WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JOSEPH GUTIERREZ, *Applicant*

vs.

BARRETT BUSINESS SERVICES, INC.;
ACE AMERICAN INSURANCE COMPANY, administered by CORVEL, *Defendants*

Adjudication Number: ADJ21248340
Sacramento District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on July 21, 2026. The WCJ found, in relevant part, that while employed by defendant as a groundsman on June 25, 2025, applicant sustained injury arising out of and in the course of employment (AOE/COE) to his lower back and right leg. The WCJ deferred and reserved all other issues.

Defendant, in essence, contends that the evidence does not support applicant's credibility and the finding of injury AOE/COE. Defendant further contends it has subsequently received sub rosa video evidence that further places applicant's credibility in question.

We have 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 of defendant's Petition and the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, as well as the reasons stated in the WCJ's Report, we will deny reconsideration.

FACTS

We will briefly review the relevant facts.

On July 18, 2025, applicant filed an Application for Adjudication of Claim (Application) claiming an injury to his back and leg while employed by defendant as a groundsman on June 24, 2025.

On November 15, 2025, applicant was evaluated by orthopedic surgeon panel qualified medical evaluator (QME), Zachary Lum, D.O. At the evaluation, applicant reported that

> . . . on June 24, 2025, he sustained an industrial injury while performing his usual and customary job duties as a groundman for Barrett Business Services.
>
> At the time of the injury, the applicant was lifting a large tree trunk when he suddenly felt pain in the lower back and right leg. He had immediate pain in the lower back and right leg. His injury was witnessed by his manager. He reported this injury to his manager on the same day. He was offered medical treatment. He continued working with ongoing pain.

(Joint Exhibit CC, Report of Orthopedic Panel Qualified Medical Evaluator Zachary Lum, D.O., dated November 25, 2025, at p. 9.)

Dr. Lum then opined that:

> The applicant's description of the event is consistent across treating physician notes and matches the reported mechanism in the cover letters. Reports indicate that the applicant experienced immediate lower back pain radiating down the right leg, with subsequent worsening symptoms, including difficulty walking, numbness, and weakness.
>
> Based on the history, mechanism of injury, physical findings, and imaging, the applicant's current condition is consistent with a right-sided lumbar radiculopathy secondary to L3-4 disc extrusion with associated right leg neurologic symptoms. The severity of foraminal stenosis on imaging strongly correlates with the patient's radicular complaints and functional limitations, including inability to stand, sit, or walk for prolonged periods and the need for a cane.

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DISCUSSION OF CREDIBILITY OF APPLICANT:

> The applicant was forthcoming and appeared sincere in discussing the details related to the injury. There was no evidence of symptom exaggeration. The account of injury and treatment was consistent with that provided within the medical records available for review. There were no inconsistencies noted.

> Given these considerations, I deem the applicant to be of good credibility and this finding will be taken into account in assimilating the subjective elements of his history in the determination of causation, impairment, permanent disability, and apportionment.
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> ***
>
> Based on my review of the medical evidence, the diagnostic studies, and the detailed history obtained from the applicant, it is within reasonable medical probability that the applicant sustained a specific industrial injury to the lumbar spine and right leg on 06/24/2025, while employed as a groundman for Barrett Business Services/Buds Tree Company.
>
> The mechanism of injury-lifting multiple large logs weighing approximately 300 pounds for several hours-is well-documented across multiple initial and subsequent medical records. Immediately following this heavy-lifting activity, the applicant reported acute low back pain radiating into the right leg, numbness, and difficulty walking. These same findings were recorded in the earliest available treatment notes, including the initial visits at Sutter (ER) and Agile Occupational Medicine. This consistency strongly supports the temporal relationship between the lifting event and the onset of symptoms. Additionally, the applicant reports his supervising boss had suggested he move them without mechanical assistance.
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> ***
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> Taken together, the applicant's credible history, the consistent and plausible biomechanics of injury, the objective diagnostic findings, and the corroborating medical records strongly support a finding of industrial causation.
>
> Accordingly, it is my medical opinion, within reasonable medical probability, that the applicant's lumbar spine injury and resulting right-sided radiculopathy are directly and causally related to the specific industrial injury of 06/24/2025.

(*Id.* at pp. 16-18.)

