WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOSE JUAN HERNANDEZ NAVARRO (deceased); ELVIRA NAVARRO BELTRAN, ELZABETH HERNANDEZ NAVARRO, VANESSA JESUS HERNANDEZ NAVARRO, JUANA ELIZABETH HERNANDEZ NAVARRO, JAVIER OCTAVIO HERNANDEZ NAVARRO, ***Applicants***

vs.

BUTTONWILLOW WAREHOUSE COMPANY d/b/a ELK GROVE RANCH; OLD REPUBLIC INSURANCE, administered by CANNON COCHRAN MANAGEMENT SERVICES, ***Defendants***

Adjudication Number: ADJ18656111
Bakersfield District Office

OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact issued on March 3, 2026, wherein the workers' compensation administrative law judge ("WCJ") found that defendant did not prove that decedent's death was proximately caused by intoxication. Defendant asserts that the WCJ erred because the evidence supports the opinion of the Qualified Medical Examiner ("QME") that intoxication was a proximate or substantial cause of the injury.

We did not receive an Answer. We did receive a Report and Recommendation on Petition for Reconsideration from the WCJ, recommending that reconsideration be denied.

We have reviewed the Petition and the Report, as well as the record. For the reasons discussed below, we will deny the petition for reconsideration, because we agree with the WCJ that defendant did not carry its burden of proof.

FACTUAL BACKGROUND

This case arises from a fatal, apparently unwitnessed injury sustained by Jose Juan Hernandez Navarro on defendant's work premises during decedent's normal working hours. The facts are sparse, and essentially undisputed; the parties' disagreement lies in what conclusions and inferences should be drawn from the limited factual record we possess.

Decedent was employed by defendant as a general farm laborer. (Minutes of Hearing / Summary of Evidence ("MOH/SOE"), October 29, 2025, at p. 2.) According to the Coroner's Report, on the morning of April 11, 2023, at approximately 7:00 a.m., decedent was dropped off at the field where he was scheduled to work. (Ex. D, at p. 2.) Decedent was an experienced farm laborer who had worked for defendant for seven years; he normally worked from 7:00 a.m. until 4 p.m. each day, and his duties included tractor operation. (*Ibid.*)

At 11:08 a.m., other employees who arrived at the work location discovered decedent's body in the field close to where he had been dropped off. (*Ibid.*) As described by the Deputy Coroner dispatched to the location:

> The scene was a large open field north of 7th Standard Road and west of Main Drain Road. North of 7th Standard Road was a fenced in area next to a large open field. A storage facility for large farming supplies and machinery was located beyond the fenced area to the east. I noted the decedent lying supine next to the fence. A tractor trailer hauling a towable container with liquid inside was present on the westside of the property directly west of the decedent. It appeared as if the tractor continued its path after the decedent was no longer operating it and was stopped by overgrown shrubbery.

(*Ibid.*) The Deputy Coroner examined decedent's body, noting serious injuries and rigor mortis. (*Ibid.*)

According to his brother and sister-in-law, decedent suffered from diabetes, but was not under the care of a doctor, and did not have any recent history of injury of hospitalization. (*Ibid.*) He did not appear to be in any medical distress immediately prior to his arrival at work. (*Ibid.*) He did not smoke, drank alcohol "socially," never overdosed on medication, and had no history of drug use or suicidal ideation. (*Ibid.*)

Decedent's body was transported to the Kern County Coroner's Office. (*Ibid.*) Nine days later, on April 20, 2023, an autopsy was performed. (Ex. C, at p. 1.) The cause of death was listed as: "Multiple blunt force injuries, interval between onset and death is seconds." (*Ibid.*) The manner of death was listed as: "Accident." (*Ibid.*)

A sample of decedent's blood taken during the autopsy was sent for toxicology analysis. (*Id.* at p. 4.) The toxicology report, dated May 5, 2023, indicates that the sample of blood taken from decedent had a Blood Alcohol Level ("BAC") of 0.219. (Ex. B, at p. 1.) The report notes that the sample arrived on April 21, 2023, but does not indicate when the testing was performed. (*Ibid.*) The "Reference Comments" section of the report states:

> Ethyl Alcohol (ethanol, drinking alcohol) is a central nervous system depressant and can cause effects such as impaired judgement, reduced alertness and impaired muscular coordination. Ethanol can also be a product of decomposition or degradation of biological samples.

