WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOSE GALVAN, *Applicant*

vs.

STEVE'S PROFESSIONAL WINDOW TINTING; SECURITY NATIONAL INSURANCE COMPANY, *Defendants*

Adjudication Numbers: ADJ11368321
Santa Ana District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant filed a Petition for Reconsideration (Petition) of the Findings and Award (F&A) issued on October 14, 2025, wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that applicant, while employed on May 11, 2018, by defendant as window film/tint installer, sustained an injury arising out of and in the course of employment to his head, bilateral wrists, back, ribs, brain, abdomen, bilateral upper and lower extremities, lungs, kidney disease, aggravation of diabetes, and PTSD/psyche, was temporarily totally disabled from March 11, 2018, until March 10, 2020, when his condition reached maximal medical improvement, that he is not amenable to vocational rehabilitation, and that he is 100% permanently totally disabled.

Defendant asserts in the Petition that applicant's vocational expert's report is not substantial evidence, that finding applicant's injury is catastrophic to provide psychiatric disability is not supported by the evidence, and that temporary disability should begin with the day of applicant's injury.

Applicant filed an Answer.

The WCJ's Report and Recommendation (Report) recommends reconsideration be granted solely to amend the F&A to reflect that temporary disability runs from May 11, 2018, to May 10, 2020, less credit for days worked, and that permanent total disability began on May 11, 2020.

After our review of the record and for the reasons discussed below, we will grant defendant's Petition for Reconsideration and amend the F&A to correct the date clerical error, defer issues related to permanent disability, and otherwise affirm the F&A.

I.

Former Labor Code section 5909[1] 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. (Former 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.

(Lab. Code, § 5909.)

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 24, 2025, and 60 days from the date of transmission is Friday, January 23, 2026. This decision issued by or on January 23, 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

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

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.

According to the proof of service, the Report was served on November 24, 2025, and the cases were transmitted to the Appeals Board on November 24, 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 24, 2025.

II.

As found by the WCJ in the F&A, applicant, while employed by defendant on May 11, 2018, sustained injury to the head, bilateral wrists, back, ribs, brain, abdomen, bilateral upper and lower extremities, lungs, kidney disease, aggravation of diabetes, and PTSD/psyche.

On May 11, 2018, applicant fell about twenty feet off a ladder without loss of consciousness. He was transported to Pomona Valley Hospital Medical Center where work-up showed a right distal radius fracture, an ulnar styloid fracture, a comminuted left distal radius fracture, a Chance fracture of T7, a T8 wedge fracture, non-displaced fractures of the right 1st rib and the left 5th-7th ribs, a mildly displaced T1 spinous process fracture, and a nondisplaced left T6 transverse process fracture. He was also noted to have chronic loss of the height of the C4-C7 vertebral bodies and degenerative changes at L4-5 and L5-S1. On May 15, 2018, applicant underwent surgical pinning of the right wrist and an open reduction and internal fixation of the left distal radius fracture. A T2-T10 posterior fusion was recommended to prevent future progression of kyphosis, however the applicant declined the procedure.

On May 20, 2018, applicant underwent thoracentesis to remove 380 cc of bloody fluid from around his lungs. Eleven days after admission, on May 22, 2018, the applicant was discharged home. He returned two days later with the sensation of his lungs filling up, however the evaluation was negative, and he was again discharged home. (Exhibit 103, Panel Qualified Medical Examiner (PQME) Standiford Helm, March 19, 2020, page 2.)

Thereafter applicant was seen for continuing medical treatment. He was also evaluated multiple times by different PQMEs.

