WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JOHN ROBERTS, *Applicant*

vs.

CITY OF LOS ANGELES;
permissibly self-insured, administered by SEDGWICK, *Defendants*

Adjudication Number: ADJ16790298, ADJ16790299
Van Nuys District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Joint Findings and Award (F&A) that was issued by the workers' compensation administrative law judge (WCJ) on September 24, 2025.

In ADJ16790298, the WCJ found, in relevant part, that applicant, while employed by defendant as a firefighter/captain from February 10, 2003 through August 25, 2022, sustained injury arising out of and in the course of employment (AOE/COE) to his back and right carpal tunnel causing permanent disability of 38%. In ADJ16790299, the WCJ found, in relevant part, that applicant, while employed as a firefighter/captain on June 18, 2022, sustained injury AOE/COE to his cervical spine and lumbar spine causing permanent disability of 42%. In both cases, the WCJ found that defendant failed to meet their burden of proof with respect to non-industrial apportionment.

Defendant contends, in pertinent part, that the WCJ erred in finding defendant failed to meet their burden of proof for non-industrial apportionment of disability to the cervical spine and the lumbar spine. Defendant further contends that the apportionment analyses by Agreed Medical Evaluator (AME) David Heskiaoff, M.D., constitutes substantial medical evidence and supports a finding of apportionment per Labor Code section 4663[1] to the cervical spine and lumbar spine.

We have received an Answer from applicant.

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[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 the Petition be denied.

We have considered the allegations of the Petition and the Answer, and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, we will deny reconsideration.

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.
>
> (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 cases were transmitted to the Appeals Board on November 12, 2025, and 60 days from the date of transmission is Sunday, January 11, 2026. The next business day that is 60 days from the date of transmission is Monday, January 12, 2026. (See Cal. Code. Regs., tit. 8, § 10600(b).[2] This decision is issued by or on Monday, January 12, 2026, so that we have timely acted on the petition as required by section 5909(a).

[2] 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.

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 November 12, 2025, and the cases were transmitted to the Appeals Board on November 12, 2025. 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 November 12, 2025.

II.

In addition to the analysis set forth in the WCJ's Report, we observe the following.

Section 4663 of the Labor Code requires:

(a) Apportionment of permanent disability shall be based on causation.

(b) A physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall address in that report the issue of causation of the permanent disability.

(c) In order for a physician's report to be considered complete on the issue of permanent disability, the report must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

(Lab. Code, § 4663(a)-(c).)

Section 4663 requires that any report addressing permanent disability must also address apportionment of disability. The defendant has the burden of proof on 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 Board 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, "[a]pportionment is a factual matter for the appeals board to determine based upon all the evidence." (*Gay*, *supra*, at p. 564.) The WCJ has the authority to determine the appropriate amount of apportionment, if any. Any decision issued by a WCJ, however, must be based upon substantial evidence. (Lab. Code, §§ 5903, 5952(d); *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 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.) 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.

Pursuant to *E.L. Yeager v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 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.* (1987) 195 Cal.App.3d 614, 621 [52 Cal.Comp.Cases 479].)

Here, for the reasons stated in the WCJ's Report, we agree with the WCJ that the opinion of AME Dr. Heskiaoff on the issue of apportionment does not constitute substantial medical evidence. "[T]he mere fact that a report 'addresses' the issue of causation of the permanent disability and makes an 'apportionment determination' by finding the approximate relative percentages of industrial and non-industrial causation does not necessarily render the report one upon which the WCAB may rely." (*Escobedo*, *supra*, 70 Cal.Comp.Cases at p. 620.)

