WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

KEVIN MONTI, *Applicant*

vs.

MASTEC, INC.; ACE AMERICAN INSURANCE COMPANY, administered by ESIS, INC., *Defendants*

Adjudication Number: ADJ19727180
San Luis Obispo District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact and Award (F&A) issued on April 1, 2026 by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant, while employed on May 12, 2023, as a lineman, sustained an industrial injury arising out of and in the course of employment to his circulatory system in the form of a heart attack resulting in 100% permanent disability without apportionment.

Defendant contends that, under *City of Petaluma v. Workers' Comp. Appeals Bd.* (*Lindh*) (2018) 29 Cal.App.5th 1175 [83 Cal.Comp.Cases 1869], the WCJ erred by adopting the opinion of Panel Qualified Medical Evaluator (PQME) Richard Hyman, M.D., who failed to perform a mandatory apportionment analysis under Labor Code section 4663[1] and improperly dismissed known nonindustrial contributing factors, including applicant's 30-year smoking history, obesity, and genetic predisposition, as mere risk factors. Defendant further contends that the PQME Dr. Hyman applied an incorrect legal framework by focusing on the causation of the injury rather than the causation of disability, and that the WCJ failed to fulfill an affirmative duty to develop the record despite characterizing PQME Dr. Hyman's reporting as "suspicious." Additionally, defendant asserts a denial of due process because it was required to proceed to trial without outstanding out-of-state medical records regarding pre-existing conditions due to applicant's failure and refusal to execute medical releases.

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

We have received an Answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) on May 19, 2026, recommending that we deny reconsideration.

We have considered the allegations in defendant's Petition, applicant's Answer and the contents of the WCJ's Report. Based on our review of the record, and for the reasons discussed below, we will affirm the WCJ's decision.

BACKGROUND

The parties stipulated that applicant, while employed as a lineman on May 12, 2023, claimed to have sustained industrial injury to his circulatory system in the form of a heart attack. (Minutes of Hearing and Summary of Evidence (MOH/SOE), 01/07/2025, 2:7-11.)

The parties proceeded to trial on January 7, 2025. Applicant testified in pertinent part as follows:

On May 12, 2023, he experienced a heart attack while working in temperatures ranging from the high 80s to low 90s. (MOH/SOE, 01/07/2025, 5:25-26.) He felt weak, fatigued, and developed chest pain while changing telephone poles after lifting transformers and cross arms weighing between 40 and 90 pounds and pulling 30 to 40 pounds of wire with a hoist. (MOH/SOE, 01/07/2025, 5:31-38.) Emergency personnel diagnosed the heart attack using a medical device at the job site. (MOH/SOE, 01/07/2025, 6:12-14.) He subjectively attributed his injury to the heavy lifting, the heat, and the stress of working in the air with an unfamiliar coworker. (MOH/SOE, 01/07/2025, 7:21-25.)

Emergency responders transported him to St. Joseph's Hospital for a three-day admission. (MOH/SOE, 01/07/2025, 6:14, 7:41-42.) Following his discharge, he relocated to New Jersey for approximately six months, where he received cardiological treatment, which included an EKG, a stress test, and a pacemaker consultation. (MOH/SOE, 01/07/2025, 8:41-45.) He subsequently returned to California and sought care with Coastal Cardiology. (MOH/SOE, 01/07/2025, 9:1-2.) He currently experiences rapid fatigue, doubts his ability to return to work, and personally finances seven different heart medications. (MOH/SOE, 01/07/2025, 7:9-11.)

With respect to risk factors, he weighed between 210 and 220 pounds at the time of the injury. He acknowledged an intermittent 30-year smoking history, consuming up to a pack a day, but noted he quit multiple times and ceased smoking entirely a few weeks to a few months prior to the heart attack. (MOH/SOE, 01/07/2025, 9:12-14, 24-27, 32-33.) Prior to the injury, he never received

medical treatment or work restrictions for his lungs or smoking habits, and no physician ever advised him of a pre-existing heart condition or an increased risk of a heart attack. (MOH/SOE, 01/07/2025, 9:30-31, 40-41.) He also passed annual Department of Transportation physical examinations that included chest X-rays. (MOH/SOE, 01/07/2025, 9:46-47 to 10:1-2.)

In his report dated April 16, 2025, followed by his supplemental report dated June 24, 2025, PQME Dr. Hyman, after evaluating applicant, diagnosed him with a myocardial infarction, ischemic cardiomyopathy, and chronic congestive heart failure. (Joint Ex. CC, pp. 5, 6.) PQME Dr. Hyman determined the mechanism of injury involved heavy lifting in a hot environment that precipitated the heart attack. (*Id.* at p. 5.) Pathological findings revealed a completely occluded left anterior descending coronary artery requiring a stent, a severely reduced ejection fraction from 30 to 35%, and a subsequent 13-second cardiac pause necessitating the implantation of a dual-chamber pacemaker and defibrillator. (*Id.* at pp. 4-5.)

