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

**MIREYA DEL REAL BRAVO, *Applicant***

**vs.**

**CCS FACILITY SERVICES;**
**ZURICH NORTH AMERICA, *Defendants***

**Adjudication Numbers: ADJ20331025, ADJ20331028**
**Van Nuys District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Joint Findings, Award, and Order (FA&O) of June 27, 2026, wherein the workers' compensation arbitrator (WCA)[1] found in relevant part that applicant failed to sustain her burden of proof that she sustained industrial injury to her right arm, right wrist, bilateral shoulders, bilateral hands, and vision loss arising out of and in the course of employment (AOE/COE) during the cumulative trauma (CT) period of May 7, 2024, to January 3, 2025, or as a compensable consequence of that injury or that she sustained injury AOE/COE to her psyche, stress, insomnia, anxiety hair loss, vision loss, and headaches during the CT period of May 7, 2024, to January 2, 2025; that applicant reached maximum medical improvement (MMI) on February 28, 2026; and that applicant provided no evidence of self-procured treatment. Applicant contends that the qualified medical evaluator report was not substantial evidence and that the record should have been developed.

[1] This matter is subject to a carve out provision and proceeded to arbitration pursuant to Labor Code section 3201.7.

We have received an Answer from defendant. The WCA prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for Reconsideration, rescind the FA&O, and return this matter to the WCA for further proceedings.

**FACTS**

Applicant while employed by defendant as a janitor during the period May 7, 2024, through January 3, 2025, sustained industrial injury to her neck and back and claims to have sustained industrial injury to her right arm, right wrist, and shoulders. (Transcript of 7/13/26 arbitration hearing (Transcript), p. 6.) Applicant also claims to have sustained industrial injury while employed during the period May 7, 2024, through January 2, 2025, by defendant as a janitor, to her psyche, stress, insomnia, anxiety, hair loss, and headaches. (Transcript, p. 7.)

Applicant testified at the arbitration hearing on July 13, 2026, that she was employed as a cleaner and was responsible for cleaning two floors, including cleaning 65 conference rooms, elevators, stairways, and taking out the trash. (Transcript, p. 10.) She testified that she felt dizzy while working; she had lost strength in her right hand; she had blurred vision starting in June 2024; and that she suffered stress, harassment, and hair loss starting in June 2024, due to treatment by a supervisor; and she currently was experiencing insomnia, anxiety, and depression. (Transcript, pp. 10-16.) She experienced insomnia by waking up for a few hours from approximately 3 am until 6 am almost every night. (Transcript, p. 14.) She began working in May 2024, and she began experiencing these issues in June 2024. (Transcript, pp. 18-19.)

The WCA admitted one report into evidence, the Independent Medical Evaluation (IME) Alternative Dispute Resolution Evaluation by Dr. Chihua Lee, M.D., with a specialty of orthopedic surgery. (Ex. A. IME Report by Dr. Lee, dated 2/28/26, p. 1.) The only record that Dr. Lee reviewed was applicant's deposition of August 5, 2025. (Ex. A, pp. 20-21.) Dr. Lee stated that applicant's diagnoses were cervical spine sprain/strain, thoracic spine sprain/strain, and lumbar spine sprain/strain. (Ex. A, p. 20.) Regarding causation, Dr. Lee stated

> Regarding the examinee's cervical. spine, thoracic spine, and lumbar spine sprain/strain, based upon the examinee's reports of her job duties along with the remainder of the

> currently available objective medical evidence, these diagnoses are considered to be related to the subject claim on a more probable than not basis.

(Ex. A, p. 22.)

Dr. Lee found applicant to be permanent and stationary as to her cervical spine, thoracic spine, and lumbar spine but stated that "Of note, I do not have any medical records available for review. If these medical records are later provided for my review, these may change my findings." (Ex. A, p. 22.) Regarding applicant's future medical care, Dr. Lee stated that

> based upon her deposition of August 5, 2025, she had obtained MRIs of her cervical spine and her "right arm," however, it was not reported that she also had MRI evaluation of her lumbar spine. Again, I do not have any medical records for review pertaining to this claim. If these records are provided for my review at a later time, these may change my recommendations.