(*Id.* at p. 2.) The blood analysis did not show the presence of any other substances of toxicological significance in the sample. (*Ibid.*)

Decedent's Death Certificate states that the cause of death was "multiple blunt force injuries," while the injury is described as being caused by being "run over by a tractor." (Ex. A, at p. 1.) This accords with the Coroner's Report. (See Ex. D, at p. 1.)

The QME, Thomas Allems, M.D., prepared a QME Report. According to that Report, Dr. Allems based on his report on the premise that decedent had been run over by a tractor that he himself was operating. (Ex. F, at p. 1.) Dr. Allems described his role as being asked to determine if decedent "was intoxicated at the time of the accident and if alcohol intoxication was the proximate cause of his accidental death." (Ex. F, at p. 1.)

The QME Report explains that a BAC of 0.219 is roughly two and a half times the legal limit for operation of motor vehicles. (*Id.* at pp. 1, 4, 5.) On an empty stomach, alcohol is completely absorbed after roughly 40 minutes; BAC peaks roughly 60 to 90 minutes after consumption, and then falls over the next 6 to 8 hours as the alcohol is metabolized. (*Id.* at p. 4.) Alcohol metabolism rates vary significantly by individual, with light drinkers metabolizing as much as three times more slowly than heavy drinkers. (*Ibid.*) Dr. Allems presumed that decedent "was a heavy and regular drinker in order to have achieved such a high blood alcohol concentration before noon on a workday[.]" (*Ibid.*)

The QME Report notes that decedent was discovered "up to a few hours after his death," based on the presence of rigor mortis, which appears about two hours postmortem. (*Id.* at p. 4.) Because the Coroner's Office was notified at 11:43, Dr. Allems assumed that it was at least an hour later when the body was inspected. (*Ibid.*) BAC can rise postmortem, but in the opinion of Dr. Allems it would not have done so in this case assuming that the Coroner's Office followed normal procedures by cooling the body to prevent the processes that can lead to postmortem alcohol synthesis. (*Id.* at pp. 4–5.)

A BAC in the range found in this case is associated with "marked incoordination and ataxia with cognitive impairment[.]" (*Id.* at p. 5.) Alcohol intoxication contributes to a significant number

of motor vehicle accidents; 19% of tractor injuries in one study included elevated BAC levels. (*Id.* at pp. 5–7.) In Dr. Allems' opinion:

> The postmortem blood alcohol concentration of 0.219 g/DL establishes gross intoxication and impairment for safely operating a tractor at the time of his death. At that level of BAC, all critical faculties are impaired that are necessary for safely operating a tractor, anticipating dangers, and responding appropriately to unexpected events. At that blood alcohol level his judgment, reaction time, coordination, cognition and balance were all grossly impaired by alcohol intoxication.
>
> Given these facts, from a medical standpoint, alcohol intoxication would be considered the proximate cause of this unfortunate and entirely preventable accidental death.

(*Id.* at p. 7.) The Report suggests that the precise mechanism of injury was that decedent "somehow" became separated from the tractor while operating it and was subsequently run over by it. (*Id.* at p. 4.) Dr. Allems believed that "[t]here are no logical circumstances that I can envision where a non-intoxicated person operating a tractor in the field would become separated from it and fall under its wheels." (*Id.* at p. 9.)

At his deposition, Dr. Allems acknowledged that decedent was described as drinking "socially," and that there was no indication in the materials he reviewed that decedent had ever been intoxicated on the job previously. (Ex. G, at pp. 8–10.) There was also no documentation to suggest that decedent was showing signs of intoxication at the time he was dropped off in the field, at 7 a.m. the morning of the accident. (*Id.* at pp. 10–11.) No one observed decedent ingesting alcohol, no one observed him bringing alcohol to the work site, no one observed decedent operating the tractor, and no one observed him showing any signs of intoxication after being dropped off and prior to being discovered. (*Id.* at pp. 11–12.) Nor were any alcohol containers found near the scene of the accident. (*Id.* at p. 19.)

When it was put to Dr. Allems that it was speculation that decedent must have fallen off the tractor and been run over by it, Dr. Allems responded:

> I – I would not use the term "speculation." When you're looking at the circumstances of an unwitnessed accident, which I do fairly routinely, you – you put things together in a – in a logical sequence to hang together.
>
> And from my understanding of this, he was found in an area where the tractor had obviously run over him. And I – I mentioned that there were no other

extraneous issues that were evident to the investigator or written in the report.