Regarding factors of permanent disability, PQME Dr. Hyman placed applicant in Class 4 for cardiovascular impairment, noting he develops congestive heart failure symptoms with less than five metabolic equivalents of task activity. PQME Dr. Hyman assigned 75% whole person impairment (WPI). (AMA Guides to the Evaluation of Permanent Impairment, Table 3-6a, p. 36.) (*Id.* at p. 6.) Addressing apportionment, PQME Dr. Hyman found applicant's permanent disability completely industrial. PQME Dr. Hyman concluded applicant possessed no pre-existing hemodynamically significant coronary artery disease, rendering the entire disability attributable to the industrial heart attack. (*Id.* at p. 5.) Furthermore, PQME Dr. Hyman recommended future medical treatment including a potential heart transplant and treatment involving the pacemaker component for the nonindustrial sick sinus syndrome, because the industrial injury had already necessitated the defibrillator component of the implanted device. (*Id.* at p. 6; Joint Ex. BB, p. 2.)

In his August 13, 2025 deposition, PQME Dr. Hyman testified that heavy physical exertion at work caused a previously asymptomatic, non-hemodynamically significant plaque to rupture and clot, resulting in the acute myocardial infarction. (Joint Ex. AA, p. 13:20-25 to 14:1-9.) He reiterated his refusal to apportion any permanent disability to nonindustrial risk factors such as applicant's smoking history or weight, emphasizing the lack of any pre-existing symptomatic coronary artery disease prior to the industrial exertion. (*Id.* at pp. 14:10-24, 15:23-25.) Regarding permanent disability, PQME Dr. Hyman testified applicant experienced a dynamic, progressively worsening congestive heart failure condition. (*Id.* at p. 8:19-23.) While PQME Dr. Hyman maintained 75% WPI

impairment rating based on the evaluation date, he noted applicant's impairment will likely increase over time unless he receives a successful heart transplant, which could substantially lower the impairment rating to 5 or 10%. (*Id.* at pp. 11:9-14, 24:18-25 to 25:1.) Finally, PQME Dr. Hyman clarified that the dual-chamber pacemaker and defibrillator unit constitutes industrial future medical care because the industrial heart attack caused the low ejection fraction requiring the defibrillator, even though the pacing function simultaneously treats an underlying nonindustrial electrical degeneration of the heart. (*Id.* at pp. 19:8-24 to 20:1-12.)

On April 1, 2026, the WCJ issued the F&A, awarding applicant 100% permanent disability without apportionment. In the Opinion on Decision, the WCJ calculated the permanent disability as follows:

> CORONARY HEART DISEASE
> 100% (03.02.00.00 - 75 [1.4] - 100 - 482I - 100 - 100%) 100%
>
> (Opinion on Decision, p. 2.)

In addition, the WCJ stated the following:

> The defendants contend they were denied due process because they were forced to proceed with Trial without the applicant's out-of-state medical records . . . However, the defendant's briefs fail to mention that they first requested these releases very late in the litigation process... over two years from the date of injury . . . No explanation was provided for their delay.
>
> Furthermore, it is uncontested that the defendants knew of the injury when it occurred . . . The applicant testified that he sent his medical bills to the defendants several times . . . Instead, it appears that the defendants issued a denial a mere seven days after the applicant's heart attack, and then did nothing.
>
> The defendants cannot neglect their duties of reasonably investigating the applicant's claim and conducting discovery, and then blame the applicant for the consequences of their neglect. Due process was provided to the defendants. They had notice and opportunity to obtain the records they now covet, and they squandered it.

(*Id.* at p. 5.)

It is from this F&A that defendant seeks reconsideration.

DISCUSSION

I.

Former Labor Code 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.

(Lab. Code, § 5909.) Effective July 2, 2024, the Legislature amended section 5909 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 current section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days after the district office transmits the case to the Appeals Board. Otherwise, the petition stands denied by operation of law. Section 5909(b) requires the trial judge to notify the parties and the Appeals Board upon transmission. It further provides that service of the Report and Recommendation under section 5900(b) satisfies this notice requirement.

The Electronic Adjudication Management System (EAMS) reflects transmission through the Case Events entry labeled "Sent to Recon," with the additional notation "The case is sent to the Recon board."

Here, according to Case Events, the district office transmitted this case to the Appeals Board on May 21, 2026, and 60 days from the date of transmission is July 20, 2026. This decision issues on or before July 20, 2026, so that we have timely acted on the petition as required by section 5909(a).