Based on his review of the medical evidence, diagnostic studies, and history from the applicant who he determined to be credible, Dr. Lum found industrial causation within reasonable medical probability to applicant's lumbar spine and right leg. (*Id.* at p. 17.)

On July 15, 2026, parties proceeded to trial on the issues of injury AOE/COE and parts of body injured. At trial, applicant testified that he was injured while cleaning and picking up tree trunks and branches from the ground. (Minutes of Hearing/Summary of Evidence (MOH/SOE), dated July 15, 2026, at p. 4.) On the day of the injury, applicant's manager, Eli, was present and working with him. (*Id.*) When applicant told Eli he "felt a hot burst in his back" and asked for five minutes, Eli told him "no" and that otherwise, he could leave. (*Id.*) He testified he was injured on June 25, 2025, the day before he went to the emergency room at Sutter. (*Id.*) Applicant further

testified that although he was sore from heavy work for about two or three days, he was not injured until June 25, 2025. (*Id.*) Defendant presented no witnesses for testimony at trial, including applicant's supervisor Eli.

On July 21, 2026, the WCJ issued her F&O and found applicant sustained injury AOE/COE to his lower back and right leg on June 25, 2025. The WCJ deferred and reserved all other issues.

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909[1], 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 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 August 18, 2026 and 60 days from the date of transmission is Saturday, October 17, 2026. The next business day that is 60 days from the date of transmission is Monday, October 19, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, October 19, 2026, so that we have timely acted on the Petition as required by section 5909(a).

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

[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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 18, 2026, and the case was transmitted to the Appeals Board on August 18, 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 18, 2026.

II.

Whether an employee's injury arose out of and in the course of employment is generally a question of fact to be determined in light of the particular circumstances of the case. (*Wright v. Beverly Fabrics* (2002) 95 Cal.App.4th 346 [67 Cal.Comp.Cases 51].) Section 3600(a) provides for liability for injuries sustained "arising out of and in the course of the employment." Section 3600(a)(2) requires as a condition of compensation that "at the time of the injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment." (Lab. Code, § 3600(a)(2).) An employer is liable for workers' compensation benefits "without regard to negligence." (Lab. Code, § 3600(a).) An employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing, Inc. 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.)

For the purpose of meeting the causation requirement in a workers' compensation injury claim, it is sufficient if the work is a contributing cause of the injury. (*South Coast Framing*, *supra*, at pp. 298-299.) "The applicant in a workers' compensation proceeding has the burden of proving industrial causation by a 'reasonable probability.' (citation) That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700-1701 [58 Cal.Comp.Cases 313].)

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 Board en banc).) Furthermore, decisions of the Appeals Board must be supported by 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].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10761.)

In the WCJ's Report, she explained why the evidence justifies the finding of injury AOE/COE:

> Applicant saw orthopedic surgeon Dr. Zachary Lum for a QME evaluation on November 15, 2025. Dr. Lum indicates Applicant was lifting a large tree trunk when he suddenly felt pain in the lower back and right leg. Applicant's job duties included lifting, carrying, and cleaning up tree trunks and debris as well as general groundskeeping tasks. Upon exam, Applicant had moderate tenderness to palpation at L1 to L5, moderate guarding an asymmetric spinal motion,and pain with radiating pain with lumbar range of motion. Dr. Lum diagnosed Applicant with possible right sided lumbar radiculopathy supported by imaging showing a L3-4 disc extrusion with severe neural foramen narrowing and presumed nerve root impingement as well as L4-5 disc herniation. Dr. Lum found a specific injury to the lumbar spine and right leg based on the medical evidence, diagnostic studies, and history from Applicant. (Joint Exhibit CC)
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> Dr. Lum produced a supplemental report dated April 8, 2026, based on review of EMG/NC studies of the lower extremities. Dr. Lum diagnosed Applicant with right posterolateral/foraminal disc extrusion at L3-4 with severe narrowing of the right L3-4 neuroforamen and presumed impingement of the right nerve root at L3, central L4-5 disc extrusion/herniation, and subacute right lumbar radiculopathy, primarily in L3-4 distribution confirmed by electrodiagnostic study with evidence of active/ongoing denervation of reinnervation. Dr. Lum opined the MRI and EMG findings support true lumbar radiculopathy rather than a non-spinal peripheral nerve condition. (Joint Exhibit AA)
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> Dr. Lum produced a supplemental report dated April 9, 2026, wherein he confirmed with reasonable medical probability that Applicant's lumbar spine condition including right-sided radicular symptoms was industrially caused. (Joint Exhibit BB)
>
> Dr. Lum found Applicant credible. (Joint Exhibit CC) Moreover, Dr. Lum's findings are supported by objective findings established by MRI imaging and EMG/NCV testing.

