant seeks reconsideration of the January 9, 2026 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a housekeeper on June 29, 2017, sustained industrial injury to her cervical spine, right shoulder, right elbow, right knee, and lumbar spine. The WCJ found that applicant's petition to reopen for new and further disability was timely filed and that applicant sustained 58 percent permanent partial disability.

Defendant contends that applicant did not sustain new and further disability within five years of her original injury. Defendant further asserts entitlement to apportionment of applicant's right knee disability.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted and the case returned for revisions to the calculation of permanent disability.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant reconsideration and affirm the F&A, except that we will defer the issues of permanent

disability, apportionment, and attorney's fees. We will then return this matter to the trial level for further proceedings and decision by the WCJ.

## **FACTS**

The instant dispute involves applicant's Petition for New and Further Disability. Applicant sustained injury to her cervical spine, right shoulder, right elbow, and right knee while employed as a housekeeper by defendant Storyteller Children's Center on June 29, 2017.

The parties selected Andrew Rah, M.D., as the Qualified Medical Evaluator (QME) in orthopedic medicine. Dr. Rah initially evaluated applicant on April 8, 2019, and issued supplemental reports on May 10, 2019 and May 31, 2019. (Ex. 16, Report of Andrew Rah, M.D., dated March 15, 2021, at p. 17.)

On March 15, 2021, Dr. Rah issued a supplemental report finding applicant to be permanent and stationary. The QME quantified applicant's impairment arising out of her injury to the cervical spine, right shoulder, right elbow, and right knee. (Ex. 16, Report of Andrew Rah, M.D., dated March 15, 2021, at pp. 19-20.)

On August 20, 2021, a WCJ approved the parties' joint stipulation that applicant sustained industrial injury to her cervical spine, right shoulder, right elbow, and right knee, and issued an Award for 43 percent permanent partial disability.

On September 28, 2021, applicant sought treatment with treating physician Christopher Proctor, M.D., who noted ongoing complaints of persistent knee pain since applicant's 2020 right knee surgery. The physician conducted a physical examination of applicant and concluded that because both physical therapy and non-steroidal anti-inflammatory medications had failed, authorization would be requested for intra-articular corticosteroid injections. (Ex. 15, Report of Christopher Proctor, M.D., dated September 28, 2021, at p. 4.)

On October 19, 2021, applicant filed a Declaration of Readiness to Proceed to Expedited Hearing, asserting a treatment dispute regarding industrial body parts.

On November 12, 2021, treating physician Dr. Romero evaluated applicant, noting "worsening right shoulder and right knee pain following a work injury back in 2017." (Ex. 11, Reporting of Anthony Romero, M.D., various dated, at p. 154.) Applicant's shoulder pain was noted to be "as high as a 8/10, worse with reaching behind her back, reaching overhead, and sleeping on that side ... [s]he also has right knee pain that escalates as high as an 8/10, which is

worse with weight bearing activities.” (*Ibid.*) Dr. Romero updated his treatment plan to include a request for MR arthrogram of the right shoulder “to evaluate the rotator cuff and labrum,” an “unloader” knee brace, right knee hyaluronic acid injections, and medications. Dr. Romero further noted that applicant’s condition “is not permanent and stationary.” (*Id.* at p. 157.) On November 15, 2021, Dr. Romero issued a corresponding Request for Authorization form (RFA).

On December 15, 2021, applicant filed a Petition to Reopen her case.

On February 1, 2022, the parties attended a Mandatory Settlement Conference (MSC) at which time applicant selected a new Primary Treating Physician (PTP). (Ex. 19, Minutes of Hearing, dated February 1, 2022.) The WCJ ordered the conference continued to February 22, 2022.

On February 22, 2022, the parties attended an MSC. The minutes reflect applicant’s pending appointment with Dr. Wickman set on March 29, 2022. (Ex. 18, Minutes of Hearing, dated February 22, 2022.)