The proof of service for the Report demonstrated service and transmission to the Appeals Board on May 21, 2026. 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 May 21, 2026.

II.

Under the doctrine of invited error, where a party sits on their rights and delays in conducting discovery, they cannot now claim a denial of their due process rights resulting from that delay. (*Telles Transport, Inc. v. Workers' Comp. Appeals Bd.* (*Zuniga*) (2001) 92 Cal.App.4th 1159, 1167-1168 [66 Cal.Comp.Cases 1290] This conduct can include causing unnecessary delay by

failing to conduct a deposition or rescheduling it multiple times, or failing to timely request a supplemental report from a reporting physician. (*Caggiano v. County of Monterey* [2018 Cal. Wrk. Comp. P.D. LEXIS 230, *16-20]; *Moore v. Salinas Valley State Prison* [2016 Cal. Wrk. Comp. P.D. LEXIS 668, *21-24]; *Jackson v. County of Los Angeles* [2013 Cal. Wrk. Comp. P.D. LEXIS 558, *3-4]; *Nicknig v. Safe Credit Union* [2012 Cal. Wrk. Comp. P.D. LEXIS 655, *9-10].)[2] Excusing this delay would impermissibly reward a party's discovery failures at the direct expense of the opposing party's right to an expeditious resolution of a disputed claim.

Here, defendant asserts a deprivation of due process, arguing the WCJ improperly ordered the matter proceed to trial without outstanding out-of-state medical records regarding applicant's pre-existing conditions. However, the record unequivocally demonstrates that defendant possessed immediate knowledge of the injury, issuing a claim denial a mere seven days after applicant suffered the heart attack. Despite this early notice, defendant inexplicably delayed for over two years from the date of injury before requesting the relevant medical releases. Applying the doctrine of invited error, we find no deprivation of due process because defendant had ample notice and declined to exercise its opportunity to obtain the records.

III.

Apportionment is the process utilized to segregate permanent disability or the residuals caused by an industrial injury from those attributable to other industrial injuries or to nonindustrial factors, to allocate legal responsibility fairly. (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1321 [72 Cal.Comp.Cases 565]; *Marsh v. Workers' Comp. Appeals Bd.* (2005) 130 Cal.App.4th 906, 911 [70 Cal.Comp.Cases 787].)

The mere fact that a medical report assigns approximate percentages of industrial and nonindustrial causation does not make the report reliable medical evidence by itself. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 927-928 [71 Cal.Comp.Cases 1687].) Instead, apportionment of permanent disability is "based on causation" and the "employer shall only be liable for the percentage of permanent disability directly caused by

[2] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

the injury arising out of and occurring in the course of employment." (Lab. Code, §§ 4663(a) and 4664(a).) "The plain reading of 'causation' in this context is causation of the permanent disability." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 611 (Appeals Board en banc).) Apportionment now includes pathology, asymptomatic prior conditions, and retroactive prophylactic work preclusions, provided there is substantial evidence establishing that these other factors have caused permanent disability. Pursuant to *Escobedo*, a physician's opinion must rely on reasonable medical probability, cannot be speculative, must rely on pertinent facts and/or an adequate examination and history, and must set forth the reasoning in support of its conclusions. (*Id.* at p. 621.) That is, a physician must explain the "how and why" of their apportionment opinion and consider all potential causes of disability, whether from a current, prior or subsequent industrial or nonindustrial injury or condition. (*Benson v. Permanente Med. Group* (2007) 72 Cal.Comp.Cases 1620, 1622 (Appeals Board en banc).)

In addition, where some portion of an employee's permanent disability results from a pre-existing, asymptomatic condition caused by a nonindustrial disease or pathology, by congenital or genetic factors, or by other nonindustrial risk factors, a physician may permissibly apportion the permanent disability. (*Brophy v. Workers' Comp. Appeals Bd.* (2021) 86 Cal.Comp.Cases 706, 707 (writ denied); see, e.g., *City of Jackson v. Workers' Comp. Appeals Bd.* (*Rice*) (2017) 11 Cal.App.5th 109 [82 Cal.Comp.Cases 437] [allowing apportionment of permanent disability caused by genetic or congenital cervical spine pathology]; *Acme Steel v. Workers' Comp. Appeals Bd.* (*Borman*) (2013) 218 Cal.App.4th 1137 [78 Cal.Comp.Cases 751] [allowing hearing disability to be apportioned to congenital degeneration of the cochlea].) In *Lindh*, the Court of Appeal clarified that the relevant inquiry is the causation of permanent disability, not the causation of the injury. Because the medical evidence demonstrated that the employee's underlying vasospastic condition and vasculature directly contributed to his impaired vision, it constituted a legally valid basis for apportionment, regardless of whether the condition was asymptomatic before the industrial injury. (*Lindh, supra*, 29 Cal.App.5th at p. 1193.)

