WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARIA CONCEPCION CASELIN HUERTA, ***Applicant***

vs.

LEONOR DEALBA DBA L&A CLEANING SERVICE; TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, ***Defendants***

Adjudication Number: ADJ16754017
Goleta District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on July 8, 2026, wherein the WCJ found in pertinent part that applicant while employed on November 15, 2021, as a housekeeper, by Leonor Dealba dba, L & A Cleaning Service, sustained injury arising out of and occurring within the course of employment (AOE/COE) to her lumbar spine and cervical spine.

Defendant contends that applicant failed to prove that she sustained injury AOE/COE to her lumbar spine and cervical spine, and that applicant's testimony is not credible.

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 deny defendant's Petition for Reconsideration.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury to left ankle, head, ear, cervical spine, thoracic spine and lumbar spine while employed by defendant as a housekeeper on November 15, 2021. (Minutes of Hearing and Summary of Evidence (MOH), June 16, 2026, at p. 2:11-14.)

On September 21, 2022, applicant chose a primary treating physician, Logan Osland, D.C. (Applicant's Exhibit 5.)

On September 29, 2022, applicant filed an Application for Adjudication of Claim.

On September 29, 2022, applicant was provided a Medical Provider Network (MPN) Notification. (Defendant's Exhibit H.)

On October 19, 2022, a Notice of Delay in Determining Liability for Workers Compensation Benefits issued which states in relevant part:

> For claims reported on or after April 19, 2004, regardless of the date of injury. if you submitted a claim form to your employer or claims administrator, Labor Code section 5402(c) provides that within one working day after you file the claim form, the employer shall authorize the provision of medical treatment, consistent with the applicable treating guidelines, for the alleged injury and shall continue to provide such treatment until the claims administrator accepts or denies liability for the claim. Until the date the claim is accepted or rejected, liability for medical treatment under this Labor Code section shall be limited to a maximum of ten thousand dollars ($10,000).

(Applicant's Exhibit 6, at p. 1.)

On December 28, 2022, a Notice Regarding Denial of Workers' Compensation Benefits issued and applicant was prompted as follows:

> Unless you have done so already, you should immediately send for consideration of payment, all bills for medical services provided between the date the completed claim form was given to the employer and the date that liability for the claim is rejected.

(Defendant's Exhibit C.)

Scott M. Graham, M.D., serves as panel Qualified Medical Evaluator (QME) in orthopedic surgery. Dr. Graham evaluated applicant on January 10, 2024 (Applicant's Exhibit 1); issued supplemental reports on August 8, 2025 and October 21, 2025 (Applicant's Exhibits 2, 3); and underwent deposition on June 15, 2026. (Applicant's Exhibit 4.)

At her initial evaluation with Dr. Graham, a mechanism of injury was reported as follows:

> The claimant advises that while at work on 11/15/21, she was standing on a sink to clean a mirror when she lost her balance and fell back onto the floor injuring both her head, her neck, and her lower back, she states that this was a reported entry to her employer, but that she did not receive any treatment at all because the employer did not have the appropriate Worker's Compensation insurance. Therefore, she has never received treatment for these injuries.

Applicant's Exhibit 1, at p, 3.)

After examination, Dr. Graham diagnosed applicant with 1) Lumbago; 2) Lumbar radiculopathy left lower extremity and 3) Cervicalgia. (*Id*. at p. 11.)

Concerning causation, Dr. Graham observed:

> Unfortunately, insofar as the claimant states that the employer did not have any workers' compensation insurance, I have no medical records regarding the 11/15/21 injury to go on. Based upon the limited information at this time, it is within a reasonable degree of medical probability that the claimant's cervical injury was caused by, and the lumbar and left leg conditions were caused by the industrial injury of 11/15/21. She states at that time she was standing on a sink to clean a mirror when she lost her balance and fell back onto the floor injuring both her head, her neck, and her lower back.
>
> The claimant's injuries arose out of employment and were caused by employment.
>
> The claimant states that this injury was reported but she did not receive any treatment as the employer did not have any workers' compensation insurance at the time.
>
> Presuming dispute regarding AOE/COE, I would defer to determination of a trier [of fact]. However, the mechanism of injury provided by this claimant, is consistent with injuries to her cervical and lumbar spine.

(*Id*. at p. 12.)

As applicant had not received any treatment for her injury, she was not maximum medically improved (MMI). (*Id*.) To address apportionment, Dr. Graham requested x-rays of the cervical and lumbar spine and medical records related to two prior spinal industrial injuries. (*Id*. at p. 13.)

On August 8, 2025, Dr. Graham reviewed electrodiagnostic studies performed by Dr. Galan on April 28, 2025, which were normal with no evidence of radiculopathy, however x-rays of the cervical and lumbar spine were outstanding. (Applicant's Exhibit 2, at pp. 1-2.)

On October 21, 2025, Dr. Graham reviewed x-rays of the cervical and lumbar spine and although the applicant was not yet MMI, he apportioned to non-industrial factors. (Applicant's Exhibit 3, at pp. 1-2.)

