WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

LARONDA MCPEAK, *Applicant*

vs.

SAFEWAY, INC., permissibly self-insured, administered by SEDGWICK, *Defendants*

Adjudication Number: ADJ11763808
Oakland District Office

OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION
AND DECISION
AFTER RECONSIDERATION

Defendant seeks reconsideration of the Amended Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on July 16, 2026, wherein the WCJ found in pertinent part that applicant, while employed on April 20, 2015 as a deli clerk, occupational group number 322 by "Safeway",[1] sustained injury arising out of and in the course of employment to her left knee, left leg, right ankle, right foot, but not to her right toes; that applicant's injuries caused permanent disability of 100%; and that applicant will require "further medical treatment to cure or relieve from the effects of the injury to her right ankle and left knee."

Defendant contends that the WCJ erred when she did not consider applicant's prior worker's compensation claims; and that the WCJ's reliance on the vocational rehabilitation

[1] In the F&A and at trial, defendant is referred to as "Safeway." The WCJ's caption also refers to "Albertson's Holdings." A defendant must be correctly identified in the F&A so as not to affect its enforceability. (Lab. Code, § 5806; Cal. Code Regs., tit. 8, §10390; see *Coldiron v. Compuware Corp.* (2002) 67 Cal.Comp.Cases 289 (Appeals Bd. en banc) [defendant attorneys must disclose proper legal names for the employer, insurance company and any third-party administrator and failure to do so may subject the offending party to sanctions]; and see *DiFusco v. Hands On Spa* (2025) 90 Cal.Comp.Cases ***, (Appeals Bd. en banc).) Thus, if any errors exist, defendant must correct them forthwith.

expert's opinion is speculative and not based on substantial evidence to support an award of 100% permanent disability.

We 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 in the Petition, the Answer, and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will grant defendant's Petition for Reconsideration, and affirm the Amended F&A, except that we will amend it to find that applicant is entitled to further medical care and award further medical care. (Finding of Fact 6, Award 2.)

BACKGROUND

We will briefly review the relevant facts.

Applicant sustained injury arising out of and in the course of employment to her left knee, left leg, right ankle, right foot, but not to her right toes, while employed by defendant on April 20, 2015. (Minutes of Hearing and Summary of Evidence (MOH/SOE, June 11, 2026, at p. 2:6-9.)

Timothy Lo, M.D., served as the Qualified Medical Evaluator (QME).

In his March 20, 2023 report, Dr. Lo examined applicant. He concluded that: "Due to her functional limitations, it is unlikely that she will be able to ever return back to work at Safeway unless she is accommodated in a sedentary capacity. She would not be able to perform the job duties as deli clerk, and the formal job description of deli clerk was again reviewed, which was accompanying the claims examiner cover letter." (Exhibit 3, p. 29.) With respect to apportionment, he found that:

> Ms. Laronda McPeak had no difficulty performing her job duties as a deli clerk prior to the specific injury sustained on April 20, 2015. She had no prior history of right ankle functional limitations or pain.
>
> Although she did have a prior history of non-industrial left knee arthroscopic lateral release performed in 1989, she reports that she made a full recovery and was able to run, perform physical activities, and perform prolonged weight-bearing and standing without any left knee symptoms.
>
> Given the mechanism of injury, which is specific in nature for both the left knee and subsequently the right ankle, it would be within reasonable medical probability

that 100% of her impairment for the left knee and right ankle would be apportioned to the work-related injury sustained on April 20, 2015.

(Exhibit 3, p. 30.)

In his July 13, 2023 report, Dr. Lo stated that:

It remains my opinion that her right ankle impairment based on range of motion loss would most appropriately provide an accurate rating for her right ankle. If gait derangement was considered, she does not rely on a cane or brace all the time, and it would be difficult for me to parcel out what aspect of gait derangement would be due to right ankle versus the left knee condition.

To address whether her permanent impairment for the left knee and right ankle should be added or combined, considering a Kite analysis, it is likely that the bilateral lower extremity impairments involving the left knee and right ankle have a synergistic effect, in which both impaim1ents make them worse in aggregate, so that combining their impairments using the Combined Values Chart would be compressive and not accurately reflecting her degree of impairment. She is not able to compensate with an asymptomatic, functionally intact lower extremity as both lower extremities are affected. Because she is not able to compensate for her left knee condition with her right leg and not able to compensate her right ankle condition with her left leg, it would be my medical opinion that adding the impairment for the right ankle and left knee would be a more accurate disability rating, rather than using the Combined Values Chart, as indicated in the AMA Guides.

