

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

JENNIFER DANCE, *Applicant*

vs.

CITY OF BURBANK, *Permissibly Self-Insured, Defendant*

**Adjudication Number: ADJ16439951
Marina Del Rey District Office**

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

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) First Amended Findings of Fact of February 6, 2026, wherein it was found that while employed on May 13, 2022 as a librarian, applicant sustained industrial injury "to panic disorder and post-traumatic stress disorder." It was found that applicant was "a victim of a violent act or from direct exposure to a significant violent act" and that "QME Baba Singh's reports and depositions are substantial medical evidence. His medical evidence will not be stricken from the record."

Defendant contends that the WCJ erred in finding industrial injury. We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration. Both the defendant and the applicant have attached numerous documents to their respective pleadings that had already been entered into the evidentiary record, in violation of Appeals Board Rule 10945(c)(1). (Cal. Code Regs., tit. 8, § 10945, subd. (c)(1).) Further violation of our rules will be met with sanctions.

As explained below, we will affirm the finding of industrial injury. However, we will amend the WCJ's decision to find that applicant has sustained industrial injury to the psyche and to delete the finding regarding the substantiality of Dr. Baba Singh's reports and deposition testimony.

Preliminarily, we note that former Labor Code 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, Labor Code 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 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 March 30, 2026 and 60 days from the date of transmission is May 29, 2026. This decision is issued by or on May 29, 2026, so 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 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 March 30, 2026, and the case was transmitted to the Appeals Board on March 30, 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 March 30, 2026.

Turning to the merits, the WCJ found industrial injury based on the reporting and testimony of primary treating physician Marc Nehorayan, M.D., who opined that applicant's psychiatric injury was predominantly caused by actual events of employment. We note that since applicant's injury resulted from being a victim of or direct exposure to a violent act – a finding that defendant does not challenge – it need only be proved the actual events of employment were a substantial cause of the injury. (Cal. Labor Code, § 3208.3, subd. (b)(2).)

Defendant argues that Dr. Nehorayan's reports and testimony are not substantial evidence because applicant's condition was diagnosed under the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V) rather than the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV).

Labor Code section 3208.3(a) states:

A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2 or, until these procedures are promulgated, it is diagnosed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, *Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.*

(Emphasis added.)

Thus, not only does the statute specifically refer to the *Third* edition, rather than the Fourth or Fifth, but it allows the use “of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine.” Without citation to a single statute, case, or regulation, defendant states in its Petition that “the standard established by the Workers' Compensation Appeals Board to evaluate and diagnosis [sic] psychiatric injuries is the DSM-IV.”

In fact, even Dr. Baba Singh, who defendant argues we should follow with regard to industrial causation, diagnosed the applicant's condition pursuant to the DSM-V (November 4, 2022 report at p. 10; Deposition of October 25, 2024 at p. 68) and testified that the DSM-V currently contains the standard diagnostic criteria. (Deposition of October 25, 2024 at pp. 83, 88.)

Defendant creates an inapt analogy regarding the use of the AMA Guides to the Evaluation of Permanent Disability, Fifth Edition in California workers' compensation proceedings in rating

physical injuries, despite the existence of a Sixth Edition. However, Labor Code sections 4660(b)(1) and 4660.1(b)(1) expressly specify the use of the Fifth Edition without the qualifying language contained in section 3208.3(a) allowing the use of other manuals generally approved and accepted by practitioners nationally. We reiterate again that in any case section 3208.3(a) refers to the DSM-III rather than the DSM-IV advocated by defendant, further undermining its argument.

Defendant appears to argue that the DSM-IV is the standard because psychiatric permanent disability is governed by the Global Assessment of Functioning (GAF) which defendant states had its genesis in the DSM-IV. While it is true that the 2005 Schedule for Rating Permanent Disabilities incorporates the GAF scale (2005 Schedule at pp. 1-12 – 1-16), the Schedule does not mention the DSM-IV at all. Even if it were true that the GAF scale was taken from the DSM-IV, it now exists independently from the DSM-IV to rate psychiatric permanent impairment. Even Dr. Baba Singh, who defendant wishes us to follow, sees no confusion in utilizing the DSM-V for diagnosis and the GAF to rate permanent impairment. (Deposition of October 25, 2024 at p. 88.)

In any case, we question whether this line of inquiry is material given that the relevant inquiry is whether actual events of employment were the substantial or predominant cause of the need for medical treatment or temporary or permanent disability rather than if they were the cause of a specific psychiatric condition. (*Sonoma State University v. Workers' Comp. Appeals Bd. (Hunton)* (2006) 142 Cal.App.4th 500 [71 Cal.Comp.Cases 1059].)¹ Dr. Baba Singh appears to have opined that applicant did not meet her burden on causation because applicant had a pre-existing anxiety disorder and thus the employment event could not have caused the anxiety disorder. However, Dr. Baba Singh outlines the fact that the incident caused new treatment modalities, temporary disability, and caused her GAF score to decrease significantly. The Supreme Court has made clear that “the acceleration, aggravation or ‘lighting up’ of a preexisting disease is an injury in the occupation causing the same.” (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd. (Clark)* 61 Cal.4th 291, 301 [80 Cal.Comp.Cases 489].) Thus, we question whether Dr. Baba Singh’s causation analysis was made under the proper legal standard.

We thus affirm the finding of psychiatric injury. However, we will grant reconsideration an amend the WCJ’s decision to amend the finding of injury to injury to “psyche” rather than “to

¹ Although the *Hunton* case appears to have overlooked the fact that actual events of employment could be the predominant cause of the need for medical treatment and temporary disability without being the predominant cause of permanent disability, the holding of the case is that the relevant inquiry is the psychiatric injury in its entirety not the separate identifiable disorders.

panic disorder and post-traumatic stress disorder.” As noted above, the ultimate issue in this case is the causation of psychiatric injury as a whole, rather than any specific diagnosis. Additionally, the WCAB is only required to issue findings on ultimate facts. (*DPR Construction v. Workers’ Comp. Appeals Bd. (McLanahan)* (2025) 111 Cal.App.5th 1136, 1143 [90 Cal.Comp.Cases 491].)

We will also delete the finding regarding the substantiality and admissibility of Dr. Baba Singh’s reporting and deposition testimony. Whether medical reporting and testimony constitutes substantial medical evidence affects the weight given to it, not its admissibility. (*Ochoa v. Casale* (2024) 2024 Wrk. Comp. P.D. LEXIS 307, *6, fn.2 [Appeals Bd. panel].) As noted above, we are only required to issue findings on ultimate facts, thus a finding regarding the substantiality of Dr. Baba Singh’s reporting and testimony was not necessary.

For the foregoing reasons,

IT IS ORDERED that Defendant’s Petition for Reconsideration of the First Amended Findings of Fact of February 6, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers’ Compensation Appeals Board the First Amended Findings of Fact of February 6, 2026 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Jennifer Dance, while employed on 5/13/22 as a librarian, occupational Group Number 214, at Burbank California, by City of Burbank, self-insured sustained injury arising out of and in the course of employment to the psyche.
2. Applicant is a “victim of a violent act or from direct exposure to a significant violent act,” under LC § 3208.3(b)(2).

ORDER

1. **IT IS HEREBY ORDERED THAT** the Findings of Fact dated January 2, 2026, is rescinded.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 29, 2026

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

**JENNIFER DANCE
WORK INJURY LAW GROUP
CW LAW**

DW/oo

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