WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

NICOLAS CORTES, *Applicant*

vs.

BENIHANA, INC.; ZURICH NORTH AMERICA, administered by BROADSPIRE, *Defendants*

Adjudication Number: ADJ14589712
San Francisco District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A) issued on March 12, 2026, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that while employed by defendant as a prep cook during the period from October 25, 2017 through October 25, 2018, applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to the lumbar spine and bilateral knees resulting in twenty-nine percent (29%) permanent disability.

Defendant contends that the reporting of treating physician Adam Stoller, M.D., which was relied upon by the WCJ in the making of her decision, does not constitute substantial medical evidence on the issue of injury AOE/COE to the lumbar spine and that applicant has failed to satisfy the requirements outlined under *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686, 688-689 (Appeals Bd. en banc) for rebuttal of the combined values chart (CVC) method of rating with respect to the bilateral knees.

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

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

FACTS

Applicant claimed that, while employed by defendant as a prep cook during the period from October 25, 2017 through October 25, 2018, he sustained injury AOE/COE to his lumbar spine and bilateral knees. Applicant also claimed injury on June 8, 2018 to the lumbar spine and bilateral knees (ADJ12214883) and on October 25, 2018 to the lumbar spine (ADJ13931806).

The parties retained Adam Holleran, M.D., as their orthopedic panel Qualified Medical Evaluator (PQME). Dr. Holleran evaluated applicant on multiple occasions and issued various reports, including reports dated January 12, 2022, July 27, 2022, and November 29, 2023 (Joint Exhibits 101-103).

In his report dated January 12, 2022, Dr. Holleran diagnosed applicant with a thoracolumbar strain, left knee strain, and internal derangement of the right knee. (Joint Exhibit 101, p. 11.) He opined that applicant's injuries "to his thoracolumbar spine and bilateral knees are causally related to the industrial injury of October 25, 2018." (*Id*. at p. 12.)

In his subsequent report dated July 27, 2022, Dr. Holleran concluded that there was industrial causation relative to the cumulative injury and that given the requirements of applicant's job, including "seven hour shifts involving frequent standing, twisting, bending, and lifting/pushing/pulling up to 30 pounds[,]" within a reasonable medical probability, applicant's "bilateral knee degenerative meniscus tears [we]re causally related to the cumulative effects of his job over the course of more than 20 years." (Joint Exhibit 102, p. 12.)

In his final report dated November 29, 2023, Dr. Holleran continued to find injury AOE/COE to the bilateral knees and opined that applicant reached permanent and stationary (P&S) status as of November 29, 2023 with a resulting one percent (1%) whole person impairment (WPI) due to the left knee partial medial meniscectomy and a three percent (3%) WPI for each knee based upon Table 17-31 under *Almaraz Guzman*. (Joint Exhibit 103, p. 11.)

Applicant also sought treatment from Dr. Stoller who issued various treatment reports as well as medical-legal reports dated December 12, 2024 and August 1, 2025 (Joint Exhibits 104-105).

In his report dated December 12, 2024, Dr. Stoller noted lumbar radiculopathy and bilateral chronic knee pain and opined that applicant sustained injury AOE/COE to the bilateral knees and lumbar spine. He agreed with the January 14, 2022 P&S date provided by Dr. Holleran opined that applicant sustained a 1% WPI due to the prior left knee partial medial meniscectomy, a 3% WPI

to the right knee due to diminished knee joint spaces on x-ray, an eight percent (8%) WPI to the left knee due to moderate chondrosis and a 2mm interval, a six percent (6%) WPI to the lumbar spine based upon DRE category II due to unilateral loss of range of motion and pain, and a 1% WPI add-on to each knee for pain. (Joint Exhibit 104, p. 27.) Dr. Stoller noted that the knee impairments should be added rather than combined. (*Ibid*.) The total knee impairment would then be combined with the lumbar spine impairment. (*Id*. at pp. 27-28.)

In his one-page supplemental report dated August 1, 2025, Dr. Stoller confirmed that applicant's "injuries are consistent with a cumulative trauma ending on [October 25, 2018] based on his mechanism of injury, symptoms, and examination."

