WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARK ALLEN, *Applicant*

vs.

BUTTE-GLENN COMMUNITY COLLEGE DISTRICT, permissibly self-insured, administered by KEENAN & ASSOCIATES, *Defendants*

Adjudication Numbers: ADJ20169304
Redding District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant filed a Petition for Reconsideration (Petition) in response to the workers' compensation administrative law judge's (WCJ) Findings of Fact and Orders (FF&O) issued on January 13, 2026. In the FF&O, the WCJ found as relevant that applicant did not sustain a compensable injury arising out of and in the course of employment to the psyche, ordered Exhibit 21 admitted into evidence, and ordered that the applicant take nothing from his claim.

Applicant contends that the panel qualified medical examiner (PQME)'s opinions on apportionment are not substantial medical evidence and therefore the FF&O which relies on the PQME's opinions is not based on substantial medical evidence.

Defendant filed an Answer.

The WCJ's Report and Recommendation (Report) recommends reconsideration be denied.

After our review of the record and for the reasons discussed below, we will grant the Petition for Reconsideration, rescind the decision and return the matter to the trial level for further proceedings consistent with this opinion.

I.

Former Labor Code section 5909[1] 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. (Former 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.

(Lab. Code, § 5909.)

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 February 17, 2026, and 60 days from the date of transmission is Saturday, April 18, 2026. The time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600(b).) Here, April 18, 2026, is a Saturday which by operation of law means this decision is due by the next business day, which is Monday, April 20, 2026. This decision issued by or on April 20, 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

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

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 and Recommendation by the workers' compensation administrative law judge, the Report was served on February 18, 2026, and the case was transmitted to the Appeals Board on February 17, 2026. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide accurate notice to the parties as to the commencement of the 60-day period on February 17, 2026. We note that this failure to provide notice does not alter the time for the Appeals Board to act on the petition, and as a result of the timing of the sixty day period, the parties had some notice of the deadline for us to act on the Petition.

II.

As found by the WCJ in the Findings of Fact and Orders, while employed during the cumulative period ending November 13, 2024, as a construction and maintenance supervisor applicant claims injury arising out of and in the course of employment to the psyche.

Applicant started working for defendant as a Facilities Planning and Maintenance Lead on July 1, 2015. (Exhibit 21, PDF pp. 123, 142.) On March 1, 2020, applicant was promoted to the position of Maintenance/Construction Supervisor. (Exhibit 21, PDF pp. 116, 118.)

The personnel file contains multiple performance evaluation forms with the most recent covering March 2021 to March 2023, in which applicant is predominantly marked as "Meets and/or Exceeds Expectations." (Exhibit 21, PDF pp. 51-57.)

On November 13, 2024, applicant was taken "off work for medical reasons from 11/18/24 to 1/30/25" by "Stark Medical- Washin." (Exhibit 1.)

On November 27, 2024, applicant filed an Application for Adjudication of Claim claiming cumulative injury through November 13, 2024, resulting in disabling stress, anxiety and psychiatric injury. Defendant denied the claim on February 5, 2025. (Exhibit A.)

On January 6, 2025, Psychologist Stephen Gary McClure, Ph.D., ABMP, with Sunrise Psychological Services, completed an initial assessment and diagnosed applicant with Unspecified

Depressive Disorder, Unspecified Anxiety Disorder, and Discord with boss and workmates, with applicant asserting "his employer inconsistently applied campus policies, which he felt was unethical and discriminatory and affected his ability to perform his job duties effectively and undermined his credibility." (Exhibit 2, PDF pp. 1-2.) Applicant was found temporarily totally disabled. (Exhibit 2, PDF p. 11.)

Applicant was seen for follow up treatment at Sunrise Psychological Services on January 14, 2025, and treated thereafter through September 25, 2025, with the diagnosis and applicant's temporary total disability status maintained. (Exhibits 3-10, 13-14, and 16-19.) In the August 13, 2025, progress report it states "reviewed QME findings and recommendations" and later "PER QME, I am requesting authorization for referral for a psychiatrist for med evaluation and medication management." (Exhibit 17, PDF pp. 2, 3.)