(Ex. A, p. 24.)

On June 27, 2026, the WCA issued the FA&O, finding that with respect to the CT of May 7, 2024, to January 3, 2025: 1) applicant sustained industrial injury AOE/COE during the CT period of May 7, 2024, to January 3, 2025, to her lumbar spine and cervical spine; 2) applicant failed to sustain her burden of proving by preponderance of evidence, Labor Code[2] section 3202.5, that she sustained industrial injury to her right arm, right wrist, bilateral shoulders, bilateral hands and vision loss AOE/COE with defendant during the CT period of May 7, 2024, to January 3, 2025, or as a compensable consequence of that injury; 3) applicant reached MMI on February 28, 2026; 4) the injury to applicant's cervical spine resulted in 13% permanent disability based on a rating string of 15.01.00- 8[1.4]- 11-340G- 13 – 13; 5) there is no apportionment; 6) applicant requires future medical care; 7) applicant has missed no time from work as a result of this injury; and 8) applicant provided no evidence of self-procured treatment, so none is awarded. For that injury, the WCA awarded the following: 1) permanent disability of 13% equaling 42.25 weeks at $290.00 per week, totaling $12,252.50, less 15% attorney fee of $1837.87 with biweekly payments to begin March 1, 2026, and continuing, until Award is paid in full; and 2) attorney fees of $1837.87 (from applicant's permanent disability award). These fees are ordered withheld by defendant until a written fee split agreement is received, or further Order of the Arbitrator.

[2] All further statutory references are to the Labor Code unless otherwise noted.

The WCA further found with respect to the CT of May 7, 2024, to January 2, 2025: 1) applicant failed to sustain her burden of proving by preponderance of evidence, pursuant to section 3202.5, that she sustained industrial injury to her psyche, stress, insomnia, anxiety, hair loss, vision loss, and headaches during the CT period of May 7, 2024, to January 2, 2025, or as a compensable consequence of that injury. For that injury, the WCA ordered that applicant take nothing on that claim as the conditions of compensation pursuant to section 3600 have not been met.

Applicant filed her Petition for Reconsideration of the FA&O on August 24, 2026. The Petition included a declaration from George Castellanos, the hearing representative who appeared for applicant at the arbitration on July 13, 2026. (Castellanos declaration, p. 1.) Castellanos stated that applicant possessed primary treating physician (PTP) records from Hirbod Azizi, D.C., concerning applicant's claimed cumulative-trauma injuries and treatment. He further stated:

> During the arbitration proceedings, the Azizi PTP reports were discussed with Arbitrator Bentley off the record as well with the mediation Judge during the prior mediation. The arbitrator stated in substance that he would not review or rely on the reports because they were authored by a chiropractor. I did not object further and did not submit a copy of the exhibits to be reviewed. I understood the arbitrator's statement as a ruling that the PTP reports would not be considered. In reliance on that ruling, I did not formally mark or offer the reports when the matter returned to the record, and I answered that Applicant had no exhibits.

(Castellanos declaration, p. 1.) Finally, he stated that the PTP reports were relevant to the disputed issues and he would have offered them into evidence, requested a ruling on the record, and requested development of the medical record before submission and now requested that the record be reopened so the reports could be marked and considered. (Castellanos declaration, p. 1.)

## 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 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 September 16, 2026, and 60 days from the date of transmission is Sunday, November 15, 2026. The next business day that is 60 days from the date of transmission is Monday, November 16, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision is issued by or on Monday, November 16, 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, the case was transmitted to the Appeals Board on September 16, 2026. However, there is no proof of service of the Report in the record and therefore, we are unable to discern when it was served. Thus, we cannot conclude that the parties were provided with the notice of transmission required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties may not have had notice of the commencement of the 60-day period on September 16, 2026.

[3] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

II.