The most recent rounds of evaluation began on February 24, 2023, resulting in the report of pain management PQME Dr. Helm. "Mr. Galvan states he continues to work eight hours a week, four hours twice a week, at his job as a window tinter. He states that the owner of his company is using the employees who are "well," so that Mr. Galvan states that he is only given eight hours. He also states that he is not able to work more than eight hours because of his injuries. He states that he turned 62 approximately two months prior to this reevaluation and started receiving Social Security benefits. He states that he continues to work to pay for his Kaiser insurance until he receives Medicare at age 65." (Exhibit 101, PQME Standiford Helm, February 28, 2023, page 2.) Dr. Helm found nominal limitations in activities of daily living (ADLs). (Exhibit 101, page 3). Work restrictions include lifting 20 pounds maximum, standing and sitting 8 hours per day, unlimited pushing and pulling up to 4 hours a day for three days a week, no crawling, occasional crouching, and can frequently perform other listed activities. (Exhibit 101, page 25). Dr. Helm concluded that "100 per cent of Mr. Galvan's present permanent thoracic, bilateral upper extremity and chest wall disability is attributable to the incident of 5/11/18" and "90 per cent of Mr. Galvan's present permanent lumbar disability is attributable to the incident of 5/11/18." (Exhibit 101, page 25.)

The next evaluation occurred May 24, 2023, by Dr. Noriega in internal medicine. The patient was seen for "polytrauma musculoskeletal and internal injuries. I have set forth a diagnosis and discussed causation of injury for a minor traumatic brain injury, thoracic injuries (rib fractures/lungs), diabetes mellitus and chronic kidney disease." "The purpose of today's reevaluation is for the assessment of permanent disability." (Exhibit 104, PQME Robert Noriega, June 27, 2023, page 1.) It was noted the applicant continued to work one to two days a month in a modified capacity. (Exhibit 104, page 2.) Considering causation of injury the doctor states in part:

> In the interim since prior evaluation, the claimant reports a reduction in medication use, and he no longer regularly uses the nonsteroidal anti-inflammatory drug (NSAID). Instead of daily use, periodic use is reported a couple times a month. Therefore, there is no longer the dosage and frequency of exposure to substantiate industrial impairment related to the chronic kidney disease, which has its causal nexus with diabetes mellitus (DM) and hypertensive vascular disease - refer to prior reports. As to the DM, although treatment was temporarily indicated for stabilization in the acute treatment setting (refer to prior reports), there is no information to substantiate industrially related impairment of the endocrine system.

(Exhibit 104, page 4.)

Under the heading Functional Capacity Assessment/Return to Work, the doctor states: "Medium work (definition of physical exertion requirements per Code of Federal Regulations §404.1567): lifting no more than 50 lbs. at a time with frequent lifting or carrying of objects weighing up to 25 lbs." (Exhibit 104, page 8.)

The most recent evaluation occurred on June 15, 2023, by psychologist PQME Walter Brown, who found a Global Assessment of Function (GAF) score of 60 resulting in a whole person impairment (WPI) of 15 percent. (Exhibit 109, PQME Walter Brown, June 15, 2023, page 37.) "In my opinion, 100% of Mr. Galvan's psychiatric injury resulted from real and/or actual events of Mr. Galvan's employment." "Mr. Galvan continues to complain of persistent emotional sequella and reactive psychiatric and psychophysiological symptomatology to the industrial related stressors" and "[i]n addition to the physical pain Mr. Galvan sustained during the course of his employment, he began to experience a host of psychiatric symptoms that included anxiety, muscle spasms, concern for his future, loss of confidence and depression." (Exhibit 109, page 38.) For apportionment Dr. Brown states this "would be estimated at a level beyond the legal threshold of industrial causation at 100%" while under Disability Status the PQME states: "[a]t the present time, I assess Mr. Galvan's injury to be permanent and stationary *and find no permanent psychiatric disability as a result of the injury*." (Exhibit 109, page 42, emphasis added.)

It appears that soon after this last evaluation applicant stopped working.

On October 4, 2023, applicant's vocational expert met with him resulting in a report where the vocational expert found applicant "is not amenable to vocational rehabilitation. Mr. Galvan is not able to sustain gainful employment and therefore he is not able to compete in the open labor market. As a direct result of his industrial-related impairments provided by considering his pre-injury capacity and abilities, Mr. Galvan has at present no consistent and stable future earning capacity." (Exhibit 53, Laura Wilson, MBA, January 26, 2024, page 34.)

