WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JASON FREY, *Applicant*

vs.

COUNTY OF SAN BERNARDINO, Permissibly Self-Insured, *Defendant*

Adjudication Number: ADJ11404657
San Bernardino District Office

OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of July 31, 2026, wherein it was found that applicant did not sustain new and further disability and that there was no good cause to reopen the December 23, 2022 stipulated Award in this matter. In that prior Award, it was found that while employed as a police officer during a cumulative period ending March 17, 2018, applicant sustained industrial injury to the lumbar spine, cervical spine, knees and psyche causing permanent disability of 60% and the need for further medical treatment. Applicant filed a Petition to Reopen on March 6, 2023.

Applicant contends that the WCJ erred in denying his Petition to Reopen, arguing that he should have been afforded the opportunity to obtain discovery in the form of a comprehensive medical report from a neurologist. 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, we will deny the applicant's Petition.

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 September 9, 2026 and 60 days from the date of transmission is Sunday, November 8, 2026. The next business day that is 60 days from the date of transmission is Monday, November 9, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on November 9, 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 September 9, 2026, and the case was transmitted to the Appeals Board on September 9, 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 September 9, 2026.

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[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.

II.

Turning to the merits, we will deny the applicant's Petition for the reasons stated by the WCJ in the Report, which we adopt, incorporate, and quote below:

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

A timely, verified Petition for Reconsideration, filed 8-25-2026, Petitioner, Jason Frey (hereafter Petitioner), by and through their representative of record, Louis Papell, seeks reconsideration of the Findings and Order issued here on 7-31-2026 and served on 7-31-2026.

At the time of this report, there was no response[] from Defendant, County of San Bernardino.

PETITIONER'S CONTENTIONS

Petitioner, Jason Frey, contends:

1. That by the order, decision, or award made and filed by the appeals board or a workers' compensation judge, the appeals board acted without or in excess of its powers.

2. The evidence does not justify the Findings of Fact.

3. The Findings of Fact do not support the Order.

INTRODUCTION

Applicant filed an Application for Adjudication of Claim on 7-16-18 alleging injury to applicant's back and psyche as a result of cumulative trauma extending what appears to be his entire period of employment from 1/1/1996 to 3-17-2018 (EAMS#67675040). An Amended Application was filed on 10-9-18 adding knees, neck, head and dermatology to his claim (EAMS#68423603). Parties jointly offer the AME reporting of Dr. Joel Frank in psychiatry and Dr. Peter Newton in orthopedics. The matter previously proceeded to Trial on a limited issue with those exhibits admitted are now incorporated into this Trial.

Parties settled the case in chief by Stipulation with Request for Award for 60% identifying "cervical spine, lumbar spine, bilateral knees and psyche only" on the bottom of page 5 and an Award issued dated 12-23-2022.

Less than three months later, applicant filed a Petition to Reopen for new and further disability filed on March 6, 2023 (EAMS#45347398). Applicant indicated that he had "recently undergone radiofrequency ablations to treat

increased low back pain….". Along with this statement, applicant also alleged further complaints which were adequately addressed and are not the subject of this Petition for Reconsideration. The theme of Applicant's Petition is that he now suffers a "neurological" condition.

DISCUSSION

Applicant contends that "evidence" has surfaced post Award which justifies further development of the record. Additionally, Applicant believes his condition has gotten worse since the Award.

It is undisputed that the Stipulation with Request for Award and Award dated 12-23-2022 covers the low back. It is also undisputed that the electrodiagnostic studies from 2/14/2022 and 3/18/2024 did not find peripheral polyneuropathy. Furthermore, based on the reporting of the AME, Dr. Newton as well as PQME, Dr. Frank, there has been no further deterioration in Applicant's condition. Yet, Applicant further contends that treatment authorized for his low back somehow supports a "new" condition.