On March 29, 2022, PTP Dr. Wickman reevaluated applicant. Applicant presented with complaints of “increasing neck pain and left radiculopathy over the last year.” (Ex. 13, Report of Amy Wickman, M.D., dated March 29, 2022, at p. 4.) Applicant described the pain as “severe and interferes with completing work at home and sleeping.” (*Ibid.*) Dr. Wickman reviewed March 29, 2022 x-ray studies, which demonstrated “cervical lordosis decreased and disc height loss C5-6,” (*Id.* at p. 6) and diagnosed neck pain with left-side radiculopathy, degenerative disc disease at C5-6, hyperreflexia and left shoulder impingement. (*Id.* at p. 7.) Dr. Wickman requested authorization for a new course of physical therapy, medications, a cervical spine MRI study “for left radiculopathy and worsening symptoms, with hyperreflexia,” and a left shoulder ultrasound. (*Ibid.*)

On April 1, 2022, Dr. Romero reevaluated applicant, noting that she “continues to struggle with right shoulder and right knee pain.” (Ex. 11, Reporting of Anthony Romero, M.D., various dated, at p. 150.) Applicant elected to undergo knee injections, and Dr. Romero further requested authorization for a “right shoulder cortisone injection into the subacromial space.” (*Ibid.*) Dr. Romero also indicated that applicant’s condition “is not permanent and stationary.” (*Ibid.*) Dr. Romero submitted a corresponding RFA on April 4, 2022. (*Id.* at p. 145.)

On April 7, 2022, Dr. Romero administered a right shoulder cortisone injection. (Ex. 11, Reporting of Anthony Romero, M.D., various dated, at p. 143.)

On April 21, 2022, April 28, 2022, May 12, 2022, and May 18, 2022, Dr. Romero administered additional injections in the series. (Ex. 11, Reporting of Anthony Romero, M.D., various dated, at p. 139, 137, 135.)

On June 20, 2022, QME Dr. Rah conducted a reevaluation of applicant. Therein, Dr. Rah noted that he had evaluated applicant on two prior occasions and had previously determined that applicant had reached a permanent and stationary plateau. (Ex. E, Report of Andrew Rah, M.D., dated June 20, 2022, at p. 17.) Dr. Rah undertook a clinical examination of applicant and reviewed interim medical records. Following his review of the submitted medical record, the QME concluded that “there is no significant change in [applicant’s] condition and the additional treatment that she has undergone has not improved or worsened her condition.” (*Ibid.*)

On June 27, 2022, treating physician Dr. Romero reevaluated applicant for “worsening right shoulder and right knee pain,” noting that applicant was post right shoulder decompression and right knee arthroscopy. Applicant had undergone right knee and shoulder injections without lasting benefits and complained of pain levels of 8/10 with reaching and weight-bearing activities. (Ex. 11, Reporting of Anthony Romero, M.D., various dated, at p. 127.) Dr. Romero opined that applicant’s “right knee pain unfortunately did not respond to a series of hyaluronic acid injections ... she has already tried [physical therapy], NSAIDs, arthroscopy ... [h]er pain is localized to her lateral compartment where she has moderately advanced arthritis ... [s]he is young to consider a knee replacement.” (*Id.* at p. 130.) Dr. Romero recommended a right knee lateral compartment unloader brace and again concluded that applicant’s “condition is not permanent and stationary.”

On August 16, 2022, PTP Michael Kenly, M.D., evaluated applicant’s complaints of “follow-up of neck and left upper extremity complaints.” (Ex. 14, Report of Michael Kenly, M.D., dated August 16, 2022, at p. 3.) Dr. Kenly noted applicant’s July 21, 2022 electromyography/nerve conduction study to be normal, but that applicant’s April 23, 2022 MRI study demonstrated straightening of the normal cervical lordosis, possibly due to muscle spasm or patient positioning, and “[m]ild multilevel degenerative disc degeneration ... [p]robable no substantial change from prior exam accounting,” but also “[a]dditional disc generation in the upper to midthoracic disc levels, most pronounced at C2-C3 where there is mild central canal stenosis.” (*Ibid.*) Dr. Kenly recommended a change to applicant’s medication regimen and authorization for acupuncture therapy.

On June 18, 2024, Anthony Romero, M.D., performed a total arthroplasty procedure on applicant's right knee.

On October 23, 2025, the parties proceeded to trial and framed for decision issues of, in relevant part, body parts of left knee and lumbar spine, permanent disability and apportionment. (Minutes of Hearing, dated October 23, 2025, at p. 2:40.) Neither party offered witness testimony, and the WCJ ordered the matter submitted for decision as of November 15, 2025.

