

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

**MAGDALENA ALCANTAR, *Applicant***

**vs.**

**SALINAS VALLEY HEALTH, Permissibly Self-Insured,  
adjusted by ACCLAMATION INSURANCE MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ10755277  
Salinas District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted reconsideration in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

Applicant, in pro per, seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on March 7, 2024, whereby the WCJ found that applicant sustained injury arising out of and in the course of employment (AOE/COE) to her neck (with headaches), bilateral shoulders, gastroesophageal reflux, irritable bowel syndrome, and psyche; that applicant has not produced evidence in support of her Petition to Reopen and the additional body parts claimed have not been proven to be the result of the industrial injury; and that no "evidence of new and further disability has been filed which came about within the statutory limit." The WCJ ordered that applicant take nothing on her Petition to Reopen.

Applicant contends that the WCJ's decision is erroneous because the medical evidence supported her claim of new and further disability arising from her original industrial injury and alleges that current medical evidence from her treating physician demonstrates that her condition is worsening. Applicant also alleges that her ability to gather evidence and obtain treatment was hampered by the Covid 19 pandemic.

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

We have considered the allegations in the Petition for Reconsideration, the answer, and the contents of the WCJ's Report. Based on our review of the record, as our Decision After

Reconsideration, we will rescind the WCJ's March 7, 2024 F&O and return the matter to the trial level for further proceedings consistent with this decision.

### **FACTUAL BACKGROUND**

The undisputed facts of the matter are as follows:

On February 20, 2017, applicant filed an Application for Adjudication alleging injury to her neck, bilateral shoulders, back, bilateral arms, bilateral hands, bilateral wrists, headaches, sleep disturbance, side effects of medication, deconditioning, and psyche while employed by defendant as a clerk II during the period up to August 22, 2016.

On May 31, 2018, the matter proceeded to trial on multiple issues, including injury AOE/COE to the contested body parts. (Minutes of Hearing and Summary of Evidence (MOH/SOE), May 31, 2018, p. 2.)

On June 19, 2018, the WCJ issued an Amended Findings and Order (F&O), finding in relevant part that applicant sustained injury AOE/COE to her cervical spine (with headaches) and bilateral shoulders and claimed injury to her lumbar spine, thoracic spine, bilateral arms, bilateral hands, and bilateral wrists, sleep disturbance, side effects of medication, deconditioning and psyche during the cumulative trauma period ending August 22, 2016. The issue of the disputed body parts was deferred pending development of the record. He found that there was good cause to order additional Qualified Medical Evaluator (QME) panels in internal medicine and psychiatry to assess these claims.

On July 29, 2020, the parties returned to trial. The disputed body parts were identified as: "bilateral grip strength loss secondary to TOS surgery and mild impingement, bilateral upper extremities, wrist sprain, TOS, back, sleep, loss of lifting, GERD, irritable bowel syndrome, and psyche." Among the other issues was permanent disability.

On September 21, 2020, the WCJ issued a Findings and Award, finding in pertinent part that applicant sustained injury AOE/COE to her cervical spine (with headaches), bilateral shoulders, gastroesophageal reflux, irritable bowel syndrome, and psyche; and that her injury caused 13% permanent disability.

On July 8, 2021, applicant filed a Petition to Reopen for New & Further Disability, alleging that her medical condition had worsened.

On December 16, 2021, applicant was reevaluated by internal Agreed Medical Evaluator (AME) Roger G. Nacouzi, M.D. He stated that: "I remain of the opinion that as a result of the

subject industrial injury CT-August 22, 2016, Ms. Magdalena Alcantar developed sleep disorder, gastroesophageal reflux disease and irritable bowel syndrome.” (Def. Exh. G, p. 4.) He otherwise had no changes to his previous opinions.

Applicant was reevaluated by QME Dr. Michel Q. Gagnon, D.C., on November 10, 2021 (Def. Exh. A); February 10, 2022 (Def. Exh. B); September 7, 2022 (Def. Exh. C); December 18, 2022 (Def. Exh. D); February 2, 2023 (Def. Exh. E); and May 24, 2023 (Def. Exh. F).

On February 10, 2022, Dr. Gagnon opined that applicant “was found to have a rib subluxation secondary to the awkward postures while trying to sleep. Her neck and upper extremity pain has been constant and unrelenting, even at night, forcing her to change position frequently in order to find some sleep. Her injured body parts contribute to her poor sleep posture which cause a rib subluxation.” (Def. Exh. B, p. 1.) He concluded that “the left rib subluxation . . . is a compensable consequence associated with poor sleep posture as she is trying to find sleep and is unable to get to sleep from lack of her Lunesta medication. This has caused a rib sprain. I have seen this frequently in my practice. The pain can be excruciating at times. . . . It is therefore my opinion, based on reasonable medical probability, that this should be considered industrial in nature.” (Def. Exh. B, p. 2.) He otherwise found that for “the body parts previously examined and settled, there is no exacerbation or aggravation of injuries.” (*Ibid.*) On December 8, 2022, Dr. Gagnon found that applicant was permanent and stationary on her rib sprain, and that it caused 5% whole person impairment (WPI). (Def. Exh. D, p. 3.) On February 2, 2023, Dr. Gagnon opined that 100% of the disability due to the rib sprain was industrial and that the 5% WPI should be added. (Def. Exh. E, p. 2.)

