WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JASON NEUMAN, *Applicant*

vs.

CALIFORNIA DEPARTMENT OF FORESTRY, legally uninsured, *Defendant*

Adjudication Number: ADJ11349173
Riverside District Office

OPINION AND ORDERS DENYING DEFENDANT'S PETITION FOR RECONSIDERATION AND GRANTING APPLICANT ATTORNEY'S PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant and applicant's attorney, on his own behalf, each seek reconsideration of the Findings and Award (F&A) issued by the workers' compensation judge (WCJ) on April 7, 2026 wherein the WCJ found, in relevant part, that while employed by defendant as an assistant chief during the period from June 1, 1986 through February 28, 2018, applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) "to rhinosinusitis, cervical spine, both shoulders, wrists, hands, lumbar spine, knees, ankles, feet, hypertension and hearing[,]" resulting in permanent disability of seventy-seven percent (77%). The WCJ issued an award for the value of 77% permanent disability less attorney's fees of twelve percent (12%), as well as lifetime further medical care to cure and relieve applicant from the effects of the injury.

Defendant contends that the opinions of internal/pulmonology panel Qualified Medical Evaluator (PQME), Sameer Gupta, M.D., and orthopedic PQME, David Wood, M.D., constitute substantial medical evidence on the issue of apportionment of permanent disability as to applicant's rhinosinusitis and his cervical and lumbar spine injuries, and that said apportionment should be applied to applicant's impairment. (Defendant's Petition for Reconsideration (Defendant's Petition), pp. 2-4.)

Applicant's attorney contends that the 12% attorney fee awarded by the WCJ does not accurately reflect the reasonable value of services rendered and that based upon the complexity of the case, applicant's attorney should be awarded a fee of fifteen percent (15%). (Applicant Attorney's Petition for Reconsideration (Applicant Attorney's Petition), p. 1.)

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petitions be denied, "or in the alternative, that further development of the record be ordered on the issue of apportionment so that the doctor's opinion on apportionment will constitute substantial medical evidence on that issue." (Report, p. 6.) The WCJ noted that if further development of the record is ordered, "this might have the effect of allowing [a]pplicant's attorney to relitigate the issue of attorney's fees." (*Id*. at p. 5.)

We have considered the contents of the Petitions, Answer, and Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny Defendant's Petition, grant Applicant Attorney's Petition, rescind the F&A, substitute it with a new Findings, Award, and Order (FA&O), which defers the issue of attorney's fees and orders defendant to hold in trust 15% of the award pending resolution of the issue of reasonable attorney fees but otherwise affirms the WCJ, and return this matter to the trial level for further proceedings consistent with this opinion.

FACTS

On June 12, 2018, applicant filed an Application for Adjudication of Claim alleging that while employed by defendant as an assistant chief during the period from June 1, 1986 through February 28, 2018, he sustained injury AOE/COE to the head (headaches), circulatory system (hypertension), respiratory system (sinus and lungs), nervous system (psyche), GERD, thyroid, neck, shoulders, left arm, lumbar spine, knees, and feet.

The parties proceeded with discovery and retained Paul Goodman, M.D., as the otolaryngology Agreed Medical Evaluator (AME), Stewart Lonky, M.D., as the internal/pulmonology PQME, Dr. Gupta as the allergy/immunology PQME, Dr. Wood as the orthopedic PQME, and Lee Silver, M.D., as the orthopedic AME.

In a report dated December 5, 2018, otolaryngology AME, Dr. Goodman, concluded that applicant's bilateral sensorineural hearing loss was one hundred percent (100%) due to the subject

injury with a resulting two percent (2%) whole person impairment (WPI) under table 11-2 due to secondary tinnitus caused by the hearing loss. (Exhibit 14, pp. 13-14.)

In a report dated April 9, 2019, internal/pulmonology PQME, Dr. Lonky, concluded that applicant's upper gastrointestinal condition was caused by work related stress and use of anti-inflammatory drugs used to treat applicant's work-related musculoskeletal injuries. (Exhibit 9, p. 49.) Dr. Lonky opined that applicant sustained a ten percent (10%) WPI under table 6-3 for his gastrointestinal issues with no non-industrial apportionment. (*Ibid*.) In a supplemental report dated November 4, 2019, Dr. Lonky concluded that applicant's hypertension was also work related, resulting from stress from the job, and that applicant sustained a three percent (3%) WPI. (Exhibit 11, p. 3.)