At trial, applicant testified that he takes ibuprofen for the pain in his wrists and back. (Minutes of Hearing, Summary of Evidence (First MOH), November 12, 2024, page 11, lines 2-4, 11-14.) Since he last saw Dr. Noriega in June of 2023, his diabetic condition is a little bit worse, his kidneys are getting damaged, and he also takes a lot of Ibuprofen. (First MOH, page 12, lines 2-3.) When working, applicant took Ibuprofen 800 milligrams on a daily basis, and it is the only medication he takes for pain. (First MOH, page 15, lines 23-24.) He is currently taking medications for diabetes, blood pressure, cholesterol, and Ibuprofen 800 milligrams. He is still taking

Lisinopril, Atrovastatin for cholesterol, and Humulin for insulin. (Minutes of Hearing, Summary of Evidence (Second MOH), March 11, 2025, page 2, lines 9-11.)

On October 14, 2025, the F&A issued for which defendant seeks reconsideration.

III.

We note a grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com.* (*Savercool*) (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com.* (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].)

1.

"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].

Further, as the Court of Appeal explained in *Peter Kiewit Sons v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188]: "Where an issue is exclusively a matter of scientific medical knowledge, expert evidence is essential to sustain a [WCAB] finding; lay testimony or opinion in support of such a finding does not measure up to the standard of substantial evidence. Expert testimony is necessary where the truth is occult and can be found only by resorting to the sciences."

Dr. Noriega clearly premised his most recent expert opinions on a reduction in medication use. Use of NSAIDs was reported to the doctor as only being a couple times a month. Based on this history the doctor found no industrial impairment related to the chronic kidney disease, which has its causal nexus with diabetes mellitus and hypertensive vascular disease (Exhibit 104, page 4.) By contrast, applicant testified at trial that since he last saw Dr. Noriega, he takes a lot of the Ibuprofen. (First MOH, page 12, lines 2-3.) It appears this NSAID comes in the form of Ibuprofen 800 milligrams. (Second MOH, page 2, lines 9-11.)

We are unable to rely on the medical reporting of Dr. Noriega as substantial medical evidence when his opinions are based on facts no longer germane such as the inaccurate medical

history regarding NSAIDs. (*Hegglin*, *supra*, at p. 169.) This is especially so when the opinions concern the effect of medication on the human body which is intrinsically an occult matter of scientific medical knowledge. (*Peter Kiewit Sons*, *supra*, at p. 838.)

Separately, and as digested above, psychologist PQME Dr. Brown found "[i]n addition to the physical pain Mr. Galvan sustained *during the course of his employment*, he began to experience a host of psychiatric symptoms". (Exhibit 109, page 38, emphasis added.) For apportionment Dr. Brown states this "would be estimated at a level beyond the legal threshold of industrial causation at 100%" while under Disability Status he states "[a]t the present time, I assess Mr. Galvan's injury to be permanent and stationary *and find no permanent psychiatric disability as a result of the injury*." (Exhibit 109, page 42, emphasis added.)

While on the surface the conclusion that psychiatric disability was caused by the fall seems obvious, we are unable to determine the cause of psychiatric disability from Dr. Brown's reporting. The record requires clarification on this point. While a lay opinion connecting psychiatric disability to applicant's injury on May 11, 2018, is temporally attractive, such lay opinion does not replace expert medical opinion. Physical pain as described by Dr. Brown "*during the course of employment*," and physical pain from a specific injury, could conceivably lead to two separately caused psychiatric disabilities. (See, Lab. Code §§ 5411, 5412.) For causation of injury, not disability, Dr. Brown concludes "100% of Mr. Galvan's psychiatric injury resulted from real and/or actual events of Mr. Galvan's employment." Without a separate informed and reasoned analysis of the cause of disability, Dr. Brown's opinions regarding disability appear to be based on surmise, speculation, conjecture or guess. (*Hegglin*, *supra*, at p. 169.)