The exhibits also include a May 7, 2025, Enloe Health Emergency Department After Visit Summary for "syncope, fall Pt fell hit head on a metal table," with impression of no "acute intracranial process identified." (Exhibit 11, p. 2.) As a result of a telehealth visit with Neil Stark on May 9, 2025, applicant was referred to "set up zio patch x 2 weeks, cardiac echo and cardiology consult." (Exhibit 12, PDF p. 7.) On June 12, 2025, after testing was completed Neil Stark reported "he is completely asymptomatic and had no further episodes" and "at this point he is safe to drive again." (Exhibit 15, PDF p. 3.)

On April 25, 2025, applicant was evaluated by PQME in psychiatry Jonathan R. Taylor, M.D., with a report issuing dated May 19, 2025. Under discussion, PQME Dr. Taylor states that "[p]rior to the date of injury, the applicant had medical problems as outlined above. Subsequent to the date of injury, the applicant has had ongoing symptomatology. The applicant is not permanent and stationary / maximum medical improvement. Accordingly, a probative whole person impairment (WPI) rating cannot be provided." (Exhibit AA, Jonathan R. Taylor, M.D., May 19, 2025, p. 30.) PQME Dr. Taylor begins his causation discussion by stating "[a]n aggravation of a pre-existing condition constitutes a new injury or illness." He then finds that "industrial causation, per Rolda analysis, is 25%" and "that non-industrial causation is 75%." (Exhibit AA, Jonathan R. Taylor, M.D., May 19, 2025, p. 33.)

PQME Dr. Taylor also provided a table listing industrial and non-industrial factors with their percentage of causation including such items as 5% non-industrial for having twice filed bankruptcy, most recently ten years prior to the claimed injury, and 5% nonindustrial for a son

who recently was married that applicant struggled to enjoy and another son who recently becoming engaged. (Exhibit AA, Jonathan R. Taylor, M.D., May 19, 2025, p. 35.) Applicant was found to have "been temporarily partially disabled from 11/13/24 to present and continuing" but there were no work restrictions. (Exhibit AA, Jonathan R. Taylor, M.D., May 19, 2025, p. 36.)

PQME Dr. Taylor was deposed on August 6, 2025, during which the following exchange occurred:

> Q. For Mr. Allen, if he's partially disabled, what restrictions or what would need to happen for him to return to work in your opinion?
>
> A. And I was reading over my report and thinking about that before this. And I think that a possible restriction could be the people that he was having issues with -- I believe it was Kim Jones and Kristy Lee -- perhaps email only communication could be a restriction.

(Exhibit BB, Deposition Jonathan R. Taylor, M.D., August 6, 2025, p. 34, lns 13-20.) During deposition, PQME Dr. Taylor also appeared unaware of applicant's wife moving out of state around the time applicant went on leave. (Exhibit BB, Deposition Jonathan R. Taylor, M.D., August 6, 2025, p. 37, lns 8-10.)

On September 15, 2025, applicant filed a declaration of readiness to proceed (DOR) listing issues including "AOE/COE" (injury arising out of and occurring in the course of employment) and "disqualification of PQME" and requesting Appeals Board assistance to "determine whether the opinions of Dr. Taylor are substantial medical evidence."

Issues in the October 21, 2025, Pre-Trial Conference Statement (PTCS) include that applicant "argues that opinions and reports of PQME Dr. Jonathan Taylor are not substantial medical evidence and cannot be rehabilitated" and according to defendant "all other MD have no[t] considered non[-]industrial factors. Defendant argues their reports lack substantial medical evidence." (PTCS, p. 3.)

On November 18, 2025, the parties proceeded to trial with the resulting Minutes of Hearing and Summary of Evidence served on November 24, 2025. Defendant requested changes to the summary of evidence on November 26, 2025, and an Amended Minutes of Hearing and Summary of Evidence (AMOH) was served on December 9, 2025. Issues listed in the AMOH include stress, psyche, and nervous system injury arising out of and in the course of employment and whether the PQME report from Dr. Johnathan Taylor was substantial medical evidence.

As reflected in the AMOH applicant testified extensively at trial. A limited selection of his testimony relevant to our decision follows.