In a report dated May 4, 2021, orthopedic PQME, Dr. Wood, opined that applicant sustained a six percent (6%) WPI to the cervical spine and eight percent (8%) WPI to the lumbar spine under DRE category II, 2% WPI to each shoulder due to loss of range of motion, a 2% WPI to the left upper extremity due to carpal tunnel syndrome, a one percent (1%) WPI to the right foot due to plantar fasciitis, and no ratable impairments for the left knee or ankle as a result of the work injury. (Exhibit 6, pp. 34-36.) Dr. Wood noted a history of prior injuries including a November 6, 2004 motor vehicle accident resulting in injury to the cervical and lumbar spine with residuals. (*Id*. at p. 37.) A 2014 injury to applicant's neck, left shoulder and right ankle was also referenced but Dr. Woods explained that he had "not been provided with any information pertaining to this injury." (*Ibid*.) Also discussed was a 2016 non-industrial low back injury and 2011 right ankle injury both of which led to no residuals. (*Ibid*.) Dr. Wood concluded that "[b]ased upon all existing medical information provided to date it is medically most probable that 30% of [applicant's] cervical and lumbar spine disability is as a result of the specific motor vehicle accident occurring on November 6, 2004 and the remaining 70% is due to the continuous trauma." (*Ibid*.) With respect to the bilateral shoulders, left wrist, and right foot, he noted that it was "medically most probable that 100% of [applicant's] disability is as a result of the continuous trauma[.]" (*Ibid*.)

In his supplemental report dated October 26, 2021, Dr. Wood updated his opinion to include a 1% WPI to the right knee due to a tear of the posterior horn and body of the meniscus and a 2% WPI to the right ankle due to a partial thickness tear of the anterior talofibular ligament. (Exhibit 7, p. 5.) He did not find any non-industrial apportionment for these body parts. (*Id*. at p. 7.)

In a report dated February 3, 2022, allergy/immunology PQME, Dr. Gupta, noted that based upon applicant's reported history, the medical records, and reported medical literature, applicant's "cumulative workplace exposure aggravated and accelerated the claimant's chronic rhinosinusitis." (Exhibit 2, p. 9.) He concluded that "[p]reexisting childhood symptoms consistent with allergic conjunctivitis along with the deviated nasal septum are significant non-industrial contributors" and that "50% of the patient chronic rhinosinusitis impairment" is "related to the nonindustrial factors[.]" (*Id*. at p. 10.)

In his final report dated May 30, 2024, Dr. Gupta reiterated his apportionment findings and concluded that applicant reached maximum medical improvement/permanent and stationary (MMI/P&S) status with a resulting ten percent whole person impairment (10% WPI) under table 13-2 due to chronic allergic rhinosinusitis. (Exhibit 4, pp. 6, 11-12.)

On September 24, 2025, defendant filed a Declaration of Readiness to Proceed to a mandatory settlement conference on the issues of permanent disability and future medical treatment. The matter proceeded to a December 2, 2026 hearing wherein the matter was set for trial, to be held on January 27, 2026.

At trial, issues set for determination included: permanent disability; apportionment; need for further medical treatment; and attorney fees. The parties submitted as joint exhibits, the reports of Drs. Gupta, Wood, Lonky, Goodman, and Silver. Thereafter, the matter stood submitted.

On April 7, 2026, the WCJ issued an F&A which held, in relevant part, that while employed by defendant as an assistant chief during the period from June 1, 1986 through February 28, 2018, applicant sustained injury AOE/COE to rhinosinusitis, cervical spine, both shoulders, wrists, hands, lumbar spine, knees, ankles, feet, hypertension, and hearing, resulting in 77% permanent disability. The WCJ awarded applicant the value of 77% permanent disability less attorney's fees of 12%, as well as lifetime further medical care to cure and relieve from the effects of the injury.

It is from this F&A that defendant and applicant's attorney seek reconsideration.

DISCUSSION

I.

Preliminarily, former Labor Code section 5909[1] provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date

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

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 under the Events tab 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 May 7, 2026, and 60 days from the date of transmission is July 6, 2026. This decision was issued by or on July 6, 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 act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall constitute notice of transmission.

Here, according to the proof of service for the Report, the Report was served on May 7, 2026, and the case was transmitted to the Appeals Board on May 7, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on May 7, 2026.

II.