Further troubling the murky waters of Dr. Brown's reporting is the contradictory statement that he finds "*no permanent psychiatric disability as a result of the injury*." While we trust this statement is the result of clerical error carried forward through Dr. Brown's reporting, we again cannot provide a lay interpretation of the record to cure such a conflict within an expert medical opinion. To analyze any limitations in the Labor Code on the appropriateness of finding psychiatric disability, the record must first be further developed regarding the cause of such disability.

We also observe that defendant raises the issue of whether applicant is entitled to compensation for his impairment for his injury to psyche or whether it is barred under section 4660.1. While we do not consider this issue at this time, we observe that the reporting by the psychiatric evaluator should consider section 4660.1(c)(2), including whether applicant's

psychiatric injury was a direct result of the industrial fall, whether the industrial fall was a violent act, and whether applicant's injury was catastrophic.

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board 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].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall*, *supra*, page 404.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).)

If the supplemental opinions of the previously reporting physicians do not or cannot cure the need for development of the medical record, the selection of an agreed medical evaluator (AME) by the parties should be considered. If none of the procedures outlined above is possible, the WCJ may resort to the appointment of a regular physician, as authorized by section 5701. (*McDuffie*, *supra*, at pp. 142-143.)

We will therefore direct further development of the record and defer issues related to permanent disability.

2.

The vocational reporting of Laura Wilson, MBA, is in part based on the medical opinions of Dr. Noriega and Dr. Brown, both of whom we find not to be substantial medical evidence. Therefore, the VE's reporting is not substantial evidence in this case as it in turn is based at least in part medical opinions that are not substantial.

After the record is developed, we recommend that any further vocational reporting, if solicited, clearly identify the work restrictions, restrictions of activities of daily living, and/or other factors found relevant, as well as specifically identify their medical source. We note an expert vocational opinion must follow medical apportionment. (*Nunes v. State of California Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741 (Appeals Bd. en banc).)

3.

We will amend the F&A as recommended by the WCJ in the Report to correct clerical error in a date so temporary disability runs from May 11, 2018, to May 10, 2020, less credit for days worked.

IV.

Following our independent review of the record, and for the reasons stated above, we grant defendant's Petition. We affirm the decision, except that we amend it to defer the issues related to permanent disability, and to correct a clerical date error we will amend the findings to reflect that temporary disability runs from May 11, 2018, to May 10, 2020, less credit for days worked.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the October 14, 2025, Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the October 14, 2025, Findings and Award is **AFFIRMED IN PART**, and **AMENDED IN PART** as follows:

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FINDINGS OF FACT

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5. The applicant was temporarily totally disabled from May 11, 2018, until March 10, 2020, when his condition reached maximal medical improvement.

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7. The issue of applicant's attorney's entitlement to reimbursement for costs associated with obtaining the Vocational Rehabilitation Expert report is deferred.

8. The issue of applicant's amenability to vocational rehabilitation is deferred.

9. The issue of permanent disability is deferred.

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11. The issue of applicant's attorney's fee from permanent disability is deferred.

12. The issue of penalties and sanctions is deferred.

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AWARD

AWARD IS MADE in favor of JOSE GALVAN against STEVE'S PROFESSIONAL WINDOW TINTING; SECURITY NATIONAL INSURANCE COMPANY, administered by AMTRUST FINANCIAL SERVICES of:

a. Temporary total disability indemnity, payable at $679.41 per week from May 11, 2018, to March 10, 2020, less credit for disability payments paid to the applicant and less credit for days worked, with the jurisdiction of the WCAB reserved, and less 15% payable to the Applicant Attorney for any additional temporary disability granted by these Findings and Award.

b. Future medical care to cure or relieve from the effects of the industrial injury.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 23, 2026

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

JOSE GALVAN
LAW OFFICE OF HENRY KHALILI
HANNA BROPHY

PS/oo

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