This applicant requires permanent work restrictions, which include no prolonged standing or walking for more than five minutes per hour. She would only be able to perform seated work. She would not be able to perform lifting of greater than five pounds and should be allowed to use a cane as needed.

It is highly unlikely that she would be able to return back to her prior employment due to the work restrictions required and can be considered a Qualified Injured Worker and entitled to vocational rehabilitation benefits.

(Exhibit 4, p. 2.)

As stated in the WCJ's Opinion on Decision:

Applicant, Laronda McPeak, sustained injury to her left knee while working in the Deli department. Applicant underwent three knee surgeries. Due to her knee instability, Ms. McPeak injured her right ankle when she fell in a church parking lot. Ms. McPeak has been evaluated by Dr. Lo who issued four reports including one on work restrictions and Ms. McPeak's functional capacity. Ms. McPeak was evaluated by vocational rehabilitative counselors Jeffrey Malmuth and Andrew Levoir.

On June 11, 2026, the matter proceeded to trial. The issues raised were permanent disability; need for future medical treatment; and attorney's fees. The sole exhibit submitted by defendant was its vocational rehabilitation evaluation report from Andrew Levoir, dated August 13, 2025.

Defendant sought reconsideration. The entirety of defendant's Petition is quoted below:

> **COMES NOW**, defendant, **SAFEWAY, INC., permissibly self-insured, administered by SEDGWICK,** by and through its attorneys of record, **MULLEN & FILIPPI, LLP,** ("Defendant"), and submits this Petition for Reconsideration of the Findings and Award by the Honorable Erin Bodner ("WCJ") that was issued in the above-captioned workers' compensation case on 6/30/2026, and amended on 7/17/2026. Defendant hereby submits this Petition based upon the following grounds:
>
> 1. By the Order, Decision or Award, the Board acted without, or in excess of, its powers.
> 2. The evidence does not justify the findings of fact,
> 3. Evidence of applicant's prior workers' compensation claims were not considered by the Workers Compensation Judge, and
> 4. The findings do not support the Order.
>
> Labor Code § 5900, which governs the procedure for filing petitions for reconsideration, provides that such a petition may be filed by any person aggrieved directly or indirectly by any final order, decision, or award. A final order, decision, or award, within the meaning of Labor Code § 5900, in the commonly accepted sense, is one which determines any substantial right or liability of those involved in the case (see *Safeway Stores, Inc. v. WCAB* (*Pointer*) 104 Cal. App. 3d 528).
>
> The Findings of the Board determines a substantial liability for Petitioner in this case because it involves a finding of 100% permanent disability.
>
> In support of this Petition, Defendant offers the following:
>
> 1. Applicant sustained a specific injury to the left knee, left leg, right ankle, and right foot on 4/20/2015.
>
> 2. Applicant has prior workers' compensation claims against the insured employer for a specific date of injury on 5/10/2006 to the neck, left shoulder, and left upper extremity under EAMS case ADJ278376 which resolved by way of Stipulations on 6/15/2015 at 22% PD.
>
> 3. Applicant has an additional prior worker's compensation claim against the insured employer for a cumulative trauma from 10/01/2009 through 10/01/2010 to the neck, left shoulder under EAMS case ADJ7897680 which

resolved by way of Stipulations on 6/15/2015 at 7% PD.

4. The result of the WCJ's unwillingness to consider applicant's prior worker's compensation claims results in a windfall to the applicant and a miscarriage of justice to the Defendant.

5. Finally, the WCJ's reliance on the vocational rehabilitation expert's opinion that applicant might possibly not comply with a potential employer's absenteeism policies is speculative and not based on substantial evidence to support an Award of 100% PD.

For the above reasons, Defendant requests the WCAB grant Reconsideration of the 6/30/2026 Findings & Award, and the 7/17/2026 Amended Findings & Award and find:

1. That by the Order filed by the Honorable Erin Bodner on 6/30/2026 and 7/17/2026, the Appeals Board acted without or in excess of its powers.

2. That the evidence does not justify the enumerated findings as outlined therein.

3. That the Order and Findings of Fact are – on their face – inaccurate, and therefore the Findings of Fact cannot support the Order.

4. The Findings of Fact are insufficient to support the Order because it is based on an erroneous interpretation of the law. Defendant's contention is that the undersigned failed to consider applicant's prior industrial injuries in cases ADJ278376 and ADJ7897680.

On July 8, 2026, the WCJ issued the decision finding that applicant sustained injury AOE/COE.

It is from the corresponding F&A that defendant seeks reconsideration.