The court in *Nicky Blair's Restaurant v. Workers' Comp. Appeals Bd.* (1980) 109 Cal.App.3d 941 [45 Cal.Comp.Cases 876] found that, under section 5410, "[the] term 'new and further disability' has been defined to mean disability which results from some demonstrable change in an employee's condition." (*Id.* at p. 955.) The court concluded that "if [applicant's] condition is unchanged from the time of the original decision . . . there is no 'new and further disability' within the meaning of section 5410 to permit reopening of the case." (*Ibid.*) The court continued, explaining that "'[n]ew and further disability' means 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." (*Ibid.*)

Here, what Applicant contends is that following a procedure which was authorized to treat his low back, and since he received temporary relief of his symptoms, thus a new condition is identified. As previously indicated, both Agreed Medical Examiners, including Dr. Peter Newton, opine that there is no new deterioration in the applicant's condition. The record is consistent that both pre and post electrodiagnostic studies indicate normal findings with the studies reflecting "no electrodiagnostic evidence of peroneal nerve entrapment or generalized peripheral neuropathy". Furthermore, it is well documented that Applicant's low back condition and his symptoms were present prior to the issues of the 12-23-22 Award. The treatment received was for the low back. No evidence was offered supporting a demonstrable change in his condition.

Instead, Applicant refers to alleged conclusions of Dr. Bill Davis's in his 10-12-23 report. This report was not offered at Trial. The only reference to this report

is the review of records by Dr. Peter Newton in his 5-15-2025 report (Jnt Ex K). The review of Dr. Davis's reports lacks any discussion supporting and/or verifying his opinion nor does it discuss any connection to applicant's industrial injury. Based on the few reports reviewed by AME Peter Newton of Dr. Davis, it appears Dr. Davis reports are speculative at best. There is no discussion as to a connection with applicant's industrial injury nor positive findings in diagnostic testing supporting his diagnosis.

At Trial, Applicant testified that the numbness and tingling was present before the procedure and he received approximately 80% relief after the ablation (MOH/SOE 5-6-26 pg 5, ln 20). Applicant further indicated this was short term relief as the relief only lasted a couple of months.

Section 5410 requires applicant to establish that "the original injury has caused *new* and *further* disability." (Italics added.) California case law has applied section 5410 to cases involving new and further disability to the *original body part* (e.g., *Sarabi v. Workers' Comp. Appeals Bd.*, *supra*, 151 Cal.App.4th 920, 922–923, 926–927 [industrial injury to right shoulder with additional claimed period of temporary disability related to worsening condition and need for further surgery on right shoulder]) or injury to a *new body part* which is alleged as a compensable consequence of the original injury. (See *Southern California Rapid Transit Dist., Inc. v. Workers' Comp. Appeals Bd. (Weitzman)* (1979) 23 Cal.3d 158 [44 Cal.Comp.Cases 107] [employee injured in car accident on the way home from delivering required work release note for prior compensable injury]; *Liberty Mutual Ins. Co. v. Industrial Accident Com. (Walden)* (1964) 231 Cal.App.2d 501, 504, [29 Cal.Comp.Cases 293] [development of asthma found to be directly attributable to industrial injury to the back].) However, irrespective of whether the Appeals Board's continuing jurisdiction is invoked because of new and further injury to an original body part or injury to a new body part as a compensable consequence of the original injury, the new and further disability must be a result or an effect of the prior compensable injury. (*Applied Materials, supra*, 64 Cal.App.5th 1042, 1080; *Sarabi, supra*, 151 Cal.App.4th at p. 926; *Weitzman, supra*, 23 Cal.3d 158.)

WCJ must determine whether applicant has sustained disability that is both new and further, that is, beyond that which existed at the time of the stipulated Award, using the standards for new and further disability described in *Sarabi, supra*, 151 Cal.App.4th 920, and *Applied Materials, supra*, 64 Cal.App.5th 1042. To the extent that applicant claims disability arising out of body parts that were not among the original stipulated body parts, the WCJ must determine whether the disability is a compensable consequence of the original injury. Under either analysis, the disability must be determined to have been in existence within the five-year period permitted under section 5410.

Considering the above, we now turn to whether Applicant has met his burden of establishing new and further disability. Here, the symptoms and treatment

recommended which applicant referenced in his Petition for Reconsideration existed prior to the issuance of the Award. Applicant had a long history of tingling and numbness which he sought authorization for the ablation prior to the Award.

Applicant prefers to believe this is a new "disability" as he received temporary relief from the procedure. Simply having a temporary relief from symptoms that existed prior to and treatment authorized prior to the Award does not satisfy the "new" nor the "further" component.

