WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

NIKCOLE TORRIE CUNNINGHAM, *Applicant*

vs.

CITY AND COUNTY OF SAN FRANCISCO, *Defendants*

Adjudication Number: ADJ18317827
San Francisco District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact and Orders (F&O) issued by the workers' compensation administrative law judge (WCJ) on July 21, 2026. The WCJ found, in relevant part, that applicant was employed as a social worker for defendant from July 5, 2016 to July 12, 2024. The WCJ further found applicant's claim is not compensable under Labor Code section 3208.3(b)(1)[1].

Applicant requests, in essence, that the F&O be rescinded as the decision is not supported by substantial evidence and argues that the psychiatric medical record should be further developed pursuant to *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138. Applicant further asserts she did not have an opportunity to depose the psychiatric panel qualified medical evaluator (QME) before proceeding to trial.

We have received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of applicant's Petition and the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, we will deny reconsideration.

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[1] All section references are to the Labor Code, unless otherwise indicated.

FACTS

As the WCJ stated in her Report:

1. Procedural background.

Applicant claims to have sustained injury arising out of and in the course of employment to her psyche and nervous system and in the form of stress while working for the employer as a social worker, during the period from July 5, 2016 through July 12, 2024. Defendant has denied the claim, and contends applicant's claim is barred under Labor code Section 3208.3, subsections (b)(1) and (h). The matter proceeded to trial before me on May 20, 2026.

2. Evidence at trial and decision

The parties offered a number of exhibits at trial. Additionally, applicant testified.

a. Reports of QME Sean Moore, M.D.

Joint Exhibit 4 is a QME report of Dr. Moore dated April 10, 2025. In his report, Dr. Moore conducted a medical records review, took a history from the applicant, outlined current symptoms, treatment, and other histories, and conducted psychological testing of the applicant. He diagnosed her with: anxiety disorder, personality disorder, medical and neurological disorders, and psychosocial and environmental problems. Dr. Moore assigned a GAF score of 60. (p. 49.)

Regarding causation, Dr. Moore stated:

I do not find at this time there is sufficient medical probability that the events of employment were predominant (51%) to the development of the applicant's psychiatric symptoms evaluated in the context of all other causes. Though the applicant perceives that the magnification and onset of symptoms seem to have arisen out of employment and during the course of employment, and seemingly has demonstrated a need for care (though records are not available,), there remain multiple non-industrial contributors to the psychological symptoms[…]
(p. 52.)

* * *

[Discussion of non-industrial causes omitted.]

Dr. Moore stated there were no work restrictions. He recommended some future psychological care. He stated he needed to review additional records. (p. 54.)

Joint Exhibit 3 is a supplemental report of Dr. Moore. In his report, he reviewed additional medical records. He stated, "…these records establish somewhat that the events of employment contribute to the causation of injury. However…a determination is required from the trier of fact as there are so many personnel and legal actions between the applicant" and the employer. (p. 4.)

Joint Exhibit 2 is a supplemental QME report of Dr. Moore. In his report, Dr. Moore reviewed an additional attorney advocacy letter and addressed it. He stated he had no substantial updates to his previous opinions regarding causation.

Joint Exhibit 1 is a supplemental QME report of Dr. Moore. In his report, Dr. Moore reviewed additional medical records and an attorney letter. He stated,

none of the information provided materially changes my prior conclusions regarding causation…[A]pplicant's psychiatric presentation is best explained by a combination of personnel actions, work stress, pre-existing psychological vulnerabilities, chronic pain, and personality-related factors, and was not predominantly (>50%) caused by actual events of employment.

(p. 10.)

[Discussion of defendant's Exhibits B and C omitted.]

b. Decision

I [conclude] that the medical evidence is not sufficient to support that applicant sustained an industrial injury. Therefore, I found applicant's claim for injury to her psyche and nervous system and in the form of stress was not compensable. I issued an order that that applicant take nothing by way of the claim she has asserted herein.

3. Contentions on reconsideration.

In her petition, applicant contends that the QME Dr. Moore's reporting is not substantial medical evidence, as Dr. Moore does not sufficiently address the causation allocations. Applicant argues that further development of the record is warranted.

(Report, at pp. 1-3.)

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 August 21, 2026, and 60 days from the date of transmission is October 20, 2026. This decision is issued by or on October 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 act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 21, 2026, and the case was transmitted to the Appeals Board on August 21, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 21, 2026.

II.

It is axiomatic that substantial evidence must support the decisions by the Appeals Board. (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].)

To constitute substantial evidence ". . . a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board 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]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525].)

As set forth in the WCJ's Report:

> In order to establish that a psychological injury is compensable, an injured worker must show by a preponderance of the evidence that actual events of employment predominantly caused the psychological injury. (Lab. Code, § 3208.3(b)(1).) "[T]he phrase 'predominant as to all causes' is intended to require that the work-related cause has greater than a 50 percent share of the entire set of causal factors." (*Department of Corrections v. Workers' Comp. Appeals Bd.* (*Garcia*) (1999) 76 Cal.App.4th 810, 816.)

Footnote 2 states:

> > First, the [WCJ] must determine whether the alleged psychiatric injury involves actual events of employment and, if so, whether competent medical evidence establishes the required percentage of industrial causation. If these first two conditions are met, the [WCJ] must then decide whether any of the actual employment events were personnel actions. If so, the [WCJ] must next determine whether the personnel action or actions were lawful, nondiscriminatory, and made in good faith. Finally, if all these criteria are met, competent medical evidence is necessary as to causation; that is, whether or not the personnel action or actions are a substantial cause, accounting for at least 35 to 40 percent of the psychiatric injury as defined by section 3208.3(b)(3). (*San Francisco Unified School Dist. v. Workers' Comp. Appeals Bd.* (*Cardozo*) (2013) 190 Cal.App.4th 1, 9 [75 Cal.Comp.Cases 1251] (writ den.).); *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241 at pp. 245-247 (*en banc*); see also *County of Sacramento v. Workers' Comp. Appeals Bd.* (*Brooks*) (2013) 215 Cal.App.4th 785.)