Turning now to the merits of the Petitions, it is well established that the burden of proof rests upon the party holding the affirmative of the issue. (Lab. Code, § 5705.) When an employee claims injury AOE/COE, it is therefore the employee, or the lien claimant who steps in the shoes of the employee, who carries the burden of proof in establishing industrial causation and they must show that the employment was a contributing cause. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297- 298, 302; §§ 5705; 3600.) Pursuant to section 3202.5, the evidentiary burden of proof is to be met by a preponderance of the evidence. However, "[t]hat 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].)

Further, substantial medical evidence is used to establish industrial causation. "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) Pursuant to *E.L. Yeager v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th922, 928 [71 Cal.Comp.Cases 1687], "[a] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (citations.) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (citation.)" "A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial evidence to support a denial of benefits. (citation.)" (*Kyle v. Workers' Comp. Appeals Bd* (*City and County of San Francisco*) (1987) 195 Cal.App.3d 614, 621.)

Here, while the WCJ relied upon the submitted medical reporting from the AME/PQMEs for her findings on permanent disability, she found that the reports of Drs. Gupta and Wood are not substantial evidence on the issue of apportionment.

It is well established that defendant carries the burden of proof on the issue of apportionment. (Lab. Code, § 5705; *Pullman Kellogg v. Workers' Comp. Appeals Bd.* (*Normand*)

(1980) 26 Cal.3d 450, 456 [45 Cal.Comp.Cases 170]; *Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 613 (Appeals Bd. en banc).) To meet this burden, defendant "must demonstrate that, based upon reasonable medical probability, there is a legal basis for apportionment." (*Gay v. Workers' Comp. Appeals Bd.* (1979) 96 Cal.App.3d 555, 564 [44 Cal.Comp.Cases 817]; see also *Escobedo*, *supra*, at p. 620.) Ultimately, however, "[a]pportionment is a factual matter for the appeals board to determine based upon all the evidence[,]" and the WCJ has the authority to determine the appropriate amount of apportionment, if any. (*Gay*, *supra*, at p. 564.) As noted above, however, any decision issued by a WCJ must be based upon substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb*, *supra*, at p. 274; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque*, *supra*, at *p.* 627.)

In *Escobedo*, the Appeals Board outlined the following requirements for substantial evidence on the issue of apportionment:

> "[I]n the context of apportionment determinations, the medical opinion must disclose familiarity with the concepts of apportionment, describe in detail the exact nature of the apportionable disability, and set forth the basis for the opinion, so that the Board can determine whether the physician is properly apportioning under correct legal principles. (citations.)
>
> Thus, to be substantial evidence on the issue of the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors, a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions."

(*Escobedo*, *supra*, at p. 621.)

Here, defendant contends that the opinions of internal/pulmonology PQME, Dr. Gupta, and orthopedic PQME, Dr. Wood, constitute substantial medical evidence on the issue of apportionment and that said apportionment should be applied to applicant's impairment. (Defendant's Petition, pp. 2-4.) Defendant cites to "Google AI Overview" as supporting evidence of Dr. Gutpa's apportionment findings. Google AI Overview, however, is not a proper medical authority for purposes of establishing substantial evidence on the issue of apportionment. Further, we agree with the WCJ that Dr. Gupta's opinions on apportionment are "devoid of any reasoning"

and fail to "adequately explain how and why there is any impairment caused by childhood allergic conjunctivitis, as well as the deviated nasal septum" and "how and why there is 50% apportionment to these [conditions] as opposed to some other percentage." (Report, p. 3; F&A and Opinion on Decision (OOD), p. 3.)

Defendant similarly believes that Dr. Wood's opinions on apportionment constitute substantial medical evidence. As explained by the WCJ in her report, however, "Dr. Wood does not explain how and why there is 30% apportionment [for the November 6, 2004 motor vehicle accident] as opposed to some other percentage." (F&A and OOD, p. 4.) The WCJ further underscores the fact that Dr. Wood did not explain why apportionment was provided to the November 6, 2004 motor vehicle accident but not the 2016 cinderblock incident, notwithstanding medical reports which evidence that applicant rated his pain as a nine out of ten and continued to have ongoing back and neck problems after the cinderblock incident. (*Ibid*.)

Based upon our review of the evidentiary record and the foregoing, we agree with the WCJ that the opinions of Drs. Gupta and Wood do not constitute substantial medical evidence on the issue of apportionment, and that defendant did not carry its burden of proving same. We therefore affirm the WCJ's findings as to permanent disability.

III.

Applicant's attorney also asserts that the WCJ abused her discretion in awarded attorney fees as 12% does not accurately reflect the reasonable value of services rendered and that based upon the complexity of the case, applicant's attorney should be awarded 15%. (Applicant Attorney's Petition, p. 1.)