On February 29, 2024, the parties proceeded to trial on applicant’s petition to reopen. Applicant was now proceeding in pro per. Applicant made a request to take the matter off calendar for six months so that she could obtain further evidence, which the WCJ denied. The WCJ admitted reports from applicant’s psychiatric nurse, Haidy Willis, and applicant’s Primary Treating Physician (PTP) Dr. Dhanu Panchal, M.D. (App. Exhs. 1-2) and defendant’s Exhibits A-G.

On March 7, 2024, the WCJ issued the disputed F&O, finding that applicant failed to demonstrate that her disability worsened in accordance with the requirements of Labor Code section 5410<sup>1</sup>. The WCJ also concluded that applicant’s rib injury (and 5% new PD) arose after

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

the five-year period in section 5410. As a result, the WCJ denied applicant's petition to reopen, mooted all other issues raised, and issued a take-nothing order.

### DISCUSSION

The court in *Applied Materials v. Workers' Comp. Appeals Bd. (Chadburn)* (2021) 64 Cal.App.5th 1042 [86 Cal.Comp.Cases 331] has explained:

Two statutes govern petitions to reopen. First, under section 5410, "an injured worker who has previously received workers' compensation benefits either voluntarily paid by the employer or pursuant to an award is entitled to claim benefits for 'new and further disability' within five years of the date of injury." [citation] Second, "[s]ection 5803 permits the reopening of a previously adjudicated case for 'good cause' upon a petition filed by party, also within five years from the date of injury. If a petition to reopen under either section is filed within the five-year period, the [WCAB] has jurisdiction to decide the matter beyond the five-year period." [citation] To recover additional benefits, the injured worker must not only file a timely petition to reopen but must also have suffered a "new and further disability" within that five-year period, unless there is otherwise "good cause" to reopen the prior award. [citation] An injured worker cannot confer jurisdiction on the WCAB by filing a petition to reopen before the five-year period has expired for anticipated new and further disability that *may* occur after the five-year limitation period has run.

(*Id.* at p. 1080, italics in original.)

The court in *Nicky Blair's Restaurant v. Workers' Comp. Appeals Bd.* (1980) 109 Cal.App.3d 941 [45 Cal.Comp.Cases 876] found that, under section 5410, "[the] term 'new and further disability' has been defined to mean disability which results from some demonstrable change in an employee's condition." (*Id.* at p. 955.) The court concluded that "if [applicant's] condition is unchanged from the time of the original decision . . . there is no 'new and further disability' within the meaning of section 5410 to permit reopening of the case." (*Ibid.*) The court continued, explaining that "'[n]ew and further disability' means disability resulting from some demonstrable change in the employee's condition, including a gradual increase in disability, a recurrence of TD, a new need for medical treatment, or the change of a temporary disability into a permanent disability." (*Ibid.*)

In *Standard Rectifier Corporation v. Workmen's Comp. Appeals Bd. (Whiddon)* (1966) 65 Cal.2d 287 [31 Cal.Comp.Cases 340], the California Supreme Court explained that section 5410 operates as follows:

The rule as established by the cases is that before an employee is entitled to the advantage of the five-year period for claiming benefits for new and further disability under section 5410, he must have been furnished workmen's compensation benefits by the employer either voluntarily *or pursuant to a Commission award*. [Citations omitted.] The rationale of this rule is that the "new and further disability" to which section 5410 refers is a disability *in addition to* that which the employer previously provided benefits as required by the statute.

(*Whiddon, supra*, 65 Cal.2d at p. 87, italics added.)

These decisions make clear that an alleged "new and further disability" must be causally related to a prior "original" injury.

Preliminarily, we note that with respect to applicant's allegation that her psychiatric injury has worsened since the date of original injury, under section 4660.1(c), it appears that applicant was not entitled to an award of permanent disability to her psyche as a compensable consequence. However, there was no such finding in the September 21, 2020 Findings and Award, and thus, the issue of whether she suffered new and further disability to her psyche should be considered upon return and a finding made as to section 4660.1(c).

Turning to the claimed body part of "sleep," the issue was raised at the July 29, 2020 trial, and yet, the September 21, 2020 Findings and Award is silent as to the body part of sleep. While the WCJ did note in his accompanying Opinion on Decision that "[t]he medical evidence did not support any injuries to the additional alleged body parts," the WCJ gave no clear basis for this conclusion. (Opinion, p. 3.) In his subsequent reporting in December 2021, AME Dr. Nacouzi opined that he "remain[ed] of the opinion that" applicant developed sleep disorder, gastroesophageal reflux disease and irritable bowel syndrome as a result of her injury.