On February 11, 2026, Dr. Graham reevaluated the applicant. (Defendant's Exhibit J.) As the interim history, Dr. Graham reported as follows:

> We received a cover letter from the Defense Attorney's office which notes that although treatment was made available to the claimant since the inception of the claim, to the defendant's knowledge, the claimant has not pursued treatment and defers to applicant counsel to provide treatment records. The case is denied in full.
>
> We were not provided with any additional medical records from either party prior to the date of this re-evaluation.
>
> The reason we have no records is because the claimant has not had any treatment at all subsequent to her initial evaluation by me on 01/10/24.

(*Id*. at p. 5.)

Dr. Graham updated his diagnoses of applicant as follows: 1) Cervical spondylosis, degenerative disc disease, cervical radiculitis both upper extremities; 2) Lumbar degenerative disc disease, lumbar radiculitis both lower extremities. (*Id*. at p. 14.)

Concerning causation, Dr. Graham updated his findings:

> With the understanding that disc claimant has been authorized to receive treatment for her neck and lower back, but has not sought treatment, my prior opinions require modification.
>
> With the understanding that the x-rays reveal degenerative changes in the claimant's cervical and lumbar spine, with the understanding that there has been prior injuries to these areas, given the representation that the claimant has been offered medical treatment for the neck and lower back, but has not sought medical treatment, as her condition is not symptomatic enough for her to seek any treatment, that there is no industrial injury to her neck or lower back resultant from the alleged injury of 11/15/ 2021. It is not reasonable to suffer significant injuries and yet not seek any medical treatment for over four years, not only on a non-industrial basis through emergency room visits, but after treatment has been authorized.

(*Id*. at p. 14.)

Within one day of each other, each party filed a Declaration of Readiness to Proceed (DOR) to Mandatory Settlement Conference (MSC).

On March 25, 2026, defendant filed on the issues of permanent disability, self-procured medical treatment and future medical treatment based on the February 11, 2026 report of Dr. Graham. The matter was set for an April 16, 2026 MSC. On April 7, 2026, applicant filed an Objection to DOR because applicant wanted to treat with Dr. Hutchinson, and discovery was pending.

On March 26, 2026, applicant filed a DOR requesting an MSC on multiple issues including permanent disability, self-procured medical treatment future medical treatment, and outstanding electrodiagnostic studies of the lower extremities requested by Dr. Graham. The matter was set for an April 15, 2026 MSC. On April 7, 2026, defendant filed an extensive Objection to DOR including the following:

> Defendant has arranged for the diagnostic testing requested by QME Dr. Scott Graham which is pending.
>
> ***
>
> Defendant asserts that a Mandatory Settlement Conference is premature at this time as discovery is still pending and no response as to settlement of the claim. Based on the foregoing, Applicant's request for a hearing is premature and improper. Accordingly, Travelers (1) objects to the setting of the Mandatory Settlement Conference as requested by the applicant's counsel, and (2) seeks that applicant's request be denied.

(Defendant's Objection to DOR, April 7, 2026, at p. 5:1-2, 19-24.)

On April 15, 2026 at the MSC in response to applicant's DOR, the matter was taken off calendar for further discovery with no issues pending.

On April 16, 2026 at the MSC in response to defendant's DOR, and the matter was continued to a June 16, 2026 trial.

On June 15, 2026, Dr. Graham was deposed. (Applicant's Exhibit 4.) At deposition, Dr. Graham explained why he changed his mind regarding causation:

> Q Weve established in your initial evaluation that you found this applicant credible, and given the mechanism of injury described to you by the applicant, you found that she injured her lumbar spine and cervical spine, correct?
>
> A Yes.
>
> Q Thereafter defense counsel sent you a letter that on my reading seems to insinuate that the applicant denied medical care. Is that an accurate description of how you understood the letter?

***

> THE WITNESS: All I can -- maybe I can answer it in a different fashion.
>
> When I first saw the claimant I felt she was believable and stated my opinions as we have gone over.
>
> The reason for my opinions in February 2026 is because it was represented at the time that the claimant was reportedly provided, allegedly provided, and never sought any treatment in the four-and-a-half years since this injury. Either from an industrial basis nor, ladies and gentlemen, have I seen any emergency room visits perhaps, et cetera. In other words, if -- my feeling was that if this was a substantial and significant injury to her neck and lower back, why are there no medical records at all even from an emergency room. You know, if we're hurt bad enough that is what emergency rooms are really for if we can't get satisfaction any other way. If we need medication, et cetera, we just can't get it off the street -- at least my understanding is. So this is why I came to my conclusions.

(*Id*. at pp. 20:8-21:14.)

At deposition, Dr. Graham continued to defer to the trier-of-fact concerning an AOE/COE dispute. (*Id*. at pp. 9:14-22, 23:8-12, 24:21-22, 27:8-12, 30:5-11.) For the first time, Dr. Graham testified that applicant's injury could be an exacerbation or an aggravation injury. (*Id*. at pp. 27:23-28:22, 36:9-19.)

