WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOHN HUDSON III, *Applicant*

vs.

STATE OF CALIFORNIA, OFFICE OF EMERGENCY SERVICES, legally uninsured, adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ16768287
Long Beach District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on December 24, 2025. The WCJ found, in pertinent part, that applicant sustained injury arising out of and in the course of employment (AOE/COE) to his arm, hand, back, hips, and shoulder, the injury caused permanent disability (PD) of 86 percent, as well as a weekly life pension thereafter, to be adjusted by the parties and subject to Labor Code section 4659[1]. The WCJ also found there is no basis for apportionment, further medical treatment is required, the opinions of Dr. Esch constitute substantial medical evidence, and there is no basis for further development of the record.

Defendant contends that 1) discovery was pursued diligently but could not be completed, 2) the panel qualified medical evaluator (QME)'s reports do not constitute substantial evidence and may not be relied upon, 3) its failure to file a petition for removal does not waive the right to complete discovery, and 4) it was substantially prejudiced when the WCJ denied it the opportunity to complete discovery.

We have received an Answer from applicant.

[1] All section references are to the Labor Code, unless otherwise indicated.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of defendant's Petition for Reconsideration (Petition) and the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, we will deny reconsideration.

FACTS

On October 3, 2022, applicant filed an Application for Adjudication of Claim (Application) claiming an injury to his arm, hand, back, and hips while employed by defendant as a communications coordinator from July 14, 2021 to July 14, 2022.

On May 9, 2023, applicant was evaluated by orthopedic surgeon panel QME, James C. Esch, M.D. The QME issued a total of thirteen reports from May 9, 2023 to December 6, 2024 and had his deposition taken on November 13, 2024, and for a second time on March 19, 2025. Dr. Esch found industrial causation to applicant's bilateral upper extremities, bilateral lower extremities, cervical spine, and lumbar spine and impairments for multiple body parts with no apportionment, and a need for future medical care. (Joint Exhibit E, Report of Orthopedic Panel Qualified Medical Evaluator James C. Esch, M.D., dated February 1, 2024, at pp. 5-17.)

On May 22, 2025, applicant's attorney filed a Declaration of Readiness to Proceed (DOR), requesting a mandatory settlement conference (MSC), to which defendant objected to as discovery was outstanding.

On June 30, 2025, the parties appeared at the MSC. The conference WCJ noted in the Minutes of Hearing that although defendant objected to the DOR, final discovery was in place. Parties were to file the pre-trial conference statement prior to the next MSC on August 25, 2025.

At the August 25, 2025 MSC, the conference WCJ set the case for trial and noted that the issue of the supplemental report was deferred to the trial judge.

At trial on November 10, 2025, the parties stipulated that applicant, while employed by defendant as a communications coordinator from July 14, 2000 to July 14, 2022, sustained injury AOE/COE to his arm, hand, back, hips, and shoulder. The parties proceeded to trial on the issues of permanent disability, apportionment, occupational group code, the need for further medical treatment, attorney fees, and whether the reports by Dr. Esch constitute substantial medical evidence or if further development of the record is necessary.

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.
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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 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 January 26, 2026, and 60 days from the date of transmission is Friday, March 27, 2026. This decision was issued by or on March 27, 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 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 January 26, 2026, and the case was transmitted to the Appeals Board on January 26, 2026. Service of the Report and transmission

of the cases 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 January 26, 2026.

II.

Defendant contends that the QME's reports do not constitute substantial medical evidence and that further discovery is necessary. For the reasons stated in the WCJ's Opinion, we agree with the WCJ that the QME's reports constitute substantial medical evidence upon which the WCJ properly relied.

