

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

MARIA SOLIMAN, *Applicant*

vs.

**UNIVERSITY OF CALIFORNIA, BERKELEY, permissibly self-insured; administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ18432382
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of our December 1, 2025 Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration (O&O) wherein we rescinded the July 11, 2025 Findings and Order (F&O) of the workers' compensation judge (WCJ), and substituted it with a new F&O which held that applicant sustained a February 1, 2023 injury arising out of and in the course of employment (AOE/COE) to her right shoulder while employed by defendant as a manager in the IT department.

Defendant contends that applicant failed to meet her burden in establishing injury AOE/COE to the right shoulder on February 1, 2023 because the report of Alberto Retodo, M.D., dated August 31, 2023, which was partially relied upon in our O&O, is conclusory, lacks a "complete history of the circumstances of the injury," and is therefore not substantial medical evidence. (Petition for Reconsideration (Petition), pp. 7-8.)

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), indicating that he would make no recommendations with respect to defendant's Petition since it pertains to an O&O issued by the Appeals Board rather than a decision by the WCJ.

We have considered the Petition, the Answer, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petition.

FACTS

Applicant filed an Application for Adjudication of Claim (Application) alleging that while employed by defendant as a manager in the IT department on February 1, 2023, she sustained injury AOE/COE to her right shoulder and hip when she “answered [her] doorbell while on a work [Z]oom call and tripped and fell.”

On May 28, 2024, applicant was deposed by defendant and testified, in relevant part, as follows, with respect to her February 1, 2023 injury:

Q: ...All right. So the vet rang the doorbell, and you ran for the front door; is that right?

A: Yes. And so what happened was my laptop is positioned at the corner of the island. And so when I—when I heard the doorbell, they’re still in the middle of a meeting. And so I was running for the doorbell, but before I even—so by the—by the island, kitchen island, is about—three feet away is a chair and an end table. And so I slipped right there with—I hit the leg of the chair. The—it’s an armchair. I hit the leg, and then I slipped. I landed hard on my right shoulder and also my hip. Yeah.

Q: So I have a February 3 report from urgent care that your attorney sent me that says you were seen for cervical spine pain and sent for X rays of the cervical spine, thoracic spine, and shoulder.

A: Uh-huh.

Q: Is that correct?

A: That’s correct.

Q: Okay I only have the after care summary, so I cannot tell if there’s any discussion of the injury or mechanism—of the mechanism of injury. Did you tell them what happened?

A: I did. I did tell them.

Q: And did they look at both of your shoulders? Because it doesn’t say. It just says cervical spine thoracic spine, and shoulder.

A: Yes. I don’t recall if they looked at both shoulders, though. Sorry.

Q: That’s okay. Do you know which shoulder you had an X ray on?

A: My right shoulder.

Q: What treatment did they give you?

A: He prescribed—he said ice and heat. And then I believe he prescribed ibuprofen.

Q: Okay. And when did you have the MRI done?

A: April. Sometime in April. I think the first week of April.

Q: 2023 or 2024?

A: Sorry, 2023.

Q: And do you know what it showed?

A: That's when the doctor, the orthopedic doctor reviewed it and showed that there was tear on the shoulder.

Q: But did you tell some of your colleagues about your right shoulder?

A: Yes.

Q: Do you know who you told?

A: Yes. I told one of my peers, Bruce Lorenson. I told Stella Pretzlaf, P-r-e-t-z-l-a-f. Yeah.

Q: And would either Stella Pretzlaf or Bruce Lorenson be considered supervisors for you?

A: No, peers.

Q: Why not?

A: I just didn't—I don't know. At that point, I just didn't want any more problems. They're already accommodating me with work, and so I didn't want to add any problems. I thought it was mine to handle.

Q: Do you have—so you have a right shoulder injury as a result of the February 1, 2023 slip-and-fall at home; is that right?

A: Yes.

(Exhibit X, pp. 100:9-21; 108:23-109:17; 110:10-12; 121:13-23; 125:9-24; 149:19-22.)

Thereafter, the claim was apparently denied by defendant, and on October 22, 2024, applicant filed a Declaration of Readiness to Proceed requesting that the matter be set for a mandatory settlement conference on all issues.

At the November 21, 2024 mandatory settlement conference, the parties filed a joint pre-trial conference statement (PTCS) stipulating that the only issues for determination were injury AOE/COE and the admissibility and relevance of a medical report from Dr. Retodo dated August 31, 2023. (PTCS, November 21, 2024, p. 3.) Dr. Retodo was serving as a Qualified Medical Evaluator (QME) in a companion file, but not in the instant case.