Applicant claims that the record lacks substantial medical evidence to support the FA&O, including the finding of no injury to the other disputed body parts; whether applicant had reached MMI; and whether self-procured treatment occurred. Decisions of the Appeals Board must be based on substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) Pursuant to section 5705, the "burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.) Therefore, the burden is on applicant to prove injury AOE/COE.

A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction 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, 620-621 (Appeals Bd. en banc).) "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].)

On the other hand, there must be some solid basis in the medical report for the doctor's ultimate opinion; the Appeals Board may not blindly accept a medical opinion which lacks a solid underlying basis and must carefully judge its weight and credibility. (*National Convenience Stores v. Workers' Comp. Appeals Bd.* (*Kesser*) (1981) 121 Cal.App.3d 420, 426 [46 Cal.Comp.Cases 783].) In other words, the Appeals Board must look to the underlying facts of a medical opinion to determine whether or not that opinion constitutes substantial evidence, and accordingly, the expert's opinion is no better than the facts on which it is based. (*Turner v. Workers' Comp. Appeals Bd.* (1974) 42 Cal.App.3d 1036, 1044 [39 Cal.Comp.Cases 780].)

Based on our review, there is a lack of substantial medical evidence to support the FA&O. The only evidence provided in this matter was a single IME report by Dr. Lee. Dr. Lee stated in the report that the only record he reviewed was applicant's deposition of August 5, 2025. (Ex. A,

pp. 20-21.) Dr. Lee found applicant to be permanent and stationary as to her cervical spine, thoracic spine, and lumbar spine but stated that "Of note, I do not have any medical records available for review. If these medical records are later provided for my review, these may change my findings." (Ex. A, p. 22.) Dr. Lee also noted that applicant stated in her deposition that she had obtained MRIs of her cervical spine and right arm and again stated that he did "not have any medical records for review pertaining to this claim. If these records are provided for my review at a later time, these may change my recommendations." (Ex. A, p. 24.)

We note that applicant did not offer any other exhibits into evidence or request to further develop the record. (Transcript, pp. 1-20.) Applicant's hearing representative stated in his declaration that applicant possessed PTP records from Hirbod Azizi, D.C., concerning applicant's claimed cumulative-trauma injuries and treatment that were relevant to the disputed issues. (Castellanos declaration, p. 1.)

Therefore, the IME report was not substantial evidence as Dr. Lee did not review medical evidence, such as the PTP reports from Dr. Azizi and applicant's MRIs. Dr. Lee's report was not based on an adequate examination and history and was therefore speculative. (See *E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*), *supra*, 145 Cal.App.4th at p. 928; *Escobedo v. Marshalls*, *supra*, 70 Cal.Comp.Cases at pp. 620-621.)

The Board generally "may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence." *(Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 404 [65 Cal.Comp.Cases 264; *West v. Industrial Acc. Com.* (1947) 79 Cal.App.2d 711, 719.) The Board's power to develop the record is appropriately exercised when there is insufficient medical evidence in the record upon which to base a determination. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394–395 [62 Cal.Comp.Cases 924].) Therefore, we will grant the Petition, rescind the FA&O, and return this matter to the WCA for further development of the record, including a review of the PTP records and applicant's MRIs by the medical evaluator.

III.

***Finally, we admonish hearing representative for applicant, George Castellanos, for filing a declaration attached to the petition for reconsideration that is violative of section 5813 and WCAB Rule 10421. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)*** A non-attorney

representative shall be held to the same professional standards of conduct as an attorney. (Lab. Code § 4907(b); Cal. Code Regs., tit. 8, § 10401(b).)

> Sanctionable actions include:
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> (5) Executing a declaration or verification to any petition, pleading or other document filed with the Workers' Compensation Appeals Board:
>
> (A) That:
>
> (i) Contains false or substantially false statements of fact;
>
> (ii) Contains statements of fact that are substantially misleading;
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> (iii) Contains substantial misrepresentations of fact;
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> (iv) Contains statements of fact that are made without any reasonable basis or with reckless indifference as to their truth or falsity;
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> (v) Contains statements of fact that are literally true, but are intentionally presented in a manner reasonably calculated to deceive; and/or
>
> (vi) Conceals or substantially conceals material facts; and
>
> (B) Where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(Cal. Code Regs., tit. 8, § 10421(b)(5).)