Accordingly, defendant's Petition is denied.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 9, 2026

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

JOHN ROBERTS
LEWIS, MARENSTEIN, SHERWIN, WICKE & LEE
OFFICE OF THE LOS ANGELES CITY ATTORNEY

JL/abs

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

RECOMMENDATIONS ON PETITION FOR RECONSIDERATION

STATEMENT OF THE CASE

Applicant John Roberts filed a continuous trauma injury claim (ADJ16790298 MF) for injuries sustained to his back and right carpal tunnel during the period February 10, 2003, through August 25, 2022, while employed as a firefighter/captain by the City of Los Angeles. He also filed a specific injury claim (ADJ16790299) for injuries sustained to his neck and lumbar spine on June 18, 2022, while employed as a firefighter/captain, by the City of Los Angeles. The injuries were accepted, and benefits were paid. Parties agreed on all aspects of the cases, with the exception of apportionment. On September 24, 2025, the WCJ issued a Findings and Award which found that Defendants did not meet their burden of proof regarding apportionment. On October 20, 2025, Applicant filed a timely and verified Petition for Reconsideration appealing that determination. The WCJ now offers these recommendations on the Petition for Reconsideration.

DEFENDANTS' CONTENTIONS ON RECONSIDERATION

Defendants assert that the 09/24/2025 Finding & Award is technically deficient, must be overturned and, in the least, be remanded back to the trial court as the Decision failed to adequately address both 1) Defendant's arguments for §4663 apportion to the cervical spine and 2) the evidence offered and· in support Defendant's arguments for §4663 apportionment. This contention is without merit as the WCJ not only addressed the fact that there is no evidence of a prior award but also points out that the AME report on apportionment is not substantial medical evidence as he does not explain, how, or why the apportionment to the cervical is non-industrial. The applicant is a long-term employee and there is no evidence presented to support a finding of non-industrial injuries or disability to the cervical or lumbar spines. Dr. Heskiaoff even admitted that he was "not clear the applicant had received a prior award for his low back."

The parties utilized Dr. David Heskiaoff as the AME in orthopedic medicine to address permanent disability, apportionment and need for future medical care. He issued three reports. In his initial report of August 15, 2023, Dr. Heskiaoff stated that the Applicant may have received a prior award for his low back of 8% and if said award existed, it should ultimately be subtracted from his potential disability rating when he becomes P&S. He noted, however, that he was not clear that he had in fact received that award.

In his report of September 18, 2024, Dr. Heskiaoff also discussed apportionment noting that:

> "Previously, the patient received 8% WPI for the lumbar spine. The subtraction method is recommended, and the residuals should be apportioned approximately 80% to the continuous trauma of work ending on August 25, 2022, and approximately 20% to the injury of June 18, 2022."
>
> "With regard to the cervical spine, I apportion approximately 20% of the patient's disability to the degenerative changes and approximately 80% to the injury of June 18, 2022." (Exhibit AA, page 18, para. 1).
>
> With regard to the right wrist carpal tunnel syndrome, I apportion approximately 10% of the patient's disability to nonindustrial usage and approximately 90% to the continuous trauma of work from February 10,

> 2003, to August 25, 2022." (Exhibit CC, page 14 to 15, para 8, to para 1 to 3). In each instance of discussing apportionment, Dr. Heskiaoff merely mentions "nonindustrial" without clearly defining what he means and what the elements of the non-industrial factors are. That does not lead to a finding of a substantial report as required by Escobedo.

DEFENDANTS HAVE THE BURDEN OF PROOF ON APPORTIONMENT

The injured employee has the burden of affirmatively establishing the extent of his permanent disability. (§§ 3202.5, 5705.) Thereafter, however, the burden shifts to defendant to prove apportionment. *(Pullman Kellogg* v. *Workers' Comp. Appeals Ed* (Normand) (1980) 26 Cal.3d 450, 456; *Kopping* v. *Workers'Comp. Appeals Bd* (2006) 142 Cal.App.4th 1099, 1115; *Escobedo* v. *Marshalls* (2005) 70 Cal.Comp.Cases 604.613 (Appeals Board en banc) (Escobedo).) Defendant must offer substantial medical evidence to prove that the apportionment is valid. In this case Defendants are arguing for credit for an 8% prior award pursuant to Labor Code section 4664(b).