> So I – my presumption, which is the most logical, is that he fell off the tractor and got run over by it. So I – I – I – I – I – I don't speculate into — you — I don't speculate beyond what seems to be the most logical reconstruction of the ac — the unwitnessed accidents.

(*Id.* at pp. 15–16.) Questioned as to the basis for the belief that decedent was operating the tractor, Dr. Allems responded: "I — we assume he was driving the tractor." (*Id.* at p. 16.) Dr. Allems went to assert that "But that day, he was driving the tractor. That was his." (*Ibid.*) Dr. Allems did not believe the documentary evidence showed any other reasons why decedent could have fallen off the tractor other than intoxication. (*Id.* at p. 17.)

Dr. Allems believed it was possible that applicant could have consumed enough alcohol between his arrival at the field at 7:00 a.m. and his death to account for his BAC level. (*Id.* at p. 21.) Alternatively, it was also "possible that he had alcohol in his bloodstream before he got to work and — and may well have continued drinking." (*Ibid.*)

Dr. Allems confirmed that decedent was diabetic, meaning his blood sugar level was higher than normal. (*Id.* at p. 22.) Postmortem, blood sugar can be metabolized into alcohols. (*Ibid.*) The autopsy in this case happened nine days after the accident. (*Ibid.*) Although there are circumstances where BAC level will rise postmortem, that typically happens when a body is not discovered for several days. (*Id.* at p. 23.) If the Coroner's Office kept the body cool according to normal procedure, there would be no reason to think such metabolization occurred. (*Id.* at pp. 23–24.) Dr. Allems would not "ever entertain addressing" the idea that the body could have been kept in suboptimal conditions. (*Id.* at p. 24.) There was no evidence that the body had been stored in such conditions in this case. (*Id.* at p. 25.) Any rise in BAC because of decedent's diabetes would have been "modest" and could not have accounted for the high level detected. (*Ibid.*)

The matter proceeded to trial on October 30, 2025. (Minutes of Hearing / Summary of Evidence ("MOH/SOE"), 10/30/25.) The issues for decision were listed as: (1) Injury arising out of and in the course of employment ("AOE/COE"); and (2) the affirmative defense of intoxication found in Labor Code[1] section 3600, subdivision (a)(4), with other issues bifurcated and deferred. (*Id.* at p. 2.) Joint exhibits were introduced. (*Id.* at pp. 2–3.) The disposition stated that the matter

[1] Further citations are to the Labor Code unless otherwise stated.

would be taken under submission on December 1, 2025, to allow for the parties to file trial briefs if desired. (*Id.* at p. 1.) Applicant filed a trial brief; defendant did not.

On March 3, 2026, the WCJ issued his Findings of Fact, finding as relevant here that: (1) decedent's injury was sustained AOE/COE, and (2) defendant did not prove that decedent's injury was caused by intoxication. (F&O, at pp. 2–3.) The appended Opinion on Decision makes clear that the WCJ accepted the QME's finding that decedent had a high BAC level at the time of the accident, but found that defendant had not adequately proved that decedent's intoxication was the proximate cause of the injury. (See Opinion on Decision, at p. 5.)

The instant Petition for Reconsideration followed, and challenges only the WCJ's finding regarding the intoxication defense; accordingly, we consider it established that decedent's injury occurred AOE/COE unless it is excluded by intoxication.

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. (§ 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 case was transmitted to the Appeals Board on April 28, 2026, and 60 days from the date of transmission is Saturday, June 27, 2026. The next business day that is 60 days from the date of transmission is Monday, June 29, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on June 29, 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 April 28, 2026, and the case was transmitted to the Appeals Board on April 28, 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 April 28, 2026.

II.

An applicant's right to recover workers' compensation benefits is subject to the conditions set forth in section 3600. Among these is that "the injury is not caused by the intoxication, by alcohol or the unlawful use of a controlled substance, of the injured employee." (§ 3600(a)(4).) Intoxication is an affirmative defense, and the burden of proof rests on the employer, as the defendant, to establish that affirmative defense. (§ 5705(b).) To carry its burden of proof, a defendant is required to prove each element of the defense by a preponderance of the evidence. (§ 3202.5.) As explained in section 3202.5:

[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.

