WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JEFFREY BLAKE, *Applicant*

vs.

STATE OF CALIFORNIA, DEPARTMENT OF MOTOR VEHICLES, legally uninsured, administered by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ11253479
Goleta District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of our Decision After Reconsideration of July 10, 2026. wherein it was found that while employed as a Department of Motor Vehicles examiner, applicant sustained injury to his neck, psyche, head and in the form of headaches causing permanent disability of 47% after apportionment and the need for further medical treatment. Previously, in a Findings and Award of April 3, 2026, a workers' compensation administrative law judge (WCJ) had found that applicant's injury caused permanent disability of 72%, and that no apportionment of permanent disability was indicated, despite a prior industrial injury to the cervical spine. Defendant filed a petition for reconsideration from the WCJ's decision. In our Opinion and Decision of July 10, 2026, we granted reconsideration, finding that the WCJ's 72% permanent disability rating impermissibly included a headache impairment consisting solely of a 3% pain add-on, and that the WCJ erred in not incorporating the Labor Code section 4663 apportionment determination of independent medical evaluator orthopedist Peter Newton, M.D. that 40 percent of applicant's cervical permanent disability was due to factors pre-existing the current industrial injury. These two findings reduced applicant's permanent disability from the 72% found by the WCJ to the 47% in our decision.

Applicant contends in his Petition that we erred in (1) finding applicant's permanent disability rating subject to Labor Code section 4663 apportionment and in (2) not incorporating

the subjective pain headache impairment into applicant's permanent disability rating. With regard to apportionment, applicant argues that Dr. Newton "changed his opinions" regarding apportionment at his October 15, 2025 deposition, and that this change in opinion is not reflected in our decision.

As explained below, while it is not clear to us that Dr. Newton changed his opinions, we will grant reconsideration and amend our decision to defer the issues of permanent disability and apportionment so that Dr. Newton may clarify or reformulate his opinion. Since we defer permanent disability on this basis, we do not reach applicant's contentions regarding the headache impairment. The parties may relitigate this issue in the further proceedings.

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.
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> (b)
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> (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 August 3, 2026, and 60 days from the date of transmission is October 2, 2026. This decision is issued by or on October 2, 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, since applicant seeks review of an Appeals Board decision, we did not receive a Report and Recommendation by a workers' compensation administrative law judge. However, no other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with the notice of transmission required by Labor Code section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on August 3, 2026.

II.

Turning to the issue of apportionment, in our Opinion and Decision after Reconsideration of July 10, 2026, we relied upon independent medical evaluator orthopedist Peter Newton, M.D.'s opinions as expressed in his April 3, 2024 report and his April 23, 2025 deposition testimony that 40 percent of applicant's cervical permanent disability was attributable to factors other than the industrial injury. At the April 23, 2025 deposition, Dr. Newton explained that he made his apportionment determination based upon "severe pain and significant limitations" after surgery for the 2012 injury and that he did not think applicant "had full range of motion based on the significant symptoms" applicant had after the 2012 injury. (April 23, 2025 deposition at pp. 18-20.)

However, at the October 15, 2025 deposition, under questioning from applicant's counsel, Dr. Newton testified that applicant's range of motion was completely normal after the surgery caused by the 2012 injury and that range of motion loss was due to the later 2017 injury. (October 15, 2025 deposition at pp. 36-37.) He testified that "Dr. Wickman found really very minimal, if any, effects due to the 2012 injury. He had full range of motion. He had very good functions." (October 15, 2025 deposition at p. 42.)

However, while applicant characterizes this testimony as a "realization" and a change of opinion, Dr. Newton was not directly asked to revisit his Labor Code section 4663 apportionment determination at the October 15, 2025 deposition. Additionally, "[a]lthough called the range-of-motion method, this evaluation method actually consists of three elements that need to be assessed: (1) the range of motion of the impaired spine region; (2) accompanying diagnoses (Table 15-7); and (3) any spinal nerve deficit." (AMA Guides, § 15.8 Range-of-Motion Method, p. 398.) Finally, it is well established that one may properly apportion to pathology and asymptomatic prior conditions (see, e.g. *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 617 [Appeals Bd. en banc]), so the fact that applicant's prior condition was not painful or did not result in a marked decrease in range of motion is not dispositive of the issue of apportionment.

Nevertheless, any apportionment decision, like any decision of the WCAB, must be based on substantial medical evidence. (*Escobedo*, *supra,* 70 Cal.Comp.Cases at p. 621.) The discrepancy raised by applicant is sufficient to require clarification or reformulation by the reporting physician. We also note that we cannot completely analyze the issue of permanent disability because Dr. Newton refers to a computer-generated rating analysis which did not find its way into the electronic adjudication file in this matter. The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) medical evidence on an issue. The WCAB has a constitutional mandate to ensure "substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) In accordance with that mandate, we will grant reconsideration and defer the issues of permanent disability and apportionment pending further development of the medical record and pending further analysis and decision by the WCJ. Since we defer the issue of permanent disability on the basis outlined above, we do not reach the issue of the rating of the alleged headache impairment. The applicant may raise this issue in the further proceedings, and it should be analyzed in light of the authorities and reasoning explained in our Opinion of July 10, 2026, and in light of the further argument and evidence raised by the parties. We express no opinion on the ultimate resolution of any issue in this matter.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of our Decision After Reconsideration of July 10, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Decision After Reconsideration of July 10, 2026 and the Findings and Award of April 3, 2026 are **AMENDED** as follows:

FINDINGS OF FACT

1 Jeffrey Blake, age 56 on the date of injury, while employed on February 3, 2017, as a DMV examiner, Occupational group No. 251, at Santa Maria, California, by the State of California, sustained injury arising out of and within the course of employment to his neck, psyche, head and in the form of headaches.

2. At the time of the injury, the employer was legally uninsured.

3. It is found at the time of the injury, Applicant's earnings were $972.69 per week warranting indemnity rates of $648.46 for temporary disability and $290 for permanent disability.

4. It is found the employer has furnished some medical treatment.

5. It is found Applicant is entitled to psychiatric permanent disability pursuant to Labor Code § 4660.1(c).

6. The issue of permanent disability is deferred, with jurisdiction reserved.

7. The issue of apportionment is deferred, with jurisdiction reserved.

8. It is found there is a need for further medical treatment to cure or relieve the effects of the industrial injury.

9. The issue of attorneys' fees is deferred, with jurisdiction reserved.

AWARD

Award is made in favor of Applicant **Jeffrey Blake** and against the **State of California** as follows:

a. Lifetime medical care as provided in Finding number 8.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 2, 2026

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

JEFFREY BLAKE
STOUT, KAUFMAN, HOLZMAN & SPRAGUE
STATE COMPENSATION INSURANCE FUND

DW/oo

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