A WCJ's decision must be based on admitted evidence and must be supported by substantial evidence (Lab. Code, §§ 5903, 5952(d); *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Defendant has the burden of proof on the issue of apportionment. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) Apportionment of permanent disability must be based on causation (Lab. Code, § 4663) and may be attributed to pathology, asymptomatic prior conditions, and retroactive prophylactic work preclusions, provided there is substantial medical evidence establishing that these other factors have caused permanent disability. (*Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687] citing *Escobedo*, *supra*, at p. 612.) Permanent disability must be apportioned in accordance with substantial medical evidence. (*Acme Steel v. Workers' Comp. Appeals Bd.* (*Borman*) (2013) 218 Cal.App.4th 1137 [78 Cal.Comp.Cases 751]) To qualify as substantial evidence, a physician's report 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. (*Gatten*, *supra*, 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo*, *supra*, 70

Cal.Comp.Cases 604, 612.) A medical report is not substantial evidence if it merely sets forth the physician's conclusions without explaining the reasoning behind his opinions. (*Gatten*, *supra*, 145 Cal.App.4th at p. 927.)

Substantial evidence has been described as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and more than a mere scintilla. (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566].) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture, or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93, 97].) Whether a physician's opinion constitutes substantial evidence "must be determined by the material facts upon which his opinion was based and by the reasons given for his opinion." (*Ibid.*) Substantial medical evidence on the issue of apportionment requires that: "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." (*Escobedo*, *supra*, 70 Cal.Comp.Cases at p. 621.)

Here, the QME evaluated the applicant, reviewed medical records, and issued thirteen reports. He was also deposed by the parties on two different occasions. With respect to apportionment, the QME opined as follows:

> It is my opinion that there is no apportionment to the following body parts: lumbar, left shoulder, right shoulder, right hip, left hip, right wrist, left wrist. The applicant has worked for over 35 years in the current job. Page 17 of my Supplemental Report of 02/01/2024 states in my opinion, 100% of his impairment has been caused by the cumulative trauma industrial injury of 07/14/2021-07/14/2022 and 0% has been caused by other factors. My opinion regarding apportionment is made considering Labor Code Sections 4663, 4664, and the Escobedo decision.

(Joint Exhibit D, Report of Orthopedic Panel Qualified Medical Evaluator James C. Esch, M.D., dated 4/11/2024, at p. 3.)

As set forth in the WCJ's Opinion:

Apportionment

Labor Code section 4663(a) essentially states that apportionment to permanent disability is based on causation. (*Brodie v. Workers Comp. App. Bd*. (2007), 40 Cal. 4th 1313). Approximate percentages iterated by a physician can be acceptable and not necessarily speculative as long as they are supported by evidence that is substantial. (*Anderson v. Workers Comp. App. Bd*. (2007) 149 Cal. App. 4th 1369). Apportionment is defendant's burden alone. (*Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604, 613-14 (*en banc*)).

The PQME finds no apportionment. Essentially, even when reviewing the job statement that was refuted by applicant's testimony as being inaccurate, the doctor relied on the applicant's 35 years of being a communications coordinator in the field, as well as the MRI of the lumbar showing severe right neural foraminal stenosis at L5-S1 and moderate left neural foraminal stenosis at L5-S1. The PQME explains, "There were multiple injuries and surgery during the time of his cumulative trauma. Therefore, in my opinion, 100% of the impairment has been caused by the cumulative trauma industrial injury…and 0% has been caused by other factors." (Joint Exhibit B; Joint Exhibit C; Joint Exhibit E, 2/1/2024, p. 17).

Based on the existing medical reports of the PQME, and no rebuttal evidence offered by the defendant, the court finds no basis for apportionment.

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Substantial medical evidence and further development of the record

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The defendant was on notice that the PQME rejected apportionment in the initial ratable report of the PQME May 9, 2023, 571 days prior to the discovery cut-off date. But also, second, the court does not find the PQME's opinions defective after the two depositions. The court is aware that risk factors can be apportioned as causes to permanent disability, but whether the medical-legal evaluator agrees to do so is an entirely different matter. It must still be determined to be a contributing cause of disability, and the PQME drew that line in this case. (*City of Petaluma v. Workers' Comp. Appeals Bd.* (2018) 29 Cal.App.5th 1175, 1193 [241 Cal.Rptr.3d 97].)

