

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

JULIA GOMEZ, *Applicant*

vs.

**CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, legally uninsured,
adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ8706562; ADJ13176683
Marina del Rey District Office**

**OPINION AND ORDERS
GRANTING PETITION
FOR RECONSIDERATION
AND DECISION
AFTER RECONSIDERATION**

Applicant seeks reconsideration of the “Joint Findings and Award” (F&A) issued on May 13, 2026, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that a report of qualified medical evaluator (QME) Stuart Silverman, M.D., which was obtained after the close of the mandatory settlement conference (MSC) was admissible. Based, in part, upon the reporting of Dr. Silverman, the WCJ awarded applicant 60% permanent partial disability after apportionment and found that applicant did not sustain industrial injury to various orthopedic body parts.

Applicant contends that the reporting of Dr. Silverman was inadmissible because it was obtained after the close of the MSC and that applicant is entitled to an unapportioned award of permanent disability. Applicant further contends that a finding of industrial injury should have issued to various orthopedic body parts.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ’s Report. Based on our review of the record we will grant applicant’s

petition for reconsideration and as our Decision After Reconsideration, we will rescind the May 13, 2026 F&A and return this matter to the trial level for further proceedings.

FACTS

In case number ADJ13176683, applicant worked as a disability evaluation analyst III during the cumulative period ending on October 4, 2019, when she sustained an industrial injury to her psyche and in the form of fibromyalgia and sleep disorder, and claims to have sustained injury to her neck, upper back, lower back, bilateral ankles, bilateral wrists, bilateral hands, and bilateral knees. (Minutes of Hearing and Summary of Evidence (MOH/SOE), April 9, 2026, p. 2, lines 18-22.)

In case number ADJ8706562, applicant worked as a disability evaluation analyst III on June 29, 2010, when she sustained an industrial injury to her psyche. (*Id.* at p. 4, lines 5-8.)

The matter proceeded to trial on the issues of body parts injured, permanent disability, apportionment, need for future medical treatment, credit, attorney's fees, and the admissibility of defendant's exhibit A. (*Id.* at p. 3, lines 12-25; p. 4, lines 1-3 and 23-25.)

While the minutes of hearing note that defendant's exhibit A, which is the December 23, 2025 report of QME Silverman, was marked for identification, the minutes contain no objection to the admission of any exhibits and contain no order admitting any of the exhibits.

According to the minutes of hearing, this matter was set for trial by joint request of the parties in December 2025. (Minutes of Hearing, ADJ13176683, ADJ8706562, December 17, 2025.) However, according to the pre-trial conference statement, "Defendant argues that the cases are not yet ready for trial, as Internal QME Dr. Minal Borsada has not MMI'd the applicant. An appointment has been set with Dr. Borsada on 01/12/26." (Pre-trial Conference Statement, ADJ13176683, ADJ8706562, December 17, 2025, p. 3.) The pre-trial conference statement is not signed by the MSC judge and contains no notation indicating that it was reviewed prior to setting the matter for trial.

Although applicant argues that discovery closed as of the date of the MSC, it appears that applicant continued to conduct discovery after the MSC as she attended an in-person QME evaluation with Dr. Borsada in January 2026. (Joint Exhibit X11, Report of Minal Borsada, M.D., January 12, 2026.)

A. Medical Evidence

Applicant was seen by orthopedic QME Jon Greenfield, M.D., who authored two reports. (Joint Exhibits X1, X2.) Dr. Greenfield took a history of cumulative injury as follows:

Ms. Gomez works as a Disability Analyst for the Department of Social Services. She works 8 hours per day; she spends six hours a day sitting, and stands two hours a day while making copies. Ms. Gomez was hired on 9/12/05, and she last worked regular duty on 10/4/19. At that time she was placed on temporary disability for non-orthopedic reasons.

* * *

The patient's job title is Disability Analyst. She works 8 hours a day and 40 hours a week. She is required to occasionally walk, stand, bend at the waist, climb, kneel, and perform pushing and pulling with both hands, and reaching above shoulder level. She has to frequently sit, twist at the neck, perform simple grasping with both hands, and reach below shoulder level.

She has to constantly bend at the neck, use her right dominant hand on a repetitive basis, and perform fine manipulation with both hands. She also has to frequently lift 0-10 pounds, and occasionally carry 0-10 pounds.

(Joint Exhibit X1, Report of Jon Greenfield, M.D., August 20, 2020, pp. 1, 4.)

Dr. Greenfield found that applicant suffered no orthopedic injury. (*Id.* at p. 18.) Dr. Greenfield deferred to a rheumatologist stating: “[B]ecause the patient's problems are primarily rheumatological in nature and the treatment of her rheumatological condition has resulted in improvement of her conditions, I believe that impairment is best determined by a rheumatologist. I believe that causation as well should be determined by the rheumatologist.” (*Id.* at p. 20.)