Applicant began working for defendant on July 1, 2015, and his last day of work was November 8, 2024. Previously he had had his own business called Air Dynamics for 20 years. (AMOH, p. 4, ln 23 - p. 5, ln 1.) He got that supervisor's job beginning about March 2, 2020. (AMOH, p. 5, lns 10-11.)

He testified that he ultimately stopped work at Butte because he was overwhelmed by symptoms and could not perform. (AMOH, p. 6, lns 4-5.) His symptoms started in August when he found out about the nepotism policy and how it was applied to prevent Mark Werblow from applying for a job. (AMOH, p. 6, lns 7-9.) Mr. Werblow is the applicant's stepson. In Mr. Werblow's previous position he worked under the applicant for 18 months. The applicant told his supervisors that although he was related to Mr. Werblow, there were no issues raised with this relationship. Mr. Werblow was not hired. (AMOH, p. 8, lns 11-15.) His perception was that the nepotism policy was misapplied and that this was the genesis of his problem. (AMOH, p. 7, lns 17-18.)

Applicant tried to get an audience with his supervisor Chris Little. He wanted to present an argument for why Mr. Werblow should be allowed to interview. He wanted Mr. Werblow to get an interview and stand on merit. Mr. Little had applicant put his argument into writing, which the applicant did. The applicant felt that "some people" did not want Mr. Werblow to be able to apply for the open job. The applicant does not know who made this decision but speculated that Christy Lee and Ms. Trull may have discussed this issue between the two of them. He was told that HR would stick with the decision that Mr. Werblow could not apply for the job due to the nepotism policy. (AMOH, p. 8, lns 16-25.) The applicant was mainly upset at this point over his perception of the failure of his supervisors to communicate with him regarding the situation, even though he himself had made every effort to communicate with them. He was frustrated with this because other people working there, such as Christy Lee, had relatives working in facilities without a problem. (AMOH, p. 8, ln 25, to p. 9, ln 3.)

Applicant also testified that unlike his stepson, Mr. Werblow, applicant's nephew, Mr. Dodd, was allowed to interview. (AMOH, p. 9, lns 7-20.)

Finally, the record contains an undated Administrative Procedure, "AP 7310 – Nepotism" policy from Butte-Glenn Community College District defining relatives or members of an immediate family to include "stepson." The policy is marked "Approved: 3/14."

After trial the WCJ issued the FF&O on January 13, 2026, finding in part applicant did not sustain a compensable injury arising out of and in the course of employment to the psyche and ordering in part applicant take nothing from his claim of industrial injury to the psyche. The FF&O does not contain an explicit finding as to the substantial nature of PQME Dr. Taylor's opinions, but the Opinion on Decision clearly shows the WCJ found "Doctor Taylor's opinion is well reasoned, credible and is substantial evidence." (FF&O, Opinion on Decision, p. 6.)

It is from this FF&O that applicant seeks reconsideration.

III.

To be compensable, an injury must arise out of and occur in the course of employment. (Lab. Code, § 3600.) 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 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3202.5, 5705.) Medical evidence that industrial causation was reasonably probable, although not certain, constitutes substantial evidence for finding injury AOE/COE. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 416-417 [33 Cal.Comp.Cases 660].) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Worker's Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].)

"[T]he medical cause of an ailment is usually a scientific question, requiring a judgment based upon scientific knowledge and inaccessible to the unguided rudimentary capacities of lay arbiters. [citations]" (*Peter Kiewit Sons v. Ind. Acc. Comm.* (*McLaughlin*) (1965) 234 Cal.App.2d 831, 839 [30 Cal.Comp.Cases 188]); see *City & County of San Francisco v. Industrial Acc. Com.* (*Murdock*) (1953) 117 Cal.App.2d 455, 459 [18 Cal.Comp.Cases 103] ("Where the subject matter is within the exclusive knowledge of experts trained in a scientific subject, expert evidence is essential.").)

For psychiatric injuries applicant's burden is heightened because an applicant must "demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury." (Lab. Code § 3208.3(b)(1).) The

phrase "predominant as to all causes" is intended to require that a work-related injury has caused greater than a 50 percent share of the entire set of causal factors. (*Dep't of Corr. v. Workers' Comp. Appeals Bd.*, (*Garcia*) (1999) 76 Cal. App. 4th 810, 816, [64 Cal.Comp.Cases 1356].)

"Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93]. Findings of substantial evidence must be determined by the material facts upon which an opinion is based and by the reasons given for the opinion. (*Ibid*. at pp. 169-170.)

It appears undisputed that applicant meets the preliminary requirements for a psychiatric injury with the only dispute being whether greater than fifty percent of the entire set of causal factors is industrial. (See FF&O, Opinion on Decision, p. 2 ("[A]pplicant meets those requirements as he required treatment, and missed time from work as a result of industrial stressors," and as further discussed pp. 2-5); Answer, p. 7, ln 16 ("[T]he only issue for trial was causation of injury").) We therefore consider this case on the issue of causation of injury.[2]

Here, PQME Dr. Taylor only reviewed treatment records from January 6, 2025, through April 7, 2025. (Exhibit AA, Jonathan R. Taylor, M.D., May 19, 2025, pp. 11-14.)

At trial, however, additional treatment records were made part of the record including an off work slip for the period beginning November 18, 2024 (Exhibit 1) and records maintaining industrial temporary total disability dated April 21, 2025, though September 25, 2025. (Exhibits 10, 13-14, and 16-19.)[3]

[2] In the Petition for Reconsideration applicant improperly seeks to frame the issue as one of apportionment and not causation by simply citing to "*Escobedo*." (Petition, p. 3, lns 20-22, p. 5, lns 16-17; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 607 (Appeals Board en banc) "[C]ausal factors of permanent disability for purposes of apportionment may be different from the analysis of the causal factors of the injury itself.") Applicant is cautioned that failure to provide full case citations in the future may result in the consideration of sanctions. (See Cal. Code Reg., tit. 8, § 10972 (requiring *specific* reference to the principles of law); Lab. Code § 5813.)

[3] The August 13, 2025, progress report states the treaters "reviewed QME findings and recommendations." (Exhibit 17, PDF p. 2.) This statement is at odds with the WCJ finding the treating doctors' opinions are not substantial evidence based in part on having not reviewed the PQME report per applicant's testimony that "the applicant did not provide them with the report of Dr. Taylor for review and comment." (FF&O, Opinion on Decision, p. 6.)

The exhibits not reviewed but introduce at trial also include a May 7, 2025, record for "syncope, fall Pt fell hit head on a metal table," with impression of no "acute intracranial process identified," (Exhibit 11, p. 2,) and follow up treatment records for the fall. (Exhibits 12, 15.)

Additionally, PQME Dr. Taylor apparently did not review the Administrative Procedure "AP 7310 – Nepotism" written policy. (Exhibit 10.) While we are unable to discern what clinical significance the policy may ultimately have to the case, it appears obvious that in a claim where applicant asserts injury resulting from a perceived failure of the employer to follow the policy, the policy should have been provided to the PQME for review and consideration.

More concerning is the cursory nature of PQME Dr. Taylor's opinions in addressing the fundamental question of industrial causation. The PQME's report is notable for providing multiple conclusory statements without explanation to support them.

For example, the first sentence of PQME Dr. Taylor's discussion under "Causation of Injury" is that "[a]n aggravation of a pre-existing condition constitutes a new injury or illness." (Exhibit AA, Jonathan R. Taylor, M.D., May 19, 2025, p. 33.) This is followed by a definition of aggravation under "California law" but then the concept of aggravation of a pre-existing condition is left orphaned in the report with no further discussion or analysis. The reader is left to wonder if this reference to "aggravation" is an error or to be considered in conjunction with the sentence under the heading "Compensability of Pyschiatric Injury" that "[t]he injury needs input from a Trier-of-fact to determine its compensability." (Exhibit AA, Jonathan R. Taylor, M.D., May 19, 2025, p. 36.)[4]

As further example, PQME Dr. Taylor provides a table with the breakdown of causative factors including 5% non-industrial for having twice filed bankruptcy, most recently ten years prior to the claimed injury, and 5% nonindustrial for a son who recently was married that applicant struggled to enjoy and another son who recently becoming engaged. (Exhibit AA, Jonathan R. Taylor, M.D., May 19, 2025, p. 35.) Although the table is clear, the reasoning is not, as the reasoning for the percentages is completely absent.