In her Report, the WCJ stated that:

Defendant's contention is that the undersigned failed to consider applicant's prior industrial injuries in cases ADJ278376 and ADJ7897680. Defendant did not ask the undersigned to take judicial notice of those cases nor were they admitted into evidence as part of the trial. Further, defendant did not raise apportionment on the pre-trial conference statement.

Labor code section 4664 subsection c lays out what constitutes the regions of the body.

It is noted that spine, upper extremities and lower extremities are all different regions of the body. The cases that defendant now raises all involve

different regions of the body including the neck, and left shoulder.

Applicant's have a lifetime cap on the accumulation of more than 100 percent permanent disability for any one region of the body; however, it is defendant's burden to first establish a prior award of disability; second, establish through evidence which body systems were impacted by the prior disability; three establish a current award of disability; and lastly, which body systems are impacted by the current disability. Here, the lower extremities are not in the same body region as the upper extremities; therefore, there is no prohibition on a 100% finding on the lower extremity region.

On July 13, 2023, after applicant underwent multiple surgeries and was MMI, Dr. Lo provided ratings, work restrictions, and filled out the residual functional capacity report. On July 13, 2023, Dr. Lo provided the work restrictions completed the residual functional capacity report. Defendant had ample opportunity to question Dr. Lo on whether the prior injuries contributed to the work restrictions and functional capacity. Dr. Lo opined applicant could miss "about four days per month" (Exhibit 4); however, applicant credibly testified, that she misses cancels more times per month due to the pain. The residual functional capacity report was based a review of substantial medical records and evaluations of the applicant; thus, there is no evidence to support the argument that Dr. Lo's opinions were speculative.

Both vocational experts applied Dr. Lo's work restrictions and the residual functional capacity reports. Defendant's own vocational rehabilitative evaluator, Mr. Andrew Levoir, found exceeding "2 to 3 days per month, she would likely have access to 0% of jobs in the open labor market." (Exhibit A pg. 68). While Mr. Levoir indicated absent that provision, applicant would be amenable, vocational experts, parties, nor the undersigned can pick and choose which work restrictions apply. To be substantial evidence, the evaluator must apply no more and no less of the work restrictions provided by Dr. Lo or the ptp.

Therefore, the medical record on this case establishes that applicant is 100% disabled due to the industrial injury of April 2015. Based upon the above, I recommend that the petition for reconsideration be denied.

(Report, pp. 2-3.)

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026, are subject to Labor Code[2] section 5909, which states that:

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

> (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 July 29, 2026 and 60 days from the date of transmission is Sunday, September 27, 2026. The next business day that is 60 days from the date of transmission is Monday, September 28, 2026.(See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision is issued by or on September 28, 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on July 29, 2026 and the case was transmitted to the Appeals Board on July 29, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude

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[3] 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.

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 July 29, 2026.

II.

WCAB Rule 10945(b) provides, in relevant part: "[e]very petition for reconsideration … *shall support its evidentiary statements by specific references to the record.*" (Cal. Code Regs., tit. 8, § 10945(b), emphasis added.) WCAB Rule 10945(b) then goes on to specify how references to the record must be made.

The requirements of WCAB Rule 10945 regarding specific references to the record are consistent with case law regarding proper citation to the record in appellate proceedings. (*Flores v. Cal. Dept. of Corrections and Rehab*. (2014) 224 Cal.App.4th 199, 204 ("an appellant must do more than assert error and leave it to the appellate court to search the record … to test his claim"); *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287 ("[r]ather than scour the record unguided, we may decide that the appellant has waived a point urged on appeal when it is not supported by accurate citations to the record"); *Salas v. Cal. Dept. of Transp*. (2011) 198 Cal.App.4th 1058, 1074 ("[w]e are not required to search the record to ascertain whether it contains support for [plaintiffs'] contentions"); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 ("[t]he appellate court is not required to search the record on its own seeking error" and "[i]f a party fails to support an argument with the necessary citations to the record, … the argument [will be] deemed to have been waived"); *Nielsen v. Workers' Comp. Appeals Bd.* (1985) 164 Cal.App.3d 918, 923 [50 Cal.Comp.Cases 104] ("Instead of a fair and sincere effort to show that the trial court was wrong, appellants brief … is an attempt to place upon the court the burden of discovering without assistance from appellant any weakness … . An appellant is not permitted to evade or shift his responsibility in this manner."); see also Cal. Rules of Court, Rule 8.204(a)(1)(C) ("Each brief must … [s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears").) Moreover, "[t]he larger and more complex the record, the more important it is for the litigants to adhere to appellate rules." (*City of Santa Maria v. Adam, supra*, 211 Cal.App.4th at p. 287.)