Notwithstanding *Lindh*, the Appeals Board strictly rejected apportionment when a pre-existing condition merely serves as a risk factor for sustaining an industrial injury rather than directly causing the permanent disability. In *State of California/Department of Hospitals-Vacaville v. Workers' Comp. Appeals Bd.* (*Ham*) (2019) 84 Cal.Comp.Cases 1006 (writ denied), the Appeals Board invalidated a physician's attempt to apportion 50% of an employee's disability to nonindustrial diabetes. Because the diabetes merely predisposed the employee to an industrial MRSA

infection, which subsequently required a foot amputation, the industrial injury and resulting amputation exclusively caused the permanent orthopedic disability. Similarly, in *Wiest v. Cal. Dep't of Corr.* (2021) 86 Cal.Comp.Cases 856 (*Wiest*), the Appeals Board upheld the rejection of apportionment for pre-existing diabetes that led to bilateral below-the-knee amputations, emphasizing that the permanent disability rating evaluated the orthopedic impairments of the amputations rather than any underlying diabetic impairment. *Wiest* explicitly distinguishes *Lindh* by highlighting that an underlying condition legally justifies apportionment only when a physician identifies it as an active, contributing cause of the permanent disability itself. Harmonizing these decisions establishes a definitive standard that physicians may apportion to a nonindustrial risk factor only when they provide substantial medical evidence detailing exactly "how and why" that specific condition directly causes the permanent disability, just as the underlying vasospastic condition directly contributed to the vision loss in *Lindh*. They may not legally apportion permanent disability to a nonindustrial risk factor that solely increases an employee's susceptibility to a workplace injury because this confuses causation of injury with causation of permanent disability. (*Valencia v. City of Daly City* [2025 Cal. Wrk. Comp. P.D. LEXIS 6, *15]; *Arias v. Williams Roofing Co.* [2024 Cal. Wrk. Comp. P.D. LEXIS 29, *10-11]; *Junge v. City of San Jose* [2021 Cal. Wrk. Comp. P.D. LEXIS 375, *17].)

Finally, the burden of proof to establish apportionment falls on defendant. (*Pullman Kellogg v. Workers' Comp. Appeals Bd.* (*Normand*) (1980) 26 Cal.3d 450, 456 [45 Cal.Comp.Cases 170]; *Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229].) In other words, an employee does not have the burden of disproving apportionment while defendant remains passive. (*Alcantar v. Martinez* [2025 Cal. Wrk. Comp. P.D. LEXIS 231, *9]; *Moraido v. County of San Diego* [2024 Cal. Wrk. Comp. P.D. LEXIS 375, *13, fn. 3]; *Arias v. Williams Roofing Co.* [2024 Cal. Wrk. Comp. P.D. LEXIS 29, *5]; *Matias v. Naturipe Berry Growers* [2024 Cal. Wrk. Comp. P.D. LEXIS 52, *4]; *Herrera v. Maple Leaf Foods* [2018 Cal. Wrk. Comp. P.D. LEXIS 430, *15].)

Here, defendant contends the WCJ erred in adopting the opinion of PQME Dr. Hyman, arguing he improperly dismissed applicant's 30-year smoking history, obesity, and genetic predisposition as mere risk factors and declining to apportion any permanent disability to them. Relying on *Lindh*, defendant asserts PQME Dr. Hyman applied an incorrect legal framework by failing to perform a mandatory apportionment analysis. This reliance misapplies *Lindh* because it authorizes apportionment to an underlying condition only when a physician provides substantial

medical evidence demonstrating that the specific nonindustrial condition actively and directly caused the permanent disability. In this case, PQME Dr. Hyman comprehensively testified that applicant's heavy physical exertion at work caused a previously asymptomatic, non-hemodynamically significant plaque to rupture, precipitating the acute myocardial infarction. Because applicant lacked any pre-existing symptomatic coronary artery disease prior to the industrial exertion, PQME Dr. Hyman explicitly refused to apportion any part of the 75% WPI to nonindustrial risk factors. He did not apportion to pre-existing factors precisely because the medical evidence failed to establish them as direct causes of the permanent disability. Since the burden of proof to establish apportionment falls squarely on defendant, who chose to proceed to trial without marshaling substantial medical evidence to contradict PQME Dr. Hyman or establish valid legal apportionment, it failed to meet that burden. We are under no obligation, and indeed decline, to order development of the record to cure defendant's fatal evidentiary deficiencies. Consequently, we will not disturb the award of 100% permanent disability.

Accordingly, we affirm the F&A.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings & Award issued on April 1, 2026, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 20, 2026

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

KEVIN MONTI
HERRERAS & FORSHER, LLP
BRADFORD & BARTHEL, LLP

DLP/md

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