On January 9, 2026, the WCJ issued his decision finding in relevant part that applicant's Petition to Reopen for new and further disability was timely filed. (Finding of Fact No. 7.) The WCJ further determined that applicant's permanent disability was 58 percent with an award of corresponding indemnity less credit for sums previously paid. (Finding of Fact No. 8, Award No. b.) The WCJ's Opinion on Decision specified that applicant had sustained her burden of proving injury to the lumbar spine, but not to the left knee. (Opinion on Decision, at p. 1.)

Defendant's Petition contends applicant did not sustain any new and further disability within five years of her June 29, 2017 injury, and that defendant is entitled to apportionment for the right knee.

Applicant's Answer contends the record supports continuing jurisdiction over applicant's claim pursuant to Labor Code<sup>1</sup> section 5410 because applicant timely instituted proceedings by filing her petition, and that the record supports the need for new medical treatment within five years of applicant's date of injury. (Answer, at p. 4:10.)

On February 7, 2026, applicant also submitted a letter to the WCJ, copied to defendant, asserting error in the WCJ's calculation of permanent disability percentages.

The WCJ's Report acknowledges error in the calculation of the permanent disability percentages, and requests that the matter be returned to the trial level or corrected by the Workers' Compensation Appeals Board (WCAB) in the first instance. (Report, at p. 1.) With respect to the issue of whether applicant timely invoked the continuing jurisdiction of the WCAB, the WCJ notes that the evidentiary record supports the need for new medical treatment within five years of the date of injury, thus satisfying the requirements of section 5410. The WCJ therefore recommends we deny reconsideration on that issue. (*Id.* at p. 5.)

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<sup>1</sup> All further references are to the Labor Code unless otherwise noted.

## DISCUSSION

### I.

Former 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 February 18, 2026, and 60 days from the date of transmission is Sunday, April 19, 2026. The next business day that is 60 days from the date of transmission is Monday, April 20, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Monday, April 20, 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

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<sup>2</sup> 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.

act on a petition. 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 February 18, 2026, and the case was transmitted to the Appeals Board on February 18, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on February 18, 2026.

## II.

Applicant sustained admitted industrial injury on June 29, 2017 resulting in an Award of 43 percent permanent disability on August 20, 2021. Applicant contends her industrial injury has resulted and new and further disability.

Labor Code section 5410 confers on the Workers' Compensation Appeals Board continuing jurisdiction over a prior award when a timely petition is filed within five years of the date of injury. The section provides:

Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period. This section does not extend the limitation provided in Section 5407.

(Lab. Code, § 5410.)

However, for an applicant to recover additional temporary or permanent disability benefits, they must not only have filed a petition to reopen within five years from the date of injury but must also have suffered a "new and further disability" within that five-year period, unless there is otherwise "good cause" to reopen the prior award. An injured worker therefore cannot confer jurisdiction on the Board by filing a petition to reopen an award before the five-year period has expired for anticipated new and further disability to occur thereafter. (*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920, 926, [72 Cal.Comp.Cases 778] (*Sarabi*); *Nicky Blair's*

*Rest. v. Workers' Comp. Appeals Bd. (Macias)* (1980) 109 Cal.App.3d 941 [45 Cal.Comp.Cases 876] (*Macias*.)

The *Sarabi* court discussed what constitutes “new and further” disability as follows:

““[N]ew and further disability” has been defined to mean disability... result[ing] from some demonstrable change in an employee’s condition...’ [citation],” including a “gradual increase in disability.” (*Nicky Blair’s Restaurant v. Workers’ Comp. Appeals Bd.* (1980) 109 Cal.App.3d 941, 955 [167 Cal. Rptr. 516].) ““Historically, a change in physical condition necessitating further medical treatment ha[s] been considered new and further disability...[Citation.]” **Thus, “[c]ommonly, new and further disability refers to a recurrence of temporary disability, a new need for medical treatment, or the change of a temporary disability into a permanent disability.”** [Citation.]”

(*Sarabi, supra*, at p. 926.)