It is not clear whether compensation for disability caused by an injury in the form of the body part of sleep would also be precluded by section 4660.1(c). However, absent a finding of fact determining whether sleep disturbance was an "original" industrial injury, we cannot reach the merits of applicant's section 5410 claim that "new and further" disabilities resulted therefrom without running afoul of the parties' due process rights. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805] ["All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense."]); see also *Gangwish v. Workers' Comp.*

*Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].) Moreover, without more, we cannot address QME Dr. Gagnon’s conclusion that applicant sustained new and further disability caused by the injury to her rib. Additionally, we cannot consider the WCJ’s apparent finding that the injury to applicant’s rib was to a newly claimed body part that arose after the expiration of the five-year period.

All awards, orders and decisions of the Appeals Board must be supported by substantial evidence in light of the entire record. (Lab. Code, § 5952(d); *Lamb v. Workers’ Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310].) It is well settled that a WCJ’s decision must be supported by substantial evidence. (Lab. Code, § 5903; *LeVesque v. Workers’ Comp. Appeals Bd.* (1970) 1 Cal.3d. 627 [35 Cal.Comp.Cases 16].) To be substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager v. Workers’ Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

“[I]n order to ensure reliance on substantial evidence, and a complete adjudication of the issues consistent with due process,” the WCJ and the Appeals Board both have a duty to develop the record further where there is an absence of, or insufficient evidence to determine the issues raised for trial. (*Tyler v. Workers’ Comp. Appeals Bd. (Tyler)* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]; *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; see Lab. Code, §§ 5701 and 5906; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 139 (Appeals Board en banc).) Indeed, the Appeals Board has a constitutional mandate to “ensure substantial justice in all cases,” and is therefore “clearly permitted” to admit evidence even after the discovery cut-off under section 5502(d)(3). (*Kuykendall v. Workers’ Comp. Appeals Bd. (Kuykendall)* (2000) 79 Cal.App.4th 396, 403-405 [65 Cal.Comp.Cases 264].) “[A]llowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers’ compensation claims” and militates in favor of our presuming the continued vitality of sections 5701 and 5906, absent a clear legislative intention to the contrary. (*Tyler, supra*, 56 Cal.App.4th at p. 394.) An adequately developed record affords all parties due process of law and further provides for meaningful review by the Appeals Board of a WCJ’s

decision. (*Evans v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]; *Hernandez v. Staff Leasing* (2011) [76 Cal.Comp.Cases 343, 346-347] (Appeals Board significant panel decision).) Pursuant to sections 5701 and 5906, a WCJ or the Appeals Board may not leave undeveloped issues that, through the exercise of its specialized knowledge, recognizes as requiring further evidentiary development. (*Kuykendall, supra*, 79 Cal.App.4th at p. 404.)

Here, at trial on February 29, 2024, applicant sought a continuance to obtain further evidence to support her claim for new and further disability. It was apparent that applicant had not obtained sufficient evidence as her submitted evidence consisted of two reports. The report from applicant's psychiatric nurse, Ms. Haidy Willis, does not discuss applicant's psychiatric condition in any detail; rather, the report consists of one brief paragraph that states, in relevant part,

Magdalena Alcantar...is currently a patient at our office since 4/28/2022. From that time on she has improved some and had several set backs [sic]. She currently continues to struggle financially, with fluctuating anxiety and insomnia...as well as her depressive symptoms.

(App. Exh. 2, p. 1.)

Similarly, the January 31, 2024 PR-2 report from applicant's PTP, Dr. Panchal, states that the primary purpose of applicant's visit was to evaluate her "neck pain." It lacks findings sufficient to show that applicant suffered a "new and further" disability as a result of a worsening in her condition. (App. Exh. 1, p. 2.) Both Ms. Willis's and Dr. Panchal's reports were conclusory, lacked any detailed discussion of records reviewed or examination(s) conducted, and any conclusions issued were not based upon reasonable medical probability. (*Gatten, supra*, 145 Cal.App.4th at p. 928; Lab. Code, §§ 5903, 5952(d).)

Consequently, as a matter of due process, the WCJ should have allowed applicant the opportunity to obtain more comprehensive reporting in support of her claim. Moreover, in her Petition for Reconsideration, applicant explained that she had difficulty in obtaining treatment and more comprehensive reporting due to the Covid 19 pandemic. Thus, further development of the record is appropriate.

Based on the foregoing, as our Decision After Reconsideration, we rescind the WCJ's March 7, 2024 Findings and Order and return the matter to the trial level for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued on March 7, 2024 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**May 26, 2026**

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

**MAGDALENA ALCANTAR  
LUNA, LEVERING & HOLMES**

**AC/mt**

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