After several continuances, the trial took place on May 12, 2025. The parties jointly submitted as evidence, a report from primary treating physician (PTP), Dr. David Smolins, dated February 8, 2023. Defendant submitted as evidence, a printout of applicant's calendar from February 1, 2023. Additionally, the court entered into evidence, a transcript of applicant's May 28, 2024 deposition testimony. Applicant's proposed exhibit, the QME report of Dr. Retodo dated August 31, 2023, was marked for identification. Applicant also testified, in relevant part, as follows:

Applicant fell at home while she was participating in a work training on her laptop. She had a management training session that day virtually from 8:30 AM to 12:30 PM. She was in listening mode. The training was online and involved other people appearing live. In response to a question from the judge, she confirmed this involved live people and was not passive computer-based training. She had her laptop on the kitchen counter, which is centrally located in her home. She injured her right shoulder when she fell while going to the front door to admit a veterinarian who was making a scheduled house call for her dog. The door is approximately 10 to 15 feet away from the location of her laptop in the kitchen counter.

She is asked if it is true if she testified at the deposition that the only reason she filed this claim was because the QME, Dr. Retodo, had suggested it to her. She asked if she told Dr. Retodo about the fall. Initially she did not, but at the exam she could not raise her right arm. The doctor asked her about it, and she told him about the fall. He did suggest that he report it. She was not going to do so before that. She

is after if she ever sent X-rays or MRIs of her right shoulder to Dr. Retodo. She responds not that she recalls. She is asked if Dr. Retodo ever saw such records. She does not recall.

(MOH and SOE, pp. 4, 6.)

On July 11, 2025, the WCJ issued an F&O wherein he found, in relevant part, that while employed by defendant as a manager in the IT department on February 1, 2023, applicant did not sustain injury AOE/COE to the right shoulder and thus ordered a take nothing. The WCJ further ordered that the report of Dr. Retodo dated August 31, 2023, be admitted into evidence over defendant's objection.

Applicant sought reconsideration, and on December 1, 2025, we issued an O&O rescinding the July 11, 2025 F&O and substituting it with new F&O which held that applicant sustained injury AOE/COE to her right shoulder on February 1, 2023.

It is from this O&O that defendant seeks reconsideration.

DISCUSSION

I.

Preliminarily, 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. (Lab. Code, § 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.

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 under the

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

Events tab 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 January 8, 2026, and 60 days from the date of transmission is March 9, 2026. This decision was issued by or on March 9, 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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on January 8, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on January 8, 2026.

II.

Turning now to the merits of the Petition, defendant contends that applicant failed to meet her burden in establishing injury AOE/COE to the right shoulder on February 1, 2023 because the report of Dr. Retodo dated August 31, 2023, is conclusory, does not contain a “complete history of the circumstances of the injury,” and is therefore lacking in substantial medical evidence. (Petition, pp. 7-8.)

As the parties are well aware, substantial medical evidence is used to establish industrial causation and the applicant must establish industrial causation by a “reasonable probability.” That burden, however, manifestly does not require the applicant to prove causation by “scientific certainty.” (*Rosas v. Workers’ Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700- 1701 [58 Cal.Comp.Cases 313].) “The term ‘substantial evidence’ means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in

nature, credible, and of solid value.” (*Braewood Convalescent Hospital v. Workers’ Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) Pursuant to *E.L. Yeager v. Workers’ Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687], “[a] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (citations.) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician’s opinion, not merely his or her conclusions. (citation.)” “A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial evidence to support a denial of benefits. (citation.)” (*Kyle v. Workers’ Comp. Appeals Bd (City and County of San Francisco)* (1987) 195 Cal.App.3d 614, 621.)

In the instant matter, as noted in our prior December 1, 2025 O&O, Dr. Retodo completed an evaluation of the applicant on June 8, 2023, and reviewed extensive medical records in preparation for the drafting of his August 31, 2023 report. (Exhibit 1, pp. 1-2.) Within his report, Dr. Retodo noted that applicant “called her primary medical physician on the [the day of the February 1, 2023 injury] due to significant right shoulder pain” and also, per Dr. Retodo’s summary, underwent an April 2, 2023 MRI study, wherein she was found to have “labral fraying and a supraspinatus tear injury[.]” (*Id.* at pp. 3, 13.) Orthopedic surgeon, Dr. Paul Abeyta therefore “recommended physical therapy and possible surgery to the right shoulder.” (*Ibid.*) Ultimately, based upon his evaluation of applicant and review of medicals, Dr. Retodo concluded that applicant sustained a “[s]pecific industrial [sprain/strain] injury to the right shoulder [on] February 1, 2023[.]” (*Id.* at p. 12.)