> "Preponderance of the evidence" means that evidence that when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence.

When a defendant asserts the intoxication defense, it must prove not only that the injured employee was intoxicated at the time of the injury, but also that the employee's intoxication was a proximate or substantial cause of the injury. (*Smith v. Workers' Comp. Appeals Bd. (Smith)* (1981) 123 Cal.App.3d 763, 774 [46 Cal.Comp.Cases 1053]; *Douglas Aircraft, Inc. v. Industrial Acc. Com. (MacDowell)* (1957) 47 Cal.2d 903 [22 Cal.Comp.Cases 24], disapproved on another ground *in LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 636 [35 Cal.Comp.Cases 16].) The results of a blood test standing alone are insufficient to meet either element; instead, such results must be weighed with all other evidence. (*Smith, supra,* 123 Cal.App.3d at 774, citing *Pacific Employers Insurance Co. v. Workmen's Comp. Appeals Bd.* (1966) 31 Cal.Comp.Cases 214, 216.) An opinion that intoxication was a proximate cause of injury cannot be based upon an assumption that cannot be established. (*Cal. Dpt. of Corrections and Rehabilitation v. Workers' Comp. Appeals Bd. (Shadden)* (2011) 76 Cal. Comp. Cases 494, 496 (writ den.).)

To constitute substantial evidence "… 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 v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) Medical reports and opinions are not substantial evidence if they are based on surmise, speculation or conjecture. (*Patterson v. Workers' Comp. Appeals Bd.* (1975) 53 Cal.App.3d 916, 921.)

Here, we agree with the WCJ that at a minimum defendant has failed to establish that decedent's intoxication was a proximate or substantial cause of the injury. The factual record in this matter is more remarkable for what is lacking than for what it contains. Decedent's injury was apparently unwitnessed, and essentially everything we know about the case is derived from the Coroner's Report, which does not opine that intoxication played a proximate or indeed any causal role in the injury, instead stating only that decedent's death was ruled an accident. (See Ex. D, at p. 3.) No witnesses provided testimony, not even those individuals whose statements are included in the Coroner's Report and form the basis for the extremely basic timeline we have. Essentially all we are presented with is a fatal injury, a nearby tractor, and blood testing performed on a sample

collected nine days later showing a substantially elevated BAC level. From this, defendant asks us to infer that intoxication was a proximate cause of that injury. Like the WCJ, we are not persuaded that defendant has carried its burden.

Perhaps tellingly, the Petition for Reconsideration contains only two citations to caselaw – one to the preponderance of the evidence standard, and one to *Smith*, cited above, for the proposition that the intoxication defense is an affirmative defense for which defendant bears the burden of proof. No further citations are made to any other cases, nor does the petition attempt to compare the facts of this matter to the facts in *Smith* to illustrate why we should endorse its argument and disallow decedent's recovery.

In point of fact, the comparison to *Smith* proves quite instructive. In *Smith*, the decedent, Smith, died in an automobile accident while returning to the office from a work site. (*Smith, supra,* 123 Cal.App.3d at 766.) According to a witness:

> Chambers explained that he and Smith were at the Highland Inn twice for a total of about two hours. They first went to the Highland Inn around 1 p.m. Smith had a six-pack of Coors beer in his truck, and they each had had one beer. Smith then wanted to use the phone, so they went to the Highland Inn, where each of them had another beer before returning to the shop. The witness did not know what happened to the six-pack. They went back to the Highland Inn, which served lunches, for about one and one-half hours, and Smith had four mixed drinks. When they left the Highland Inn in Smith's truck after the phone call, the four cans of beer were still in the truck.

(*Smith, supra,* 123 Cal.App.3d at 768.) The call came at about 5:30 or 6:00 p.m., with Smith arriving at the site at around 8:00 p.m. and working until sometime after 10 p.m., when Smith and two witnesses decided to pack up for the night. (*Id.* at p. 767–768.) According to the same witness:

> When they were ready to leave, Smith took off "like a shot from a cannon." The witness tried but could not keep up with Smith, and eventually lost sight of the taillights of Smith's vehicle. It was raining very hard.
>
> Chambers stated on cross-examination that he had intended to ride with Smith but, when they started to leave the accident site, Smith "took off like a shot" down the mountain. Chambers rode as a passenger in an A-frame. The road was curving, winding, and downhill, and it was raining heavily. In the witness' opinion it was not prudent to start that fast.