> At trial, Applicant testified credibly that he was injured while working with logs. Whether the exact moment of pain occurred while lifting a log or rolling a log is inconsequential.
>
> Based upon the QME reports of Dr. Lum and Applicant's testimony at trial, the record supports a finding that Applicant sustained a specific injury to his lower back and right leg arising out of and occurring in the course of employment in June 2025.

(Report, at pp. 2-3.)

III.

We generally accord great weight to a WCJ's findings on the credibility of witnesses as the WCJ had the opportunity to observe the demeanor of the witness. (*Garza*, *supra*, 3 Cal.3d at p. 319.) When a WCJ's findings are supported by solid, credible evidence, they are to be accorded great weight by the Board and rejected only on the basis of contrary evidence of considerable substantiality. (*Lamb*, *supra*, 11 Cal.3d at p. 281; *Garza*, *supra*, at p. 318.)

Here, the WCJ found applicant's trial testimony concerning the injury to be credible and consistent with the reporting by the panel QME, Dr. Zachary Lum. (Report, at p. 2.) Following our independent review of the evidentiary record, the pleadings of the parties, and the WCJ's Report, we agree with the WCJ and are not persuaded that "evidence of considerable substantiality" warrants disturbing the WCJ's factual determination that applicant met the burden of proving, to a preponderance of the evidence, industrial injury. (*Lamb*, *supra*, at p. 281; *Garza, supra*, at pp. 318-319.) Defendant's arguments regarding applicant's lack of credibility are not persuasive. We observe that although defendant had the opportunity to present witness testimony at trial to contravene applicant's testimony, including that of Eli, its employee who was working alongside applicant when the injury occurred, it did not. Based thereon, we decline to disturb the WCJ's factual determinations with respect to the issue of injury AOE/COE.

IV.

Section 5502(d)(3) provides that "discovery shall close on the date of the mandatory settlement conference." The section further provides, "[e]vidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference." (Lab. Code, § 5502(d)(3).) "The purpose of the disclosure requirement in section 5502 is obvious: 'to guarantee a productive dialogue leading, if not to expeditious

resolution of the whole dispute, to thorough and accurate framing of the stipulations and issues for hearing.'" (*San Bernardino Community Hosp. v. Workers' Comp. Appeals Bd.* (*McKernan*) (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986]), quoting *Zenith Insurance Co. v. Ramirez* (1992) 57 Cal.Comp.Cases 719.)

In the Petition, defendant asserts that we should rescind the WCJ's decision so that the WCJ can review the sub rosa video that it did not receive until after the trial as it directly undermines applicant's credibility. (Petition, at p. 5.) We agree with the WCJ that "it is entirely unclear why sub rosa video could not have been obtained with reasonable diligence before trial." (Report, at p. 2.)

Defendant's allegation is not that the video calls into question applicant's testimony at trial about how the injury occurred or applicant's description to Dr. Lum of how the injury occurred. Instead, defendant alleges that the video reveals that the nature and extent of applicant's disability may be different than as previously reported. But the nature and extent of the disability is not yet at issue, so it is unclear what bearing it has on the WCJ's decision. Moreover, defendant had ample opportunity to cross-examine Dr. Lum by way of deposition before the matter proceeded to trial.

The primary issue decided at this trial was whether applicant sustained injury AOE/COE, and the discovery cutoff for this trial has no impact on the parties' ability to conduct ongoing discovery as to the remaining issues, including nature and extent of applicant's disability. Specifically, under the procedures set forth under section 4062.3(b), defendant is able to send the sub rosa video to a medical evaluator with a request that the evaluator review any medical conclusions reached in light of the activities seen in the video. Thus, we see no reason on this basis to disturb the WCJ's decision.

Accordingly, defendant's Petition is denied.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the WCJ's decision issued on July 21, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 16, 2026

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

JOSEPH GUTIERREZ
GEORGE P. SURMAITIS, APC
YRULEGUI & ROBERTS

JL/abs

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