On December 12, 2025, applicant filed a Declaration of Readiness to Proceed (DOR) to a mandatory settlement conference on the issues of temporary and permanent disability, self-procured medical treatment, and future medical treatment. It appears the DOR was filed only in the specific injury claim of June 8, 2018 (ADJ12214883).

At the January 28, 2026 mandatory settlement conference, the parties stipulated to dismissal without prejudice, of applicant's two other cases—the June 8, 2018 specific injury to the lumbar spine and bilateral knees (ADJ12214883) and the October 25, 2018 specific injury to the lumbar spine (ADJ13931806), thereby leaving only the cumulative injury claim (ADJ14589712). The remaining case was then set for trial.

On March 3, 2026, the parties proceeded to trial. The issues set for determination included body parts injured, permanent disability (including apportionment), and attorney's fees. The parties submitted as joint exhibits the reports of Dr. Holleran dated January 12, 2022, July 27, 2022, and November 29, 2023, and the reports of Dr. Soller dated December 12, 2024, August 1, 2025, and July 22, 2025.

On March 12, 2026, the WCJ issued an F&A which held, in relevant part, that while employed by defendant as a prep cook during the period from October 25, 2017 through October 25, 2018, applicant sustained injury AOE/COE to the lumbar spine and bilateral knees resulting in 29% permanent disability.

It is from this F&A that defendant seeks reconsideration.

DISCUSSION

I.

Preliminarily, former Labor Code[1] 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 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 April 14, 2026, and 60 days from the date of transmission is June 23, 2026, which is a Saturday. The next business day that is 60 days from the date of transmission is June 25, 2026, which is a Monday. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision was issued by or on June 25, 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

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

[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.

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, the Report by the WCJ was served upon the parties on April 14, 2026, and the case was transmitted to the Appeals Board on April 14, 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 accurate notice of transmission as required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 14, 2026.

II.

Turning now to the merits of the Petition, defendant contends that the reporting of Dr. Stoller, which was relied upon by the WCJ in the making of her decision, does not constitute substantial medical evidence on the issue of injury AOE/COE to the lumbar spine.

It is well established that the burden of proof rests upon the party holding the affirmative of the issue. (Lab. Code, § 5705.) As such, when an employee claims injury AOE/COE, it is the employee, or the lien claimant who steps in the shoes of the employee, who carries the burden of proof in establishing industrial causation and they must show that the employment was a contributing cause. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297- 298, 302; §§ 5705; 3600.) Pursuant to section 3202.5, the evidentiary burden of proof is to be met by a preponderance of the evidence. However, "[t]hat 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].)

Further, substantial medical evidence is used to establish industrial causation. "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.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.) 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* (1987) 195 Cal.App.3d 614, 621.)

Based upon our review of Dr. Stoller's reports, including the medical legal report dated December 12, 2024, Dr. Stoller reviewed medical records, took an accurate and adequate history of the injury, thoroughly examined the applicant, and explained how and why the industrial work exposure caused applicant's complaints. As such, we find that Dr. Stoller's reporting constitutes substantial medical evidence of injury AOE/COE to the lumbar spine. As explained by Dr. Stoller, applicant sustained a 6% WPI to the lumbar spine under DRE category II due to loss of range of motion and pain as well as the injury's effects on applicant's activities and daily living (ADLs) including issues with standing and sitting. (Joint Exhibit 104 p. 27.) Applicant noted that he can tolerate sitting for sixty (60) minutes, standing and walking for two (2) hours, and lifting up to thirty (30) pounds. (*Id*. at p. 2.) Applicant also noted significant pain when walking up and down stairs and driving more than two hours. (*Ibid*.) We note that in his report dated August 1, 2025, Dr. Stoller confirmed that causation was due to the cumulative injury ending on October 25, 2018. (Joint Exhibit 105.)

III.

Defendant further contends that applicant failed to satisfy the requirements outlined under *Vigil* for rebuttal of the CVC method of rating with respect to the bilateral knees. (Petition, p. 4.)