It is well established that the Appeals Board has exclusive jurisdiction over fees to be allowed or paid to applicants' attorneys. (*Vierra v. Workers' Comp. Appeals Bd*. (2007) 154 Cal.App.4th 1142, 1149 [72 Cal.Comp.Cases 1128]; Cal. Code Regs., tit. 8, § 10840.) In calculating attorney fees, our basic statutory command is that the fees awarded must be "reasonable." (Lab. Code, §§ 4903, 4906(a), (d).) Pursuant to section 4906, in determining what constitutes a "reasonable" attorney fee, the Appeals Board must consider four factors: 1) the responsibility assumed by the attorney; 2) the care exercised by the attorney; 3) the time expended by the attorney; and 4) the results obtained by the attorney. (Lab. Code, § 4906(d); see also Cal. Code Regs., tit. 8, § 10844.) In *Vierra*, the Court of Appeal held:

> The Legislature has…clearly and decisively spoken that attorney fees in workers' compensation cases cannot exceed an amount that is "reasonable" and that the WCAB shall be the final arbiter of reasonableness in all cases.

(*Id.* at p. 1151.)

Although not binding, WCAB/DIR Policy & Procedure Manual, section 1.140 also provides guidance in our analysis of this matter. Under section 1.140, we may also consider the complexity of the issues, whether the case involved highly disputed factual issues, and whether detailed investigation, interrogation of prospective witnesses, and/or participation in lengthy hearings are involved.

Here, in awarding the 12% attorney fee, the WCJ explained in her Report that:

> While the court agrees with Applicant's attorney's argument that the fact the parties have simplified the issues for the court's convenience should not weigh against the attorney, if Applicant's attorney wanted to prove that this case truly warranted a 15% fee then she should have submitted exhibits on that issue. There were no such exhibits in this trial, and no testimony from the Applicant. Instead, [defendant] apparently just assumed the court would award a 15% fee with no analysis of its reasonableness, which would be a true abuse of discretion.

(Report, p. 5.)

Based upon our review of the record, we agree that evidence is lacking on the issue of attorney fees. Under both the California and United States Constitutions, all parties in workers' compensation proceedings retain their fundamental right to due process and a fair hearing. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and offer evidence in rebuttal. (*Ibid*.)

To afford applicant's attorney due process in the instant matter, we must give the parties an opportunity to be heard and the WCJ must create a record on the issue of attorney fees. We will therefore rescind the F&A and substitute it with a FA&O which defers the issue of attorney fees and orders defendant to withhold 15% attorney fees from the award in trust pending resolution of the issue.

Accordingly, we deny Defendant's Petition, grant Applicant Attorney's Petition, rescind the F&A, substitute it with a new FA&O which defers the issue of attorney fees and orders defendant to withhold 15% for attorney fees but otherwise affirms the decision of the WCJ, and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued April 7, 2026, is **DENIED**.

IT IS FURTHER ORDERED that applicant attorney's Petition for Reconsideration of the Findings and Award issued April 7, 2026, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued April 7, 2026 is **RESCINDED** and the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant, Jason Neuman, [dob omitted], while employed during the period from June 1, 1986 through February 28, 2018, as an assistant chief, Occupational Group No. 490, at Perris, California, by the California Department of Forestry, legally uninsured, sustained injury arising out of and occurring in the course of employment to rhinosinusitis, cervical spine, both shoulders, wrists, hands, lumbar spine, knees, ankles, feet, hypertension, and hearing.

2. Applicant sustained 77% permanent disability.

3. The percentage of attorney fees awarded to applicant's attorney is deferred.

AWARD

1. Permanent disability of 77%, at the rate of $290 per week for 545.25 weeks beginning May 4, 2021, totaling $158,122.50, followed by a life pension, less credit for sums already paid and less attorney fees of up to 15%, to be commuted from the far end of the award, and to be held in trust by defendant pending resolution of the attorney fee issue.

2. Lifetime further medical care to cure or relieve the applicant from the effects of the injury, as needed, subject to any applicable UR, IMR, and MPN rules and procedures.

ORDER

Defendant is Ordered to withhold attorney fees of 15% in trust from the award pending resolution of the issue of reasonable attorney fees.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 26, 2026

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

JASON NEUMAN
WHITING, COTTER & HURLIMANN, L.L.P.
STATE COMPENSATION INSURANCE FUND

RL/*cs*

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