More recently, the Court of Appeal in *Applied Materials v. Workers’ Comp. Appeals Bd. (Chadburn)* (2021) 64 Cal.App.5th 1042 [86 Cal.Comp.Cases 331] (*Applied Materials*), defined new and further disability as “disability resulting from some demonstrable change in the employee’s condition, including a gradual increase in disability, a recurrence of TD, a new need for medical treatment, or the change of a temporary disability into a permanent disability.” (*Id.* at p. 1080.) In *Applied Materials, supra*, the applicant sustained injury to her neck and right arm on November 27, 2001. The applicant settled her claim in 2005 by way of stipulated Award. (*Id.* at p. 1054.) Applicant then filed a timely petition to reopen for new and further disability in October, 2006. When the parties eventually appeared for trial in 2017, defendant contended that the applicant had not suffered new and further disability “because her alleged new and further disability arose more than five years after November 27, 2001, the date of injury for its claim.” (*Id.* at p. 1080.) Defendant asserted the reports of the orthopedic AME and QME found no evidence of any new and further disability due to applicant’s 2001 injury. However, the Court of Appeal rejected this argument, noting that the applicant’s treatment for injury to her psyche, including evaluations with at least eight doctors between May, 2005, and November, 2006, “satisfied the definition of new and further disability in *Sarabi*.” (*Id.* at p. 1081.)

Here, applicant bears the burden of establishing that she filed a timely petition for new and further disability and the existence of new and further disability within five years of her date of injury of June 29, 2017. Defendant’s Petition contends that the evidentiary record does not support

the existence of new and further disability within five years of applicant's June 29, 2017 injury. (Petition, at p. 3:4.) Defendant contends only two reports in evidence are relevant to the issue of continuing jurisdiction under section 5410, the reports of treating physicians Drs. Wickman and Proctor. Defendant characterizes Dr. Wickman's March 29, 2022 report as "cursory," acknowledging the physician's request for an MRI study, but also that if the MRI showed no change, then applicant's referral to pain management, "which suggests that [Dr. Wickman] has not concluded that there has been any change to applicant's condition." (*Id.* at p. 5:16.) Defendant also notes that the September 28, 2021 report of Dr. Proctor found no change to applicant's work restrictions or status as having reached maximum medical improvement. (*Id.* at p. 5:23.) Defendant observes that pursuant to the reevaluation of QME Dr. Rah, applicant "remains MMI for all body parts related to this claim." (*Id.* at p. 6:13, citing Ex. E, Report of Andrew Rah, M.D., dated June 20, 2022, at p. 17.)

Applicant's Answer responds that between the date of the issuance of the Award on August 20, 2021 and the date five years from the date of injury, or June 29, 2022, the record demonstrates significant new medical treatment. (Answer, at p. 2:5.) Applicant observes that she sought treatment with Dr. Wickman, who documented increasing neck pain and radiculopathy, while Dr. Proctor noted functional deficits and worsening pain. (*Ibid.*) Applicant observes that the records of Dr. Romero document exhaustive treatment efforts designed to alleviate worsening right knee and right shoulder pain, and that applicant's condition was not permanent and stationary. (*Id.* at p. 3:3.)

The WCJ's Report analyzes the evidence as follows:

In the Defendant's Petition for Reconsideration, Defendant first argues the Petition to Reopen is timely because there is no evidence Applicant sustained any new and further disability prior to the five years as provided under Labor Code § 5410.

As noted hereinabove, Applicant filed her Petition to Reopen within five (5) years of the date of injury. She was constantly seeing physicians following the resolution of her case in August 2021, including surgery by Dr. Romero (Exhibit 11).

A mere 2 months after the Stipulations with Request for Award was Awarded, Applicant filed for an Expedited Hearing for medical treatment.

Further, in November 2021, Dr. Romero indicated in Exhibit 11 on a Request for Authorization (RFA) dated November 12, 2021, page 157 of the exhibit,

“With regard to the shoulder, given her worsening pain and weakness and present physical examination, I would recommend an MR ARTHROGRAM to evaluate the rotator cuff and labrum.”

On page 154 of the same exhibit 11, Dr. Romero writes, “. . . She presents with worsening right shoulder pain and right knee pain.”

Applicant has provided substantial medical evidence that she perceived she had worsening conditions, and the medical reports support that position. The Applicant’s Petition to Reopen was filed after these medical opinions; and they were rendered prior to five years from the date of injury. This is a valid Petition to Reopen for new and further disability.

(Report, at pp. 2-3.)

Pursuant both *Applied Materials, supra*, 64 Cal.App.5th at p. 1080, and *Sarabi, supra*, 151 Cal.App.4th at p. 925, applicant bears the burden of establishing the requirements necessary to invoke of the Board’s continuing jurisdiction under section 5410, including the filing of a timely petition and the existence of new and further disability. New and further disability is “disability resulting from some demonstrable change in the employee’s condition, including a gradual increase in disability, a recurrence of TD, a new need for medical treatment, or the change of a temporary disability into a permanent disability.” (*Applied Materials, supra*, at p. 1080.)