Pursuant to section 4660.1, the Permanent Disability Rating Schedule (PDRS) is prima facie evidence of an injured employee's permanent disability. (Lab. Code, § 4660; cf. *Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262, 1274-1277 [76 Cal.Comp.Cases 624].) The PDRS provides that the ratings for multiple body parts arising out of the same injury are "generally" combined using the CVC, which is appended to the PDRS. (2005 PDRS, at p. 1-10.) Yet, because it is part of the PDRS, the CVC is rebuttable and a reporting physician is not precluded from utilizing a method other than the CVC to determine an employee's whole person impairment so long as the physician's opinion remains within the four comers of the AMA Guides.

(Lab. Code, § 4660; *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.* (*Guzman*) (2010) 187 Cal.App.4th 808, 818-829 [75 Cal.Comp.Cases 837].) Accordingly, the use of the multiple disabilities table is discretionary depending upon whether it produces a rating that fully compensates an applicant for the effects of their injury. (*Mihesuah v. Workers' Comp. Appeals Bd.* (1976) 55 Cal.App.3d 720, 728 [41 Cal.Comp.Cases 81, 87].)

In *Athens Administrators v. Workers' Comp. Appeals Bd.* (*Kite*) (2013) 78 Cal.Comp.Cases 213 (writ den.), the Appeals Board held that if there is substantial medical evidence that two or more impairments have a synergistic effect which causes the resulting impairment to be greater than that reflected through use of the CVC, the impairments should be added for purposes of accuracy. In *Kite*, the applicant underwent bilateral hip replacement surgeries and the orthopedic QME opined that due to a "synergistic effect of the injury to the same body parts bilaterally versus body parts from different regions of the body," "the best way to combine the impairments to the right and left hips would be to add them versus using the combined values chart, which would result in a lower whole person impairment." *(Id*. at p. 5.) Accordingly, the WCJ in *Kite* found that the impairment for the applicant's hips would be calculated based upon the addition method rather than through the combined values formula.

Subsequent to *Kite*, the Appeals Board issued the en banc case of *Vigil* wherein it was determined that if an applicant seeks to rebut the CVC and add rather than combine impairments, the applicant must establish 1) The ADLs impacted by each impairment, and 2) That the ADLs either do not overlap, or overlap in such a way that it increases or amplifies the impact of the overlapping ADLs. (*Vigil*, *supra*, at pp. 688-689.)

Here, Dr. Stoller indicated in his December 12, 2024 report that he agreed with Dr. Holleran regarding the 1% WPI for applicant's prior left knee partial medial meniscectomy and 3% WPI to the right knee due to mild bilateral knee joint spaces on x-ray. For the left knee, he increased applicant's WPI to 8% due to a 2 mm joint space. Additionally, he agreed with Dr. Holleran that 1% WPI should be added to each knee for pain. He noted that the knee impairments should be added rather than combined for an overall fourteen percent (14%) WPI, which would then be combined with the lumbar impairment. With respect to ADLs, as noted above, applicant can only tolerate sitting for 60 minutes, standing and walking for 2 hours, and lifting up to 30 pounds. (Joint Exhibit 104, p. 2.) Applicant also noted significant pain walking up and down stairs and driving more than two hours. (*Ibid*.)

In subsequent reports, Dr. Stoller noted various restrictions specific to the bilateral knees. In his most recent report dated December 9, 2025, he noted issues with locking, aggravated pain with driving, and further limitations to his tolerance for standing (1 hour), sitting (1 hour), and walking (30-60 minutes). (Joint Exhibit 106, December 9, 2025 report, pp. 3-4.) ADLs specific to the lumbar spine were limited but included increased pain with sitting and driving which are relieved by changing positions. (*Id*. at p. 3.)

Based upon the totality of the evidence, we believe that applicant satisfied the requirements under *Vigil* for rebuttal of the CVC method of rating with respect to the bilateral knees.

Accordingly, defendant's Petition is denied.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the WCJ's March 12, 2026 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 12, 2026

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

NICOLAS CORTES
LAW OFFICE OF AMANDA POE
FLOYD SKEREN MANUKIAN LANGEVIN, LLP

RL/kl

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