Pursuant to the PQME, people who are over morbidly obese have a potential for increased osteoarthritis; however, it also depends on activity level. (Joint Exhibit J, Deposition of James Esch MD 11/13/2024, 21:23-25, 22:1-14.) At some point the applicant was morbidly obese (385 pounds) for the last ten years or more. (Joint Exhibit J, Deposition of James Esch MD 11/13/2024, 22:15-18.) The applicant underwent a total hip replacement for the right hip and lacked cartilage in his left hip. (Joint Exhibit J, Deposition of James Esch MD 11/13/2024, 24:13-18). In the PQME's opinion, the level of osteoarthritic change on which PD is measured by

> weight, activity level, and time, using a car as metaphor. (Joint Exhibit H, Deposition of James Esch MD 11/13/2024, 25:17-25; 26:1-4.) Extra pressure and mechanical stress lead to articular cartilage damage. (Joint Exhibit J, Deposition of James Esch MD 11/13/2024, 28:16-21). However, the doctor considered obesity itself to be a risk factor not a definite causative factor that would sway him on orthopedic apportionment when taking into account the applicant's length of employment and duties in the field. Obesity would only expedite or "lend to a faster arthritis," but not contribute towards disability. (Joint Exhibit J, Deposition of James Esch MD 11/13/2024, 35:1-18).
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> In essence, continuing with the PQME's car metaphor, it did not matter how fast the car was going because the destination was always the same. (*See also State of California/Department of Hospitals-Vacaville v. Workers' Comp. Appeals Bd.* (*Ham*) (2019) 84 Cal. Comp. Cases 1006). No matter how the defendant asked the question, and it was certainly not for the lack of trying, the doctor did not find obesity to be a causal factor of disability because there was no evidence of pre-existing osteoarthritis. (Joint Exhibit I, Deposition of James Esch MD 3/19/2025, 65:18-23, 66:1-8; 67:1-13). The disability was rated on the basis of the applicant's orthopedic disability alone, unrelated to his prior obesity. Thus, defendant has not met its burden of proof. (*See Wiest (Scott) v. Cal. Dep't of Corr*., 2021 Cal. Wrk. Comp. P.D. LEXIS 162.)
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> The burden of proof is not with the court as the impartial judicial entity. Irrespective of the fact that the PQME failed to read the applicant's deposition transcript, Dr. Esch did not give further credence to non-industrial apportionment in his depositions that followed. Standing alone, the opinions of Dr. Esch do constitute substantial medical evidence upon which the court can rely on determining disability on which to base an award. There is no record to develop. That the PQME does not come to a conclusion favorable to one side or another does not impair its substantiality. Absent new evidence that could not have been obtained prior to the discovery cut off, the court cannot save either party from their burden of proof or a disagreeing PQME.

(Report, at pp. 3-5.)

The WCJ has carefully reviewed and evaluated the apportionment analysis as described by the QME. Having considered the question of the weight of the evidence in light of the applicable statutory and case law authority, the WCJ has determined that the existing apportionment analysis described by the QME constitutes substantial medical evidence. Although defendant took Volume I of applicant's deposition on August 22, 2024, it failed to serve the transcript onto the QME prior to the August 25, 2025 MSC. Nevertheless, the QME's failure to review the applicant's deposition transcript does not make the QME's reports any less substantial when the QME has taken an adequate history from the applicant and reviewed prior relevant medical records.

Here, we are persuaded that the WCJ's findings are amply supported by the medical evidence. We observe that defendant's failure to file a petition for removal did not preclude it from raising the issue at trial, and the issue of further discovery was appropriately deferred to the trial WCJ. Based on our independent review of the entire evidentiary record, we agree that the QME's reports are substantial medical evidence and that further discovery is not necessary, and we decline to disturb the WCJ's findings.

Accordingly, we deny defendant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the December 24, 2025 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 25, 2026

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

JOHN HUDSON III
LAW OFFICE OF ERIC GRITZ
STATE COMPENSATION INSURANCE FUND

JL/abs

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