Here, defendant not only violated WCAB Rule 10945(b), but failed to make even a reasonable effort to include specific citations to the record. A petitioner cannot evade this

responsibility and place the burden on the Appeals Board to discover where the evidence supporting the petition can be found in the record. As explained below, we are granting the Petition to find that applicant is entitled to further medical treatment, but otherwise we would have denied the Petition for Reconsideration. Furthermore, defendant submitted no evidence of the prior Stipulations at trial and made no effort to obtain medical reporting with respect to applicant's prior injuries. If the Petition was not subject to denial for failing to cite to the record, we would have denied it on the merits.

III.

In her decision, the WCJ found that applicant will require further medical treatment to cure or relieve from the effects of the injury to her right ankle and left knee.

Section 4600 defines medical treatment broadly, as "[m]edical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury[.]" (Lab. Code, § 4600(a).) Section 4610 requires employers to establish an UR process by which it can, "[R]eview and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians, as defined in Section 3209.3, prior to, retrospectively, or concurrent with the provision of medical treatment services pursuant to section 4600." (Lab. Code, § 4610(a).) Irrespective of the presence of nonindustrial conditions, section 4600 requires that a defendant provide medical treatment "reasonably required to cure or relieve the injured worker from the effects of his or her injury." (*Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399, 406 [33 Cal.Comp.Cases 647, 652] ["So long as the treatment is reasonably required to cure or relieve from the effects of the industrial injury, the employer is required to provide the treatment"].)

In *Wilson v. State of CA Cal Fire* (2019) 84 Cal.Comp.Cases 393 (Appeals Board en banc), the Appeals Board opined as follows regarding causation of a compensable consequence injury: "Causation of an injury may be either direct or as a compensable consequence of a prior injury. . . . [A] subsequent injury is a compensable consequence of the first injury where it "is not a new and independent injury but rather the direct and natural consequence of the" first injury. (*Carter v. County of Los Angeles* (1986) 51 Cal.Comp.Cases 255, 258 (Appeals Board en banc).) The "first injury need not be the exclusive cause of the second but only a contributing factor to it…So long

as the original injury operates even in part as a contributing factor it establishes liability." (*State Compensation Ins. Fund v. I.A.C.* (*Wallin*) (1959) 176 Cal.App.2d 10, 17 [24 Cal.Comp.Cases 302].) In other words, if the first injury is a contributing cause of the second injury, the second injury is a compensable consequence of the first injury. Whereas the first injury is directly caused by the employment, a compensable consequence injury is indirectly caused by the employment via the first injury." (*Id.* at pp. 403-404, footnotes omitted.) This means that if medical evidence supports that applicant sustained a compensable consequence injury, an applicant will be entitled to medical treatment for that body part.

Moreover, it is well settled that an employer will be liable even for the cost of treatment for a non-industrial condition, if that treatment is reasonably required to cure or relieve the effects of the industrial injury. (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 165-166 [48 Cal.Comp.Cases 566, 570].) It is for this reason that "treatment for nonindustrial conditions may be required of the employer where it becomes essential in curing or relieving from the effects of the industrial injury itself." (*Granado*, *supra*, 69 Cal.2d at p. 406.)

Therefore, an applicant is entitled to reasonable and necessary medical treatment, and a defendant has the ability to seek review of a request for treatment by way of UR. Since it is not possible to know now what treatment an applicant may need in the future, it is not necessary for the WCJ at the time of the decision to attempt to predict what an applicant's future need for medical treatment will be.

Thus, here, we are amending the WCJ's finding and award of further medical treatment to remove the specific body parts identified in Finding 6 and in Award 2, and we will make a general finding and award. Specifically, we will amend Finding of Fact 6 and Award 2 to find that applicant is entitled to future medical treatment without mention of a body part.

Accordingly, we grant defendant's Petition for Reconsideration, affirm the Amended F&A, except that we will amend it to find that applicant is entitled to further medical care and award further medical care. (Finding of Fact 6, Award 2.)

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Amended Findings and Award issued by the WCJ on July 16, 2026, is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

6. Applicant will require further medical treatment to cure or relieve from the effects of the injury.

AWARD

2. Applicant is entitled to future medical to cure or relieve from the effects of the injury.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 28, 2026

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

LARONDA MCPEAK
SHOEMAKER LAW OFFICE
MULLEN & FILIPPI
JEFF MALMUTH
EMPLOYMENT DEVELOPMENT DEPARTMENT

AS/mc

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