In our own review of the evidentiary record, and based upon the totality of the evidence, including the transcript of applicant’s May 28, 2024 deposition testimony (Exhibit X), and applicant’s May 12, 2025 trial testimony (Minutes of Hearing and Summary of Evidence (MOH & SOE), pp. 4-7), we conclude, as we did previously, that there exists substantial medical evidence of injury AOE/COE to the right shoulder.

As the parties are well aware, the burden of proof rests upon the party holding the affirmative of the issue. (Lab. Code, § 5705.) To prove his or her claim, the burden therefore rests with the applicant (or lien claimant, who steps into the shoes of the applicant). However, once this

burden has been met, the burden shifts to the defendant to provide rebuttal evidence. No rebuttal evidence was provided by defendant here.

Accordingly, we deny defendant's Petition.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the December 1, 2025 Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

I DISSENT (see attached dissenting opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 5, 2026

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

**MARIA SOLIMAN
LAW OFFICES OF DAVID L. HART
MICHAEL SULLIVAN & ASSOCIATES LLP**

RL/cs

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

DISSENTING OPINION OF COMMISSIONER JOSÉ RAZO

I respectfully dissented from the majority's December 1, 2025 Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration (O&O) and continue to respectfully dissent today. I would have denied applicant's original Petition for Reconsideration and would have granted defendant's Petition for Reconsideration for the reasons stated below.

As noted in my original dissent, an employee is considered to be acting within "the course of employment" when "he does those reasonable things which his contract with his employment expressly or impliedly permit him to do." (*Latourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644, 651 [63 Cal.Comp.Cases 253].) "Acts of 'personal convenience' are within the course of employment if they are 'reasonably contemplated by the employment.'" (*Price v. Workers' Comp. Appeals Bd.* (1984) 37 Cal.3d 559, 568 [49 Cal.Comp.Cases 773]; *Fremont Indemnity Co. v. Workers' Comp. Appeals Bd (Makaeff)* (1977) 69 Cal.App.3d 170, 176 [42 Cal.Comp.Cases 297]; *Vogt v. Herron Construction* (2011) 200 Cal.App.4th 643.)

Here, a scheduled vet appointment would not be reasonably contemplated by employment, and had applicant not scheduled the appointment to occur at the same time as a work Zoom call, she would not have needed to answer her door at that particular time. Applicant was injured tending to a personal errand unrelated to her job duties. I therefore continue to agree with the WCJ that the act had "nothing to do with her remote employment" and was not intended "to serve or benefit her employer in any way." (Report, September 18, 2025, p. 6.) Although it is also true that "an employer who permits an employee to work from home can reasonably expect or contemplate" personal comfort in the form of "bathroom breaks, meals, and [answering] the door ... for an *unexpected visitor*," that was not the case here. (*Ibid.*) Ultimately, whether an injury arose out of and in the course of employment is a question of fact to be determined based upon the circumstances of each case, and based upon the facts presented herein, the injury was not industrial. (*Wright v. Beverly Fabrics* (2002) 95 Cal.App.4th 346, 353 [67 Cal.Comp.Cases 51].)

Given the above, I believe the issue of whether the reporting of Alberto Retodo, M.D. constitutes substantial medical evidence is moot. Nonetheless, in my review of his August 31, 2023 report, I note that although there contains a discussion regarding alleged treatment and diagnostics pertaining to applicant's February 1, 2023 right shoulder injury, no such medicals were reviewed by Dr. Retodo. As the parties are well aware, substantial medical evidence is used to establish industrial causation, and the applicant must establish industrial causation by a

“reasonable probability.” Pursuant to *E.L. Yeager v. Workers’ Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th922, 928 [71 Cal.Comp.Cases 1687], “[a] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (citations.) Here, the August 31, 2023 report of Dr. Retodo is not only conclusory, but speculative. As such, the report does not constitute substantial medical evidence.

Accordingly, I would have denied applicant’s Petition for Reconsideration and would have granted defendant’s Petition for Reconsideration.



WORKERS’ COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 5, 2026

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

**MARIA SOLIMAN
LAW OFFICES OF DAVID L. HART
MICHAEL SULLIVAN & ASSOCIATES LLP**

RL/cs

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