Applicant was seen by rheumatology QME Stuart Silverman, M.D., who authored six reports. (Joint Exhibits X6, X7, X8, X9, X10, and Defendant’s Exhibit A.) Dr. Silverman took a history of applicant’s work stress as follows:

Ms. Gomez . . . described herself as a whistleblower who was subjected to harassment by employers. She was working on medical determination for her social security claims where a physician review was required. She stated the physician was to review the claims, he did not review the claims but only signed them. He was older with cognitive problems and was technologically challenged. She was asked to sign off cases which were backlogged. She states that the office was subject to a review by the office of Inspector General where she named some of her co-workers. She states she suffered multiple retaliations, including a credit report, and was terminated on October 26, 2021.

(Joint Exhibit X6, Report of Stuart Silverman, M.D., July 16, 2025, p. 1.)

Dr. Silverman noted the onset of fibromyalgia as follows:

She has noted widespread pain since 2012 and a history of undifferentiated connective tissue disease in the past. In my prior report of 2022, I diagnosed fibromyalgia in the setting of undifferentiated connective tissue disease. I noted in the setting a perceived stress in the workplace, she developed nonrestorative sleep, depression, anxiety, and widespread pain consistent with fibromyalgia. She also had a highly positive ANA which could contribute to the development of fibromyalgia. I suggested she have a multidisciplinary fibromyalgia treatment program. She states there was an OIG investigation which lasted six months. She was told both in office and out of office that she was going to go to jail. She was terminated October 26, 2021. She has not worked since October 2021 when she left her position as disability analyst after an OIG investigation of 2011 to 2013. She has had multiple periods of disability leave in 2011, 2016, and 2018, each lasting approximately a year.

(*Id.* at pp. 1-2.)

Dr. Silverman initially opined that applicant's fibromyalgia and its resulting impairment was "100% industrial assuming trier of fact agrees with the perception of stress." (*Id.* at p. 8.)

After reviewing additional medical records, Dr. Silverman modified his opinion on apportionment as follows:

I do note a 15-year history of chronic pain diagnosed as fibromyalgia/connective tissue disease with a positive ANA and response to prednisone and hydroxychloroquine with anti-nucleolar and centromere antibodies diagnosed as UCTD (undifferentiated connective tissue disease), and later in October 2020 by Dr. Kao. Joint pain is common in UCTD and fibromyalgia. She does have fibromyalgia as judged by widespread pain, plus 18/18 tender points, positive dolorimetry and compression tests, and meets ACR 2016 criteria. I believe, therefore, we need to consider that the fibromyalgia may be due to two triggering events. Her prior history of UCTD, but also her stress in the workplace, noted above, well documented. Dr. Kao, in his October 5, 2010 notes chronic and constant achy pain without swelling of all joints of the entire back since 2000, and in 2001, a positive ANA and lupus panel led to a diagnosis of SLE, later changed to MCTD after repeat negative lupus panel antibodies. This would suggest that the fibromyalgia is in part related to an underlying connective tissue disease, but also to the work exposure. I would apportion 50% industrial related to the work exposure and 50% due to the underlying connective tissue disease such as lupus, for example, have a 25% incidence of development of fibromyalgia secondary to inflammation.

(Defendant's Exhibit A, Report of Stuart Silverman, M.D., December 23, 2025, p. 36.)

Applicant was seen by psychiatric QME Stephane Johnson, M.D., who authored three reports. (Joint Exhibits X3, X4, X5.) Applicant's GAF score was 61. (Joint Exhibit X4, Report of QME Stephane Johnson, M.D., September 18, 2020, p. 13.)

Applicant was seen by internal QME Minal Borsada, M.D., who authored two reports. (Joint Exhibits X11, X12.) Dr. Borsada assigned 11% impairment due to sleep disturbance. (Joint Exhibit X11, *supra* at p. 51.)

The WCJ drafted rating instructions which the DEU rated as follows:

Psyche 14 WP

14.01.00.00 - 14 - [1.4]20 - 111I - 27 - 33 PD

Behavioral/Emotional Disorder 30 WP

50% [13.06.00.00 - 33 - [1.4]46 - 111I - 55 - 63] 32 PD

3 WP add-on included for pain

Cognitive Impairment 11 WP

50% [13.04.00.00 - 11 - [1.4]15 - 111H - 19 - 24] 12 PD

Combine:

33 C 32 C 12 = 60 Final PD

(DEU Rating, ADJ13176683, ADJ8706562, April 29, 2026.)

DISCUSSION

I.

Former Labor Code¹ 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.

(§ 5909.)

¹ All future references are to the Labor Code unless noted.

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 June 10, 2026, and 60 days from the date of transmission is Sunday, August 9, 2026, which by operation of law means this decision is due by Monday, August 10, 2026. (Cal. Code Regs., tit. 8, § 10600.). This decision is issued by or on August 10, 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on June 10, 2026, and the case was transmitted to the Appeals Board on June 10, 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 June 10, 2026.

II.

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].)

A. Admissibility of evidence obtained after the MSC.

Applicant challenges the admissibility of Defendant's Exhibit A because it was a report obtained after conclusion of the MSC.