Here, applicant filed her petition to reopen on December 15, 2021, within five years of her date of injury. Moreover, in the months between the issuance of applicant’s Award on August 20, 2021, and June 29, 2022, the date five years from her date of injury, the record demonstrates significant new need for medical treatment.

Applicant sought treatment with Dr. Proctor the next month after the August 20, 2021 Award, complaining of worsening symptoms. Dr. Proctor noted that past treatment modalities including physical therapy and NSAIDs had failed and recommended a new series of intra-articular injections. (Ex. 15, Report of Christopher Proctor, M.D., dated September 28, 2021, at p. 4.)

On November 12, 2021, treating physician Dr. Romero evaluated applicant for worsening right shoulder and right knee symptoms, noted significant functional limitations, and recommended new diagnostic studies and joint injections along with bracing and medication management. (Ex. 11, Reporting of Anthony Romero, M.D., various dated, at p. 154.)

The March 29, 2022 reevaluation by Dr. Wickman reflected applicant's presenting complaints of "increasing neck pain and left radiculopathy over the last year." (Ex. 13, Report of Amy Wickman, M.D., dated March 29, 2022, at p. 4.) Applicant described the pain as "severe and interferes with completing work at home and sleeping." (*Ibid.*) Dr. Wickman reviewed March 29, 2022 x-ray studies, which demonstrated "cervical lordosis decreased and disc height loss C5-6," (*Id.* at p. 6) and diagnosed neck pain with left-side radiculopathy, degenerative disc disease at C5-6, hyperreflexia and left shoulder impingement. (*Id.* at p. 7.) Dr. Wickman requested authorization for a new course of physical therapy, medications, a cervical spine MRI study "for left radiculopathy and worsening symptoms, with hyperreflexia," and a left shoulder ultrasound. (*Ibid.*)

On April 1, 2022, Dr. Romero reevaluated applicant, noting that she "continues to struggle with right shoulder and right knee pain." (Ex. 11, Reporting of Anthony Romero, M.D., various dated, at p. 150.) Dr. Romero indicated the need for a series of joint injections for both the right shoulder and right knee and observed that applicant's condition "is not permanent and stationary." (*Ibid.*) Over the following two months applicant underwent a series of five shoulder injections and two right knee injections. (Ex. 11, Reporting of Anthony Romero, M.D., various dated, at p. 139, 137, 135.)

On June 20, 2022, QME Dr. Rah reevaluated applicant and concluded that "there is no significant change in [applicant's] condition and the additional treatment that she has undergone has not improved or worsened her condition." (Ex. E, Report of Andrew Rah, M.D., dated June 20, 2022, at p. 17.)

However, just one week later, on June 27, 2022, Dr. Romero reevaluated applicant for "worsening right shoulder and right knee pain," noting that "right knee pain unfortunately did not respond to a series of hyaluronic acid injections ... she has already tried [physical therapy], NSAIDs, arthroscopy ... [h]er pain is localized to her lateral compartment where she has moderately advanced arthritis ... [s]he is young to consider a knee replacement." (Ex. 11, Reporting of Anthony Romero, M.D., various dated, at p. 130.) Dr. Romero recommended a right knee lateral compartment unloader brace and again concluded that applicant's "condition is not permanent and stationary." (*Ibid.*)

On this record, we concur with the WCJ's analysis finding substantial evidence in support of new and further disability prior to June 29, 2022. The record demonstrates significant "new need for medical treatment," as documented in the reports of applicant's treating physicians.

(*Sarabi, supra*, at p. 926.) Moreover, although QME Dr. Rah opined to no change in applicant's permanent and stationary status, applicant's treating physicians made significant changes to applicant's treatment regimen in the 10 months after the issuance of applicant's Award, including multiple new treatment modalities such as injections and changes to applicant's medications, while further indicating that applicant's condition was not permanent and stationary. (See, e.g., Ex. 11, Reporting of Anthony Romero, M.D., various dated, at p. 130.) Accordingly, and on the record before us, we agree with the WCJ's determination that applicant has timely invoked the WCAB's continuing jurisdiction afforded under section 5410, and that the record establishes the existence of new and further disability. (*Sarabi, supra*, 151 Cal.App.4th 920, 926; *Macias, supra*, 109 Cal.App.3d 941.) We will affirm the WCJ's determination that applicant's petition to reopen was timely filed, accordingly. (Finding of Fact No. 7.)