> Sanctionable actions also include:
>
> (9) Using any language or gesture at or in connection with any hearing, or using any language in any pleading or other document:
>
> (A) Where the language or gesture:
>
> (i) Is directed to the Workers' Compensation Appeals Board, to any of its officials or staff or to any party (or the attorney or non-attorney representative for a party); and
>
> (ii) Is patently insulting, offensive, insolent, intemperate, foul, vulgar, obscene, abusive or disrespectful; or
>
> (B) Where the language or gesture impugns the integrity of the Workers' Compensation Appeals Board or its commissioners, judges or staff.

(Cal. Code Regs., tit. 8, § 10421(b)(9).)

***We admonish the hearing representative for filing a declaration that includes statements in the declaration in violation of WCAB Rule 10421(b)(5).*** (See Lab. Code, § 5813; see also Cal. Code Regs., tit. 8, § 10421(b)(5). ***We further admonish the hearing representative for using language in the declaration that is disrespectful to the WCA and impugns their integrity in violation of WCAB Rule 10421(b)(9).*** (See Lab. Code, § 5813; see also Cal. Code Regs., tit. 8, § 10421(b)(9).)

"Issues not raised in the trial court are generally forfeited for purposes of appeal." (*Schultz v. Workers' Comp. Appeals Bd*. (2015) 232 Cal.App.4th 1126, 1134 [181 Cal.Rptr.3d 891], quoting

*Natkin v. California Unemployment Ins. Appeals Bd.* (2013) 219 Cal.App.4th 997, 1011 [162 Cal. Rptr. 3d 367]; see also *Cuevas v. Workers' Comp. Appeals Bd*. (2005), 70 Cal.Comp.Cases 479, 483-484 (writ den.); *L.A. Unif. School Dist. v. Workers' Comp. Appeals Bd.* (2001) 66 Cal.Comp.Cases 1220 (writ den.).) The hearing representative offered no exhibits, raised no concerns about the substantiality of Dr. Lee's report, and made no request to develop the record at the arbitration. (Transcript, pp. 1-20.) The hearing representative should have made these requests on the record and not claim that the arbitrator denied a request to admit the PTP reports in an off-the-record discussion. (Castellanos declaration, p. 1.) If any off-the-record discussion occurred, the hearing representative should have indicated that on the record.

However, we observe that both defendant and the WCA deny that any such off-the-record conversation occurred. (Answer, p. 4; Report, p. 2.) Therefore, we treat the statements in paragraph four of the hearing representative's declaration about being precluded from offering the PTP reports into evidence as untruthful, based on the Answer and Report, and therefore those statements violate WCAB Rule 10421(b), sections (5) and (9).

We therefore reiterate and remind applicant's hearing representative and any supervising attorneys that all parties appearing before the WCAB are required to follow the WCAB's Rules in all future proceedings, and that the failure to do so may subject the offending party to sanctions. (Lab. Code § 5813; Cal. Code Regs., tit. 8 § 10421.) Further, we remind the parties that upon motion of the Appeals Board, a non-attorney representative may have the privilege to appear before the Workers' Compensation Appeals Board removed or suspended for good cause after a hearing; good cause includes, but is not limited to, serious or repeated violations of these rules and failure to comply with Rule 10401. (Lab. Code § 4907(a); Cal. Code Regs., tit. 8, § 10404(a)-(b).)

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the June 27, 2026 Joint Findings, Award, and Order is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the June 27, 2026 Joint Findings, Award, and Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

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

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

**NOVEMBER 16, 2026**

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

**MIREYA DEL REAL BRAVO**
**SAG LAW GROUP, LLP**
**SCHOCHET SOLOMON, LLP**
**JOSEPH RYAN LAW FIRM**
**CHARLES BENTLEY, ARBITRATOR**

**JMR/*pm***

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