Specifically, the reader is provided with no reasoning why bankruptcies ten years before a claimed industrial injury *have now caused injury*. Such medical reasoning is necessary to help the

[4] It is unclear if PQME Dr. Taylor independently addressed causation of industrial injury or improperly conflated the causation assessment with the defense of good faith personnel action as analyzed under *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc).

trier of fact understand how an individual with a positive work history of over nine years and who was promoted to the position of supervisor by his employer, sustained an injury caused by an event ten years prior. Such causation opinion is clearly within the province of the medical expert but for the opinion to be substantial, reasoning must be provided. (*Hegglin*, *supra*, at pp. 169-170.)

Likewise, PQME Dr. Taylor provides no reasoning as to why 5% of the injury was caused by a son who recently was married that applicant struggled to enjoy and another son who recently becoming engaged.[5]

Although the WCJ found that PQME Dr. Taylor persuasive, noting the doctor discussed and explained his reasoning in deposition, we are not convinced. (FF&O, Opinion on Decision, p. 5.) The following exchange is illuminative:

> Q. And initially my question is how you go about determining that, not necessarily the specific percentages that you provided in your Rolda analysis?
>
> A. So you're not asking for clarification on the percentages?
>
> Q. Not at this moment. I'm asking about your process to get there.
>
> A. So in reviewing the records, the patient interview, you know, my clinical expertise based on seeing, you know, over 10,000 patients in my career and talking to patients about various experiences and symptoms, that's the process, relying on that to, you know -- *I guess I don't have a clear answer. The question is still a little bit vague to me.* The process is based on my clinical expertise, which is based on, you know, many years of training.

(EXH BB, p. 10, ln 21 to p. 11, ln 9, emphasis added.) It appears PQME Dr. Taylor is unable to describe his process to determine causation because as he states, "I don't have a clear answer. The question is still a little bit vague to me." It is not possible for the trier of fact to rely on an expert medical opinion that does not explain its reasoning.

It also appears from the deposition that PQME Dr. Taylor did not have an accurate history. An example of incorrect history is shown by the following exchange:

> Are you aware that his wife moved out of state around the time that he went on leave?

[5] We also not that although the parties stipulated to, and the WCJ found, employment for the period through November 13, 2024, PQME Dr. Taylor merely adopted this as the end date of occupational exposure for the causal factors found to arise out of employment without providing any reasoning for such adoption despite applicant apparently having last worked on November 8, 2024. Identifying the last day of occupational exposure for a cumulative claim per section 5500.5(a) not only establishes liability, but it can also help the physician properly analyze causation.

A. I don't recall him mentioning that.

Q. Would that be an additional stressor or contributing nonindustrial stressor?

A. It could. Without knowing, you know, their relationship intimately -- but it could.

(EXH BB, p. 37, lns 8-15.)

PQME Dr. Taylor's opinions may ultimately be correct and yet still not be substantial evidence. PQME Dr. Taylor discusses many contributing factors he believes have a bearing on the cause of applicant's claimed injury to provide percentages of causation, but PQME Dr. Taylor does not provide the reasoning linking the factors to the injury. This defect is not cured by referring to clinical expertise and years of training. Further, PQME Dr. Taylor provided opinions based on an incomplete record and appears to have relied on an incorrect history. In summary, PQME Dr. Taylor's opinions are not substantial evidence. (*Hegglin*, supra, pp. 169-170.)

IV.

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 404 [65 Cal.Comp.Cases 264].)

The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138, 142 (Appeals Board en banc).) If the supplemental opinions of the previously reporting physicians do not or cannot cure the need for development of the medical record, the selection of an agreed medical evaluator (AME) by the parties should be considered. If none of the procedures outlined above is possible, the WCJ may resort to the appointment of a regular physician, as authorized by section 5701. (*Ibid*, 142-143.)

PQME Dr. Taylor's opinions are currently not substantial evidence. At a minimum, PQME Dr. Taylor should be provided with the missing treatment records, the nepotism policy, and possibly re-evaluate the applicant to clarify the history.[6] In light of PQME Dr. Taylor not having

[6] We are concerned that PQME Dr. Taylor was not provided with the nepotism policy in the first instance given the central role the policy plays in applicant's claim of injury. The nepotism policy should have been available early in

a clear answer about how he arrived at causation percentages, the parties may wish to use an Agreed Medical Examiner to evaluate the applicant and avoid the possible appointment of a regular physician.