However, we also note the WCJ's acknowledgement of inadvertent omission of factors relevant to the calculation of permanent disability determination herein. (Report, at p. 2.) The WCJ acknowledges that consideration of lumbar spine disability was not included in the F&A. Pursuant to WCAB Rule 10966 (Cal. Code Regs., tit. 8, § 10966), the WCJ may correct errors prior to the filing of a petition for reconsideration, including "clerical, mathematical or procedural error." However, pursuant to Rule 10961, "after 15 days have elapsed from the filing of a petition for reconsideration, a workers' compensation judge shall not issue any order in the case until the Appeals Board has denied or dismissed the petition for reconsideration or issued a decision after reconsideration." (Cal. Code Regs., tit. 8, § 10961.)

Notwithstanding the WCJ's authority in this regard, once the continuing jurisdiction of the WCAB is invoked, the Appeals Board has the authority to reconsider the entire case, including applicant's assertions related to the sufficiency of the Award. (*Bland v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 324, 475 [35 Cal. Comp. Cases 513, 517] ["in a petition to reopen, the injured employee need not request any particular classification of compensation in order to vest the Board with jurisdiction to reconsider the entire case"]; see also *Sarabi, supra*, at p. 925 [very broad or general petitions are sufficient to invoke the continuing jurisdiction of the Appeals Board].)

In addition, section 5906 provides:

Upon the filing of a petition for reconsideration, or having granted reconsideration upon its own motion, the appeals board may, with or without further proceedings and with or without notice affirm, rescind, alter, or amend the order, decision, or award made and filed by the appeals board or the workers'

compensation judge on the basis of the evidence previously submitted in the case, or may grant reconsideration and direct the taking of additional evidence. Notice of the time and place of any hearing on reconsideration shall be given to the petitioner and adverse parties and to other persons as the appeals board orders.

Section 5907 further provides:

If, at the time of granting reconsideration, it appears to the satisfaction of the appeals board that no sufficient reason exists for taking further testimony, the appeals board may affirm, rescind, alter, or amend the order, decision, or award made and filed by the appeals board or the workers' compensation judge and may, without further proceedings, without notice, and without setting a time and place for further hearing, enter its findings, order, decision, or award based upon the record in the case.

In our en banc decision in *Pasquotto v. Hayward Lumber* (2006) 71 Cal.Comp.Cases 223 [2006 Cal. Wrk. Comp. LEXIS 35, 51-17], we held:

Based on [section 5906 and 5908], it is settled law that a grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal.724, 729 [218 P. 1009] [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [270 P.2d 55] [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (*Ibid.*; e.g., also, *Tate v. Industrial Acc. Com.* (1953) 120 Cal.App.2d 657, 663 [261 P.2d 759] [18 Cal.Comp.Cases 246]; *Pacific Employers Ins. Co. v. Industrial Acc. Com. (Sowell)* (1943) 58 Cal.App.2d 262, 266–267 [136 P.2d 633] [8 Cal.Comp.Cases 79].)

(*Id.* at p. 238, fn. 7.)

Thus, the granting of a Petition for Reconsideration has the effect of "throwing open the entire record for review," including the determination of permanent disability, apportionment, and attorney's fees, as applicable. (*George, supra*, 125 Cal.App.2d 201, 203.)

For the reasons stated in the WCJ's Report, and based on the need to fully evaluate applicant's permanent disability, along with associated issues of apportionment, if any, as well as attorney's fees, we will amend the F&A to defer the issues of permanent disability, apportionment,

and attorney's fees, and return the matter to the trial level for further proceedings and decision by the WCJ.

Although we defer the issue of apportionment, upon return of this matter to the trial level we observe that contrary to defendant's assertion that applicant must establish that her impairment is entirely industrial, it is defendant's burden to establish nonindustrial apportionment. (Petition, at p. 9:5.) In *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc) (*Escobedo*), we made clear that pursuant to section 5705, the applicant has the burden of establishing the percentage of permanent disability directly caused by the industrial injury, while the *defendant* has the burden of establishing the percentage of disability caused by other factors. (*Id.* at p. 612.)