(*Id.* at p. 768.) The CHP report indicated the accident occurred at approximately 11:30 p.m., and included the following details:

> The victim "failed to negotiate a curve" and left the western edge of the roadway while traveling north on Cerro Noreste Road, a winding road in mountainous terrain. The highway patrol report states that the location of the accident was one mile north of the area where Smith and the crew had been working. No skidmarks were visible prior to the point where the vehicle left the road; there were approximately 30 feet of tire marks on the dirt shoulder. The pickup went down a 15-foot bank, through a barbed-wire fence and rolled over, ejecting Smith. The truck came to rest on its wheels on top of the victim, about 50 feet west of the western edge of the road. The road is paved, with 1 lane approximately 12 feet wide in each direction; the dirt shoulders are 8 feet wide.

(*Id.* at pp. 769–770.)

A sample of Smith's blood taken the following morning showed a BAC level of 0.25, and a forensic pathologist testified that the handling of the specimen was proper and that based on the facts of the case, Smith would have been substantially impaired in his ability to drive. (*Id.* at pp. 769–770.) The Court of Appeal offered the following with regard to the requirement to prove that intoxication was a proximate cause of the accident:

> We are aware . . . that the record shows other factors (such as fatigue, wet road, poor visibility because of weather) which may have contributed to the accident. However, "[the] findings of the [Industrial Accident Commission] will not be disturbed . . . where they are supported by substantial evidence, *or by inferences which may fairly be drawn from the evidence.*" (*Phoenix Indem. Co. v. Ind. Acc. Com.* (1948) 31 Cal.2d 856, 859 [193 P.2d 745]; italics added.)
>
> …
>
> Once the board found, on ample evidence, that decedent was intoxicated, the testimony of Dr. Hayes that anyone's judgment and reaction time would be impaired seriously at that blood alcohol level provides the basis for an inference that such impairment was a substantial factor in bringing about the accident. We cannot say such an inference is unreasonable. The existence of numerous circumstances that would support other, conflicting inferences is not a basis for overturning the decision.

(*Id.* at pp. 774–775, some internal citations omitted.)

To summarize, then: in *Smith,* there was extensive eyewitness testimony, including testimony that Smith had consumed at least two beers and four mixed drinks in the hours leading up to the accident.[3] Despite the poor weather conditions, Smith took off "like a shot" in his vehicle,

[3] To be sure, the witnesses in *Smith*, colleagues of the decedent's, also testified that they did not observe Smith behaving in an inebriated manner. (*Smith, supra,* 123 Cal.App.3d at pp. 766, 768.) Our focus here is not on

something the witness believed unwise under the circumstances. The CHP report included a clear time and mechanism of injury. The forensic pathologist testified that an individual of Smith's size and weight with a BAC level of 0.25 would have been seriously impaired in his ability to operate a vehicle no matter his alcohol tolerance, and the Industrial Accident Commission ("IAC") – the predecessor to the Appeals Board – found the intoxication defense had been established. The Court of Appeal affirmed, but only based on deference to the IAC's inferences drawn from the pathologist's testimony, which it concluded were not objectively unreasonable, while at the same time strongly implying that it would also have been reasonable to draw other, conflicting inferences from the facts presented.

In comparison, in this matter we have an extremely limited factual record as to how decedent's injuries were sustained, characterized less by what we know than by what we do not. Unlike *Smith*, where Smith was clearly the driver of his own vehicle, decedent was not observed operating the tractor on the day of the accident. Indeed, as far as can be told from the record before us, it is not clear that the tractor found nearby was actually inspected to confirm that it was the source of decedent's injuries, or to check whether it was still on at the time decedent was discovered, as it presumably would have been if it had continued on its path until it came to rest against the bushes where it was found.[4] Nor is there any evidence that it was examined to rule out the possibility of mechanical fault. Instead, as far as can be told from the record before us, everyone involved simply assumed that because the tractor was found nearby and decedent had suffered traumatic injuries consistent with being run over, the tractor must have been the source of those injuries, and decedent himself must have been the operator. It does not even appear certain that decedent was alone at the time of the injury; although the Coroner's Report indicates that decedent was last seen when he was dropped off at 7 a.m., nowhere is it affirmatively stated by anyone with knowledge of defendant's business that decedent was the only worker assigned to work in the area prior to his discovery. We find the absence of information on these points curious, given that this information would presumably be readily available to defendant.