In fact, Dr. Peter Newton and Dr. Joel Frank, Agreed Medical Examiners issued multiple reports. Both stated that there was nothing in the reports that were reviewed that would cause them to change their prior opinion. Both indicated that there is no evidence of further deterioration. Both also conducted post Award evaluations. Furthermore, there is no evidence offered that supports any "demonstrable change in the employee's condition", nor "further disability". Applicant disregards the evidence presented, which does not support his position for new and further. Instead, Applicant seeks to reopen discovery and have yet another opportunity to pursue his contentions even though he has been unable to substantiate his position in the more than three years post-Award.

Applicant argues that there is good cause to reopen and more importantly, to seek further discovery, desiring yet another bite at the apple. In his deposition, Dr. Newton confirmed that he did not find peripheral polyneuropathy and what Dr. Davis referenced in his report was not present during his evaluation (Jnt Ex L, pg 17, ln 2). In review of case history, more than eight years have passed since the filing of the Application, more than three years post-Award. Parties utilized Agreed Medical Examiners in more than one specialty, with multiple reports from each. Yet, Applicant ignores their conclusions. It is generally assumed that an agreed medical examiner is chosen by the parties because of their expertise and neutrality. Thus, as set forth in *Power v. WCAB* (1986) 51 CCC 114, the opinion of the Agreed Medical Examiner should ordinarily be followed unless there is good cause to find the opinion unpersuasive. I found no such good cause in the instant matter. Both Agreed Medical Examiners found no new deterioration in the applicant's condition.

Applicant argues that there is good cause to reopen the Award. However, preference is to return to the initial evaluators, and in this case the Agreed Medical Examiners which has already occurred post filing of the Petition to Reopen. Multiple reports were generated. Applicant's contentions are not supported by the evidence.

Diagnostic testing was conducted pre and post Award. Dr. Schreiber, who completed the diagnostic studies nor Dr. Newton, Agreed Medical Examiner found that applicant had a neurological condition nor that it is a consequence of the original injury. Based on the above, I find no good cause to reopen.

RECOMMENDATION

I recommend the Petition for Reconsideration, filed by Applicant through their representatives of record, Louis Papell on 8-25-2026 be DENIED.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings and Order of July 31, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I DISSENT,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 9, 2026

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

JASON FREY
LOUIS B. PAPELL
GOLDMAN MAGDALIN STRAATSMA

DW/bp

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

DISSENTING OPINION OF DEPUTY COMMISSIONER LISA A. SUSSMAN

I respectfully dissent. I would have granted reconsideration, rescinded the WCJ's decision, and returned this matter to the trial level for further development of the medical record and decision. While I agree with the WCJ and my colleagues in the majority that the current record does not support reopening the December 23, 2022 on the basis of new and further disability or good cause, I believe that the applicant should be afforded the opportunity to be evaluated by a neurologist.

In a May 15, 2025 report, agreed medical evaluator (AME) orthopedist Peter Newton, M.D wrote that applicant's "complaints of numbness and tingling into the lower extremities" are "most accurately evaluated by a neurologist." (May 15, 2025 report at p. 6.) At Dr. Newton's May 28,2025 deposition, the following exchange took place between applicant's counsel and Dr. Newton:

> Q. So when you say the condition would be most accurately evaluated by a neurologist, are you talking on a work-related basis or a nonwork-related basis?
>
> A. That's a good question. Let me go back to some of his prior reports to see if he's a diabetic. Let me go to his initial history. I don't think he's diabetic because he was not taking any medications for that.
>
> Q. Could it be caused by chronic use of some type of – any type of drugs to treat pain conditions, like Lyrica or anything similar to that?
>
> A. I'm not sure. That should be decided. I guess – yes. It should be decided by a neurologist to determine if this is work related or not. I would recommend that. I would recommend an AME or [qualified medical evaluator] in neurology.

(Transcript of May 28, 2025 deposition at p. 8.)

While it may ultimately have been determined that applicant's cumulative injury did not cause new and further disability, or that there was not good cause to reopen the December 23, 2022 Award, applicant should have been afforded the opportunity to be evaluated by a neurologist in order to prove his case. The orthopedic AME expressly called for applicant to be evaluated by a neurologist.

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, I would have granted reconsideration, rescinded the WCJ's decision, and returned this matter to the trial level for further development of the medical record and decision for applicant to be evaluated by a neurologist, as urged by Dr. Newton.

I therefore respectfully dissent.

WORKERS' COMPENSATION APPEALS BOARD



/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 9, 2026

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

JASON FREY
LOUIS B. PAPELL
GOLDMAN MAGDALIN STRAATSMA

DW/bp

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