We also note that in *Vargas v. Atascadero State Hosp.* (2006) (71 Cal.Comp.Cases 500) (Appeals Board en banc) (*Vargas*), we addressed the extent to which the changes made under SB899 would apply to applicant's pending Petition to Reopen for New and Further Disability. We wrote:

In *Marsh v. Workers' Comp. Appeals Bd.* (2005) 130 Cal.App.4th 906 [30 Cal. Rptr. 3d 598] [70 Cal.Comp.Cases 787], wherein a petition to reopen was pending on the date of SB 899's enactment, the Court held that the apportionment provisions of SB 899 must be applied to all cases not yet final at the time of the legislative enactment on April 19, 2004, regardless of the earlier dates of injury and any interim decision. (See also, *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274 [25 Cal. Rptr. 3d 448] [70 Cal.Comp.Cases 133] (in which the Court reached a similar conclusion wherein a petition to reopen was pending on the date of SB 899's enactment); cf., *Rio Linda Union School Dist. v. Workers' Comp. Appeals Bd. (Scheftner)* (2005) 131 Cal.App.4th 517 [31 Cal. Rptr. 3d 789] [70 Cal.Comp.Cases 999].)

Accordingly, and consistent with the principles stated in *Marsh*, we conclude that the new apportionment provisions of SB 899 apply to the issue of increased permanent disability alleged in any petition to reopen (see sections 5803, 5804, 5410) that was pending at the time of the legislative enactment on April 19, 2004, regardless of date of injury. (*Id.* at p. 505-506.) However, notwithstanding the applicability of the new apportionment standards described in the reform legislation of SB899, we nonetheless noted that, "in applying the new apportionment provisions to the issue of increased permanent disability, the issue must be determined without reference to how, or if, apportionment was determined in the original award." (*Id.* at p. 507.) We acknowledged that "to the extent that applicant's neck and upper extremity injury may have resulted in increased

permanent disability, any such increased disability will be subject to apportionment under the new law, provided there is substantial medical evidence establishing that these other factors have caused increased permanent disability.” However, because the prior award was finalized, “the new apportionment statutes cannot be used to revisit or recalculate the level of permanent disability, or the presence or absence of apportionment, determined under a final order, decision, or award issued before April 19, 2004.” (*Id.* at p. 508.)

Accordingly, any increased permanent disability alleged in a petition to reopen for new and further disability must be determined without reference to how or if apportionment was determined in the original award. (*Vargas, supra*, at p. 502; see also *Wilson-Marshall v. Workers’ Comp. Appeals Bd.* (2007) 72 Cal.Comp.Cases 1431 [2007 Cal. Wrk. Comp. LEXIS 304] (writ den.); *Ortiz v. Orange County Transp. Auth.* (August 16, 2012, ADJ2033351 (ANA 0389567)) [2012 Cal. Wrk. Comp. P.D. LEXIS 429]; *Balderas v. GTE Corp.* (July 1, 2010, ADJ2405891 (GRO 0022758)) [2010 Cal. Wrk. Comp. P.D. LEXIS 270]; *Hartfield v. Los Angeles Unif. School Dist.* (September 24, 2009, ADJ1687053 (MON 0281584)) [2009 Cal. Wrk. Comp. P.D. LEXIS 453].)

In summary, we agree with the WCJ that applicant has timely invoked the continuing jurisdiction of the WCAB pursuant to section 5410. We will thus affirm the F&A, except that we will amend it to defer the related issues of permanent disability, apportionment, and attorney’s fees, pending further proceedings and decision by the WCJ.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the decision of January 9, 2026 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of January 9, 2026 is **AFFIRMED**, except that it is **AMENDED** as follows:

**FINDINGS OF FACT**

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- 8. The issue of permanent disability is deferred.
- 9. The issue of apportionment is deferred.

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- 12. The issue of attorney's fees is deferred.

**AWARD**

Award is made in favor of Irma Loyola against Illinois Midwest Insurance Agency, administered by Pro Century Insurance Company as follows:

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- b. The issue of permanent disability is deferred.
- c. The issue of apportionment is deferred.

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- f. The issue of attorney's fees is deferred.

**IT IS FURTHER ORDERED** that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**JOSÉ H. RAZO, COMMISSIONER**  
**PARTICIPATING NOT SIGNING**



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

**April 20, 2026**

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

**IRMA LOYOLA  
LAW OFFICE OF ALAN H. FENTON  
LAW OFFICES OF BRADFORD & BARTHEL**

**SAR/abs**

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