Although the assumption that decedent was operating the tractor alone at the time of the incident is not particularly unreasonable on its face, it is just that: an assumption. Significantly, no testimony or documentary evidence was presented to concretely demonstrate the plausibility of

[4] In the Coroner's Report, some reference is made to a possible OSHA investigation. (See Ex. D, at p. 2.) However, no further information pertaining to any OSHA investigation was admitted at trial or alluded to by the parties.

defendant's theory of injury, namely that due to intoxication, decedent fell off the tractor into its path and was then run over by it. The QME Report here is telling, stating that the QME's opinions were based on the belief that decedent "somehow" fell forward off the tractor in such a manner that he was run over by it. (See Ex. F, at p. 4.) Defendant asks us to simply accept as fact that this is what happened, despite the absence not only of evidence that the tractor was inspected by an expert, but even of witness testimony from someone familiar with the model of tractor in question to confirm that such a theory is plausible. To the extent that the QME's opinions are heavily predicated upon this "somehow," they do not constitute substantial evidence because they are based on surmise, speculation or conjecture. (See *Patterson, supra,* 53 Cal.App.3d at 921.) Even if the QME had offered a clearer mechanism of injury than "somehow," the QME is a medical expert, not a forensic expert; his conclusions are due deference to the extent they relate to medical issues, not to issues of mechanical causation. The QME's own report indicates that 81% of tractor accidents do not involve alcohol, calling into question his belief that there were "no logical circumstances" under which decedent's injuries could be attributed to anything other than intoxication. (See Ex F., at pp. 6, 9.)

Nor do we have any specific time of injury beyond the four-hour window of 7:00 a.m., when decedent was dropped off, and 11:08 a.m., when he was discovered. The Coroner's Report does not include an estimated time of death, nor does it document when decedent's body was inspected, other than that it was after 11:43 a.m. when the Coroner's Office received the call from the fire department. (See Ex. D, at p. 2.) The closest we have is the information contained in the QME Report that decedent likely died at least two hours before the Deputy Coroner inspected the body, whenever that may have been. (See Ex. F, at p. 4.) This information is relevant because a more precise time for the accident would narrow the window in which decedent could have become intoxicated, and therefore potentially indicate whether such intoxication would have had to occur before or after arrival at the worksite. It would also shed light on how long decedent was undiscovered, and therefore the degree to which postmortem alcohol synthesis might have began to take its course.

Along those lines, similarly missing from the record is any clear evidence of how or when defendant became intoxicated. Aside from the BAC level itself, detected in testing performed on a sample collected nine days after decedent's death, we have no information whatsoever to suggest when and where the intoxication occurred. The information in the Coroner's Report does not

indicate who dropped decedent off at the work site at 7:00 a.m., nor does it suggest that decedent showed any signs of intoxication at that time, or that he was carrying any alcohol with him. No alcohol containers were found at the scene of the injury. Nor is there any documented history of decedent being intoxicated on the job previously. Notably, the Coroner's Report makes no reference to any signs of intoxication observable from examination of the body, nor does the Death Certificate mention intoxication. (See Ex. D, at p. 2; Ex. A at p. 1.)

The QME Report speculates that in order to have reached a BAC level of 0.219 so early on a workday morning, decedent was probably a heavy drinker. (Ex. F, at p. 4.) This is arguably contradicted by the only information we have available on decedent's drinking habits, which indicates that he drank "socially." (Ex. D, at p. 2.) At his deposition, questioned as to when decedent would have had to begin consuming alcohol to reach the BAC level found in his blood, the QME equivocated, suggesting that it was possible that decedent had arrived intoxicated, that he had ingested alcohol subsequent to his arrival, or that he may have both arrived intoxicated and continued to consume alcohol at the worksite. (Ex. G, at p. 21.)

What is conspicuously missing from this testimony is any degree of scientific certainty or specificity as to how and when decedent became as intoxicated as the BAC levels suggest. Just as defendant's theory of injury relies on an assumption that decedent was operating the tractor and "somehow" fell off it into its path, so too defendant's theory relies on the fact that decedent somehow consumed a large quantity of alcohol either before or after arriving at the site, without, as far as we know from the evidence admitted at trial, any signs of that consumption being evident either in decedent's behavior at the time he was dropped off, or at the scene if such consumption occurred after arrival.