In determining whether to admit evidence, we are governed by the principles of section 5908, which states that the appeals board "shall not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division." The right to present evidence implicates the right to due process. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 175 [36 Cal.Comp.Cases 93, 102]; *Pence v. Industrial Acci. Com.* (1965) 63 Cal.2d 48, 51 [30 Cal.Comp.Cases 207, 209].)

We should first note that no order exists, admitting any of the evidence in this matter. The WCJ has proceeded as if the exhibits are in evidence; however, they are not. While the Appeals Board could issue an order admitting evidence, it would appear that the proceedings in this matter violated the parties right to due process, which may only be remedied by returning this matter to the trial level to conduct a new MSC.

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "... one of 'the rudiments of fair play' assured to every litigant" (*Id.* at 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "[The] commission, ... must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.* at 577.)

Pursuant to section 5502(d):

(2) The settlement conference shall be conducted by a workers' compensation administrative law judge or by a referee who is eligible to be a workers' compensation administrative law judge or eligible to be an arbitrator under Section 5270.5. At the mandatory settlement conference, the referee or workers' compensation administrative law judge shall have the authority to resolve the dispute, including the authority to approve a compromise and release or issue a stipulated finding and award, and **if the dispute cannot be resolved, to frame the issues and stipulations for trial.** The appeals board shall adopt any regulations needed to implement

this subdivision. The presiding workers' compensation administrative law judge shall supervise settlement conference referees in the performance of their judicial functions under this subdivision.

(3) If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. **Discovery shall close on the date of the mandatory settlement conference. Evidence 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.**

(§ 5502(d)(2), (3), (emphasis added).)

Section 5502 requires the WCJ to frame the issues and stipulations for trial at the MSC. The parties are required to disclose all of their evidence at the MSC on the PTCS and submit the PTCS to the WCJ for a substantive review *on the day of the hearing, with the parties present*. The primary purpose of the statute is to avoid trial by surprise. Failure to follow section 5502 at the trial level not only violates the statute, but invites a host of errors that are easily avoidable, such as the error seen here where a party discloses evidence for the first time after the MSC is completed. While it has long been understood that workers' compensation proceedings are handled with a degree of informality, such informality cannot justify violating the parties' right to due process to be notified of the issues upon which a trial is set and to be notified of the witnesses and exhibits that will be produced at trial.

To be clear, it is within the WCJ's discretion to order development of the record in cases where the record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (§§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) There may also be cases where evidence is newly discovered after the close of the MSC, (§ 5903(d),) or the parties stipulate to obtain an exhibit after the MSC and list the expected exhibit on the PTCS, or other doctrines of law that may warrant amendment of the PTCS. The terms of section 5502 do not restrict the WCJ's discretion in such matters. However, a WCJ may not abuse their discretion in setting a matter for trial when the WCJ

has not reviewed *any* PTCS. Doing so violates the parties right to due process to know what issues are set for trial and what exhibits or witnesses are expected to be called.

In addition to avoiding trial by surprise, section 5502 serves a significant public purpose, which is to promote judicial economy and avoid abuse of public proceedings. The Workers' Compensation Appeals Board has limited resources. When a WCJ allows the parties to blindly set a matter for trial without reviewing the stipulations of the parties, the issues to be set, and the exhibits and witnesses proffered, both the WCJ and the parties waste the judicial resources of the State and further contribute to delays in other cases that are truly prepared to proceed.

This matter was set for trial notwithstanding the fact that *both parties* required additional discovery and were clearly not prepared to proceed to trial. It does not appear that the WCJ reviewed and completed a PTCS at the MSC. Their failure to sign the PTCS and their failure to issue an order closing discovery, invited the errors that exist in this case. This violated the parties' right to due process, and thus we are compelled to return this matter to the trial level to conduct a new MSC.

Applicant argues that the rating in this case should not be based upon reporting obtained after the MSC concluded. If applicant's argument were followed, we would be compelled to exclude the evidence obtained by *applicant* after the close of the MSC, which included the January 2026 ratings report of Dr. Borsada, which provided applicant's impairment for sleep disorder. In this case *both parties* continued to conduct discovery after the close of the MSC.

B. Compensability of Orthopedic Body Parts

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).) “When the foundation of an expert's testimony is determined to be inadequate as a matter of law, we are not bound by an apparent conflict in the evidence created by his bare conclusions.” (*People v. Bassett* (1968) 69 Cal.2d 122, 139.)

Applicant argues that a finding of industrial injury should issue as to applicant's orthopedic body parts. Applicant argues that the reporting of Dr. Greenfield should be followed in this regard, however, Dr. Greenfield issued no opinion as to whether applicant suffered an orthopedic injury

and deferred all of applicant's complaints to a rheumatologist. (See Joint Exhibit X2.) Without any medical opinion addressing the causation of orthopedic injury, no such finding can issue.

Accordingly, we grant applicant's petition for reconsideration and as our Decision After Reconsideration, we rescind the May 13, 2026 F&A and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Joint Findings and Award issued on May 13, 2026, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings and Award issued on May 13, 2026, by the WCJ is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 10, 2026

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

**JULIA GOMEZ
HINDEN & BRESLAVSKY, APC
STATE COMPENSATION INSURANCE FUND**

EDL/mt

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