V.

Following our independent review of the record, and for the reasons stated above, we grant applicant's February 9, 2026 Petition for Reconsideration, and we rescind the January 13, 2026 Findings of Fact and Orders and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's February 9, 2026 Petition for Reconsideration is **GRANTED**.

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the claims process as "a claims administrator must conduct a reasonable and timely investigation upon receiving notice or knowledge of an injury or claim for a workers' compensation benefit." (Cal. Code Reg., tit. 8, § 10109(a).)

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the January 13, 2026 Findings of Fact and Orders is **RESCINDED a**nd the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I DISSENT (*See Dissenting Opinion*),

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 20, 2026

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

MARK ALLEN
HARO LAW
MICHAEL SULLIVAN & ASSOCIATES
LEWIS BRISBOIS BISGAARD & SMITH

PS/oo

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

DISSENTING OPINION OF COMMISSIONER JOSÉ H. RAZO

I respectfully dissent. I am of the opinion the record is clear that applicant failed to meet his burden to establish industrial injury.

As noted by my colleagues, 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 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3202.5, 5705.) The applicant must "demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury." (Lab. Code § 3208.3(b)(1).) This means the applicant is required to prove that the work-related injury has caused greater than a 50 percent share of the entire set of causal factors. (*Dep't of Corr. v. Workers' Comp. Appeals Bd.*, (*Garcia*) (1999) 76 Cal. App. 4th 810, 816, [64 Cal.Comp.Cases 1356].)

It is important to recall that section 3208.3 "was enacted as part of the Margolin-Greene Workers' Compensation Reform Act of 1989, and was part of the Legislature's response to increased public concern about the high cost of workers' compensation coverage, limited benefits for injured workers, suspected fraud and widespread abuses in the system, and particularly the proliferation of workers' compensation cases with claims for psychiatric injuries. [citation.]" (*Pacific Gas & Electric Co. v. Workers' Comp. Appeals Bd.*, (*Bryan*) (2004) 114 Cal. App. 4th 1174, 1180-1181 [69 Cal.Comp.Cases 21].) "Section 3208.3, subdivision (c) underscores the Legislature's intent that claims seeking benefits based on psychiatric injuries be evaluated strictly. It states, 'It is the intent of the Legislature in enacting this section to establish a new and higher threshold of compensability for psychiatric injury under this division.'" (*Ibid*.)

Here one needs to look no further than at PQME Dr. Taylor's table on page 35 of his report for the four work factors/events the applicant claims caused injury along with the PQME's assignment of causation percentage:

> Employment Event #1: Date of injury 11/13/24: felt isolated and undermined 5%
> Employment Event #2: Did not get warm welcome by co-workers 5%
> Employment Event #3: stepson (Mr. Werblow) not hired 7.5%
> Employment Event #4: nephew (Mr. Todd) not hired 7.5%

(Exhibit AA, Jonathan R. Taylor, M.D., May 19, 2025, p. 35.)

It is clear the factors/events listed total only 25% of causation and on that basis alone applicant has failed in meeting his burden to prove injury by a preponderance. It is also clear to the lay eye that the alleged factors/events are not sufficient to cause industrial injury. It is difficult

to understand how an employer failing to hire an applicant's nephew and step-son could lead to industrial injury. It also difficult to understand how not getting a warm welcome by co-workers could do so.

"[T]he relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence. [citation]." (*Place v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525].) This is doubly so where the relevant and considered opinion of PQME Dr. Taylor is in line with the obvious facts of the case. Applicant has failed to meet the Legislature's requirement for strict scrutiny at the "higher threshold of compensability for psychiatric injury." (*Bryan*, *supra*, p. 1182.)

I would deny reconsideration and affirm the Findings of Fact and Orders denying injury.

For the foregoing reasons, I dissent.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 20, 2026

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

MARK ALLEN
HARO LAW
MICHAEL SULLIVAN & ASSOCIATES
LEWIS BRISBOIS BISGAARD & SMITH

PS/oo

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