It is possible there are plausible explanations for each of these areas of uncertainty; the problem is that no such answers were offered here. We do not have, for example, evidence from the QME or some other qualified expert laying out concrete scenarios which could have resulted in decedent reaching the BAC levels found in testing while in operation of the tractor, based on various assumptions regarding when the alcohol was consumed and when the accident occurred. This, too, is in contrast to the *Smith* case, where the forensic pathologist gave testimony regarding how it was possible that Smith could have been as intoxicated as the BAC test indicated without it being obvious to the two witnesses who testified at trial. (See *Smith, supra,* 123 Cal.App.3d at 769.)

Finally, we address the fact that the blood tested in this case was not collected until nine days after death, on April 20, 2023, with testing occurring sometime after that and before May 5, 2023. (See Ex. C, at p. 2; Ex. B, at p. 1.) The record does not contain any explanation for this apparently significant delay, or any information about how decedent's body was stored prior to the autopsy or how the blood was stored post-collection and pre-testing, beyond the fact that the Coroner's Report indicates that decedent was moved to the Coroner's Office pending the autopsy. (See Ex. C, at p. 2.) The QME testified that the delay in testing should not have impacted the results assuming the Coroner's Office properly maintained the body, even considering decedent's diabetes, which could have raised his blood sugar levels and therefore increased the amount of alcohol that could have been synthesized postmortem. (See Ex. G, at pp. 21–25.) To be sure, we have no affirmative evidence to suggest that decedent's body was *not* properly stored between his discovery and the autopsy. However, once again the record is simply silent on this point, both with regard to the conditions under which decedent was preserved, and with regard to why his autopsy occurred nine days later. Although we are not suggesting that the absence of evidence on this point is necessarily evidence of anything more than absence, it nevertheless represents yet another way in which the facts of this case are not as settled as they could be. Because defendant bears the burden of proving the intoxication defense, any such uncertainly as to the reliability of the BAC results must necessarily redound against it, especially when they serve as the sole indication of intoxication in the case.

Standing alone, any one of these deficiencies in the evidence might not necessarily be decisive. The problem is their impact in the aggregate, because doubt begets doubt. If we were more confident that decedent arrived at the worksite already intoxicated, the absence of alcohol containers at the site would be explained. Alternatively, if it was certain that decedent was alone at the time the of the accident, the absence of containers would not leave any lingering doubts as to whether someone else could have been present. If it had been more conclusively established that the tractor found near the accident was the source of decedent's injuries, that it was still running when discovered, and that decedent was the only person in the area, the lack of evidence regarding the plausibility of decedent being able to fall forward off the tractor into its path might be less significant. Conversely, if it had been clear that decedent had in fact fallen forward off a tractor and been run over by it, the fact that the particular tractor at the scene was not definitively identified as the source of those injuries might be of less import. If decedent had shown signs of intoxication

on the day of the accident or if there was other evidence to suggest he had consumed a large quantity of alcohol, the apparent delay in performing the autopsy and blood testing might not be as significant a cause for concern. In other words, the more settled the facts as a whole, the more reasonable it is to draw inferences consistent with what is settled. Such is the nature of the preponderance of the evidence standard, which deals in probabilities rather than in certainties.

We must evaluate this case on the evidence presented at trial, however, and not on hypotheticals or speculation. Based on that evidence, we do not think that defendant has carried its burden. There are simply too many areas of uncertainty, and too many speculative inferences that defendant requires we draw from them. On these facts, we cannot fault the WCJ's conclusion that there is at least one "somehow" too many.

Accordingly, we will deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact issued on March 3, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 26, 2026

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

ELVIRA NAVARRO BELTRAN, (DEPENDENT)
ELZABETH HERNANDEZ NAVARRO, (DEPENDENT)
VANESSA JESUS HERNANDEZ NAVARRO, (DEPENDENT)
JUANA ELIZABETH HERNANDEZ NAVARRO, (DEPENDENT)
JAVIER OCTAVIO HERNANDEZ NAVARRO, (DEPENDENT)
ROSE KLEIN & MARIAS LLP
WINTERSTEEN CASAREZ

AW/*kl*

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