On June 16, 2026, the matter proceeded to trial on the issue of AOE/COE with all other issues deferred. Applicant testified as follows with respect to how her injury occurred:

> She recalls the incident that had occurred at work on November 15, 2021, while she was working at L & A Cleaning. She fell at work. She was cleaning the bathroom mirror above the sink. She slipped and fell backwards hitting the ground. She hit her back, neck, and head; her whole body. She fell flat on her back.
>
> There were no witnesses to the slip and fall. Two people helped her up. This was the owner of the cleaning business, Leonor, and Leonor's daughter-in-law.
>
> She was taken by Leonor to Lompoc Hospital but was not seen because Leonor had left, and she was told she needed workers' compensation papers by the receptionist. She denies her employer ever sent her to a doctor. She denies seeking treatment on her own. This was because she had no money and no insurance.
>
> She recalls seeing Dr. Graham. She was truthful and accurate to him. She had the diagnostic testing done as was requested by Dr. Graham.

> She still has pain in her low back, neck, head, and headaches, shoulders, legs, pain in her eyes and jaw, and she advised her legs cramp up. She gets a humming in her ears when she gets headaches.

(MOH, p. 6.)

On cross-examination, defendant questioned applicant as to other workers' compensation claims that she had made. (MOH, p. 7.)

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.

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to section 5909, 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 Labor Code section[1] 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.,

[1] All statutory references are to the Labor Code unless otherwise stated.

tit. 8, § 10600(b).)[2] 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 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.

As stated in the WCJ's Opinion on Decision:

> Based on the credibility of the applicant, with due regard for her demeanor as a witness, together with the medical reporting and deposition testimony of Scott Graham, M.D., in his capacity as a PQME, Applicant sustained injury arising out of and occurring within the course of employment to her lumbar spine and cervical spine. All other body parts are deferred with jurisdiction reserved.

(Opinion on Decision, p. 1.)

As stated in the WCJ's Report:

> Defendant's brief focuses on the fact that Applicant did not seek or receive treatment following the industrial injury, that she has the knowledge to obtain such treatment and that her testimony is incredible. As explained below, these factors could bear on credibility, but do not preclude the finding of injury on an industrial basis.

[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.

> Scott A. Graham, M.D., in the capacity of a PQME, wrote four reports and was deposed on one occasion. His reports and deposition all come to the same conclusion; he believes Applicant sustained injury to her cervical and lumbar spine, and the mechanism of injury is consistent with what the Applicant has relayed to him. His reason for not finding the injury to be industrially-related is because Applicant did not receive medical treatment anytime after the industrial injury claimed, prior to seeing him, although he leaves it up to the trier of fact.
>
> Applicant testified credibly and unrefuted that on November 15, 2021, she was cleaning a bathroom mirror above the sink when she slipped and fell backwards hitting the ground. While there were no witnesses to the fall, two people (the owner of the cleaning business and her daughter-in-law) helped her up. Neither of them appeared or testified at trial.
>
> On direct and cross-examination, Applicant testified to all of the previous and subsequent work-related injuries.
>
> Defendant makes much of the fact Applicant was provided Medical Provider Network (MPN) notices, that Applicant has other previous and subsequent workers' compensation cases, and further that, because Applicant is familiar and knowledgeable about the workers' compensation system, and lack of treatment dooms her claim.
>
> However, this was an AOE/COE trial. In order to prevail on this issue, Applicant must show the injury arose out of her employment and occurred during the course of her employment.
>
> Based on Applicant's credible testimony, together with Dr. Graham's finding of the mechanism of injury being consistent with Applicant's history of the injury, Applicant has carried her burden to show injury AOE/COE.

(Report, pp. 2-3.)

The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing 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.) The Supreme Court of California has long held that an employee need only show that the "proof of industrial causation is reasonably probable, although not certain or 'convincing.'" (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) "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, 1701 [58 Cal.Comp.Cases 313].)

It is well established that any decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].)

Here, the WCJ found that applicant credibly testified as to how her injury occurred. We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*Garza*, *supra*, 3 Cal.3d 312 at pp. 318-319.) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id*.) In addition, applicant testified that she was taken to the Emergency Room by her employer, and defendant presented no witnesses to rebut applicant's credible testimony.

We observe that the QME concluded that applicant was credible and that the explanation by applicant was consistent with her reported injury. He deferred to the trier of fact, who found applicant credible. While QME Graham said he "reversed" his AOE/COE finding, he only reviewed diagnostic testing, and his conclusions as to "exacerbation" were not based on review of medical records. His analysis is more akin to whether there is apportionment of permanent disability and not whether there is industrial causation. Similarly, the testimony elicited by defendant at trial about applicant's other claimed injuries is also more relevant to the issue of apportionment and not industrial causation. Thus, we do not disturb the WCJ's decision.

Accordingly, we deny defendant's Petition for Reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
PARTICIPATING 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.

MARIA CONCEPCION CASELIN HUERTA
WOLFF WALKER LAW
DIMACULANGAN AND ASSOCIATES

SL/abs

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