WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOSE ALVARENGA, *Applicant*

vs.

SAPUTO CHEESE USA, INC.; STONINGTON INSURANCE COMPANY, administered by SEDGWICK, *Defendants*

Adjudication Number: ADJ11443488
Fresno District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND ORDER TO OBTAIN TRANSCRIPT

Defendant seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on August 21, 2026. The WCJ found, in relevant part, that Labor Code section[1] 3208.3(d) does not bar compensation, as applicant's injury was caused by a sudden and extraordinary event; that applicant sustained a psychiatric injury and an internal medicine injury; and that apportionment does not apply.

Defendant contends that applicant did not present evidence that the event was uncommon, unusual, and occurred unexpectedly, and thus applicant's claim for a psychiatric injury should be barred by section 3208.3(d). Defendant further contends that psychiatric panel qualified medical evaluator (QME) Alberto G. Lopez, M.D., M.P.H., lacks the necessary qualifications to opine on employability and his opinion is not sufficient to rebut the scheduled rating. Additionally, defendant contends that Dr. Lopez's opinion regarding impairment is not substantial medical evidence.

We received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto.

---

[1] All statutory references are to the Labor Code unless otherwise stated.

Based on our preliminary review of the record we will grant reconsideration to issue an order pursuant to WCAB Rule 10800 (Cal. Code Regs., tit. 8, § 10800) that the proceedings and testimony from the April 20, 2026 trial in this matter be transcribed and promptly filed in the Electronic Adjudication Management System (EAMS), with simultaneous notice of the filing to all active parties and the Workers' Compensation Appeals Board, Office of the Commissioners.

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to 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.
>
> (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 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 21, 2026, and 60 days from the date of transmission is Tuesday, October 20, 2026. This decision is issued by or on October 20, 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 21, 2026, and the case was transmitted to the Appeals Board on August 21, 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 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 August 21, 2026.

II.

To be compensable, an injury must arise out of and occur in the course of employment. (Lab. Code, § 3600.) The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd*. (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.)

Where applicant claims a psychiatric injury, section 3208.3 states:

> (b)
>
> (1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.
>
> ***
>
> (3) For the purposes of this section, "substantial cause" means at least 35 to 40 percent of the causation from all sources combined.
>
> (c) It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division.
>
> (d) Notwithstanding any other provision of this division, no compensation shall be paid pursuant to this division for a psychiatric injury related to a claim against an employer unless the employee has been employed by that employer for at least six months. The six months of employment need not be continuous. This subdivision shall not apply if the psychiatric injury is caused by a sudden and extraordinary employment condition.
>
> ***

(Lab. Code, § 3208.3.)

Although the Legislature refers to the term "sudden and extraordinary" employment condition in section 3208.3(d), it does not define "sudden" or "extraordinary" in the statute. Analysis of the decisions addressing whether a psychiatric injury resulted from a "sudden and extraordinary employment condition" reveal that this is a primarily fact-driven inquiry. "Each case must be considered **on its facts** in order to determine whether the alleged psychiatric injury occurred as a result of sudden and extraordinary events that would naturally be expected to cause psychic disturbances[.]" (*Matea v. Workers' Comp. Appeals Bd*. (2006) 144 Cal.App.4th 1435, 1450 [71 Cal.Comp.Cases 1522], emphasis added.) Consequently, appellate decisions focus heavily on the individual facts in determining whether an employment condition was sudden and extraordinary. By extension, the determination of whether an event is "sudden and extraordinary" within the meaning of section 3208.3(d) also hinges on the evidence in the record, or lack thereof.

Petitioner cites to several other cases where the Courts considered whether an injured worker sustained their burden of establishing that their psychiatric injury was caused by a "sudden and extraordinary employment condition." These cases illustrate how the Courts focus on the individual facts in determining whether an employment condition was sudden and extraordinary.

In *State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.* (*Garcia*) (2012) 204 Cal.App.4th 766 [77 Cal.Comp.Cases 307], the Court concluded that an avocado picker did not offer "**particularly strong evidence** on extraordinariness" to support his claim that his fall from a 24-foot ladder was unusual or extraordinary. (*Garcia*, *supra*, 204 Cal.App.4th at p. 774, emphasis added.) In *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Guzman*) (2018) 20 Cal.App.5th 796, 800 the injured worker was the only witness at trial. The Court noted that the injured worker did not introduce any evidence regarding what regularly or routinely happens if a compactor hits a rock on a slope, as opposed to a flat surface. (*Guzman*, *supra*, 20 Cal.App.5th at p. 810.) Similarly, in *Travelers Casualty & Surety Co. v. Workers' Comp. Appeals Bd.* (*Dreher*) (2016) 246 Cal.App.4th 1101, 1108-1109 [81 Cal.Comp.Cases 402], the injured worker did not present sufficient evidence to shift the burden on whether a slip-and-fall on rain-slicked concrete was extraordinary.

A WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon

which the determination was made." (Lab. Code, § 5313; Cal. Code Regs., tit. 8, §§ 10759, 10761; see also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc).) "[T]he WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton*, *supra*, at 475.) A WCJ's decision must be supported by substantial evidence in light of the entire record. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workers' Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].)

"The WCJ is also required to prepare an opinion on decision, setting forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on." (*Hamilton*, *supra*, at 476.) "The opinion 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*, 66 Cal.Comp.Cases at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350].) For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record. (*Hamilton*, *supra*, 66 Cal.Comp.Cases at p. 476.)

Here, following our preliminary review of the summary of testimony at trial and the discussion in the WCJ's Opinion and the Report, we believe that it is necessary to review a transcript of the testimony at trial to better consider whether applicant's injury was caused by a sudden and extraordinary event pursuant to section 3208.3(d).

Accordingly, reconsideration is granted to issue an order pursuant to WCAB Rule 10800 that the proceedings and testimony from the April 20, 2026 trial in this matter be transcribed and promptly filed in EAMS, with simultaneous notice of the filing to all active parties and the Workers' Compensation Appeals Board, Office of the Commissioners.

We emphasize that this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is

deferred. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that the court reporter transcribe the proceedings and testimony from the April 20, 2026 trial pursuant to WCAB Rule 10800 (Cal. Code Regs., tit. 8, § 10800), and that copies of the transcript be promptly filed in the Electronic Adjudication Management System (EAMS) with notice of the filing provided to all active parties and the Workers' Compensation Appeals Board, Office of the Commissioners.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 20, 2026

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

JOSE ALVARENGA
THE LAW OFFICES OF ROBERT OZERAN
D'ANDRE LAW, LLP
LAW OFFICES OF BO KATZAKIAN
THE JIN LAW FIRM, P.C.
LAURA M. WILSON & ASSOCIATES, INC.
MERCED COUNTY DCSS

JB/*pm*

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