However, subsequent to that Finding there is no further analysis or discussion provided by the WCJ specifically considering Defendant's arguments for §4663 apportionment to the cervical spine, with the Opinion only addressing §4663 apportionment for the Applicant's carpal tunnel syndrome without any further comment on any other body parts. *09/24/2025 Joint Opinion on Award, pg. 3 - 4.* In fact, the WCJ did address the apportionment under LC 4663. It was noted that the apportionment was deficient because of the lack of clear explanation as required per Escobedo. This is noted below:

> Next, turning to apportionment under Labor Code Section 4663, we again find deficiencies in the analysis set forth by the AME. For the carpal tunnel syndrome, he apportions 10% to nonindustrial usage, however, nothing in the medical history reflects the nature of the nonindustrial usage referenced. No explanation is given as to when, how, or why that usage resulted in disability to the applicant. In order for a medical opinion to constitute substantial evidence, it must be predicated on reasonable medical probability. It must also set forth the reasoning behind the physician's opinion. In the context of an apportionment determination, the 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 California Workers' Compensation Appeals Board can determine whether the physician is properly apportioning under correct legal principles. A medical opinion must be framed in terms of reasonable medical probability, must not be speculative, must be based on pertinent facts and on adequate examination and history, and must set forth the reasoning in support of its conclusions.(*City of Petaluma v. Workers' Comp. Appeals Bd.* 2018) 29 Cal.App.5th 1175, 1177 [241 Cal.Rptr.3d 97].) The medical evidence in this case does not meet the required criteria. Thus, defendants have not met their burden of proof and as such applicant is entitled to an un-apportioned award.

DEFENDANTS CANNOT CREATE A NEW ST AND ARD OF PROOF FOR APPORTIONMENT

Throughout their pleading Defendants argue that Dr. Heskiaoff's apportionment analysis is "clear", or "clear enough" to support a finding of apportionment to non-industrial factors. That is not the test set forth in Escobedo which requires substantial medical evidence based on "reasonable medical probability, no speculation, pertinent facts and on adequate examination and history, and it must set forth the reasoning in support of its conclusions. (*City of Petaluma v. Workers' Comp. Appeals Bd.* 2018) 29 Cal.App.5th 1175, 1177 [241 Cal.Rptr.3d 97].) That test is not met here.

In fact, Defendants agree that Dr. Heskiaoff's report is lacking in substantial analysis when they say in the Petition:

> Admittedly, the somewhat-confusing nature of the Lumbar Spine apportionment analysis does no favor for the Parties given the AME's unusual two-step calculation with deduction of a percentage of WPI to the total of Applicant's Lumbar impairment, only then to divide the 'remainder' impairment between the Applicant's pled cumulative and specific injury claims. Furthermore, the apportionment analysis presented for the low back is moreover complicated by the AME's reference to 'subtraction' of WPI attributed to a prior injury – an apportionment term more common in the context of LC §4664 apportionment from a prior award, which is not appropriate here as there is no prior award issued in this matter.

Despite reaching their own conclusion that Dr. Heskiaoff's apportionment is speculative and unclear, Defendants still persist in arguing that the WCJ must rely upon it. That theory is not supported by case law.

CONTENTIONS BY APPLICANT'S ATTORNEY

Applicants counsel asserts the following:

However, it should be noted that nowhere in the three reports authored by the AME does he review a cervical spine MRI report dated 08101/2022. In fact, the only cervical spine MRI report reviewed by the AME is the one authored by Dr. Babak Shayestehfar dated 08/27/2023, and nowhere in the review of that MRI report does the AME note the existence of "degenerative changes". Applicant will concede that Dr Heskiaoff performed X-rays at the time of his initial evaluation on 08/15/ 2023 and noted in his corresponding report degenerative disc disease in the cervical spine. (Joint Trial Exhibit AA, pg 14-16). That said, Dr. Heskiaoff s x-rays were taken over a year after June 18, 2022, injury. Thus, there is no evidence to suggest that the degenerative. findings pre-existed the date of injury. Moreover, Dr. Heskiaoff does not comment on the non-industrial nature of Applicant's degenerative changes, so we are left to speculate whether said 20% would be due to non-industrial factors. Thus, Defendants have not met their burden of proof to establish apportionment for the cervical spine.

Given the review of the arguments and the evidence, it is WCJ's recommendation that the Petition for Reconsideration be denied.

THIS REPORT AND RECOMMENDATION WAS TRANSMITTED TO THE APPEALS BOARD ON: 11/12/2025

DATE: 11-12-25

MARTHA D. HENDERSON
WORKERS' COMPENSATION JUDGE