Here, I found QME Dr. Moore's reporting to be substantial and persuasive. He reviewed and summarized numerous medical records. He interviewed, evaluated, and took histories from the applicant. When Dr. Moore received additional medical records, he analyzed those and determined that his conclusion regarding causation had not changed. He explained why and how each event caused their respective assigned percentages of having caused the psychological injury. Dr. Moore assigned the "contributive causes" to applicant's symptoms in his reports. (Joint Exhibits 1, 2, 3, 4.) 50% of the psychological injury . . . was caused by actual events of employment. The remaining 50% was caused by non-industrial factors . . . 50%

> fails the "predominant cause" threshold. There was therefore no need for me to analyze whether compensation is barred by good faith personnel actions.
>
> *I found applicant's testimony to be heartfelt, and I found her to be a credible witness. However given the unrebutted medical reporting, I was compelled to conclude that the medical evidence is not sufficient to support that applicant sustained an industrial injury.* Therefore, I found applicant's claim for injury to her psyche and nervous system and in the form of stress is not compensable.
>
> In her petition, applicant argues that, at the very least, further development of the record is warranted under *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138. Because I found the medical evidence to be substantial, further development of the record is not necessary. Furthermore, there were no pretrial requests made for further discovery by way of deposition of the QME as applicant now requests in her petition.

(Report, at pp. 4-6, emphasis added.)

The determination of whether an injury is industrially caused must be based on substantial medical evidence. Indeed: "Where an issue is exclusively a matter of scientific medical knowledge, expert evidence is essential to sustain a [WCAB] finding; lay testimony or opinion in support of such a finding does not measure up to the standard of substantial evidence. [citations] Expert testimony is necessary 'where the truth is occult and can be found only by resorting to the sciences.' [citation]." (*Peter Kiewit Sons v. I.A.C.* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].) Here, the WCJ was clear that she found applicant's testimony to be credible, but based on the medical evidence, she concluded that the claimed injury was non-compensable.

We concur with the WCJ that the QME's reports constitute substantial medical evidence upon which the WCJ properly relied. The QME issued three supplemental reports. He provided lengthy and clear responses to the well-articulated interrogatories and thoroughly reviewed all of additional medical records provided. Yet, he did not change his mind and continued to opine applicant's psychiatric injury was not predominantly caused by "actual events of employment" as required under section 3208.3(b)(1). (Joint Exhibit 1, QME Report of Sean Moore, M.D., dated March 27, 2026, at p. 10.) Thus, we agree with the WCJ that discovery is complete, and that further development of the record is not necessary.

Based on our independent review of the entire evidentiary record, we agree that the QME's reports are substantial medical evidence, and we decline to disturb the WCJ's findings.

III.

A psychiatric injury may be *directly* caused by actual events of employment or as a compensable consequence of an industrial physical injury. (See *Lockheed Martin Corp. v. Workers' Comp. Appeals Bd.* (*McCullough*) (2002) 96 Cal.App.4th 1237, 1249 [67 Cal.Comp.Cases 245] ["the precipitating physical injury constitutes an 'actual event[] of employment' within the meaning of [section 3208.3(b)(1)]" for a compensable consequence psychiatric injury].) The predominant causation threshold applies to psychiatric injuries pled as a compensable consequence of a physical injury. (*Id.*)

Here, applicant contends the QME does not adequately explain how he classified the years of conflict concerning accommodations for applicant's industrially-related low back pain as a major industrial psychiatric stressor but classified the underlying chronic pain as a non-industrial psychiatric stressor. (Petition, at pp. 6-7.) We want to clarify that the QME found 20% of causation to applicant's psychiatric injury to be due to "[y]ears of conflict with employer over accommodations for industrially-related low back pain" and 10% of causation to be due to a "[h]istory of physically-limiting chronic pain including a diagnosis of fibromyalgia and treatment with psychotropic medications for pain medication…" (Joint Exhibit 3, QME report of Sean Moore, M.D., dated September 9, 2025, at p. 5.) At the initial evaluation, applicant informed the QME that she suffered an industrial injury to her neck and back in July 2012 while working for defendant as a human services agency technician, several years before she was even hired as a social worker on July 5, 2016. (Joint Exhibit 4, QME Report of Sean Moore, M.D., dated April 10, 2025, at p. 40.) Moreover, the records also show a history of chronic pain from 2009 to 2023 to various parts of applicant's body aside from her back including but not limited to her left leg, fibromyalgia, migraine, neck, and left shoulder. (*Id.* at pp. 6-38.)

Based on our review of the QME reports, it appears the QME finds the years of conflict with the employer over accommodations to be industrial because they were actual events of employment, whereas applicant's chronic pain to multiple body parts, including fibromyalgia, were not actual events of employment that occurred, and thus, not found to be industrial. Otherwise, a psychiatric injury as a compensable consequence of the prior back injury would be part of the July 2012 injury, which is a separate and distinct case from the current claim only alleging a psychiatric injury.

Accordingly, defendant's Petition is denied.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the WCJ's decision issued on July 21, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 20, 2026

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

NIKCOLE TORRIE CUNNINGHAM
LAW AT YOUR SIDE
CITY ATTORNEY SAN FRANCISCO

JL/abs

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