WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

NORMA OCHOA, *Applicant*

vs.

LAIBCO, LLC; COMPWEST INSURANCE COMPANY, *Defendants*

Adjudication Numbers: ADJ21919813; ADJ21919815
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Joint Findings and Order of July 10, 2026, wherein it was found that "the two continuous trauma claims filed on behalf of applicant are duplicative and overlapping, and that ADJ21919813 shall be dismissed…." In this matter, applicant simultaneously filed two applications for adjudication of claim. In case ADJ21919813, applicant alleged that while employed during a cumulative period from November 1, 2024 to November 1, 2025, she sustained industrial injury to the psyche. In case ADJ21919815, applicant alleges that while employed during a cumulative period from November 26, 2024 to November 26, 2025, she sustained industrial injury to her back and hand. After filing both applications, applicant also initiated the process to be evaluated by a qualified medical evaluator in each case. In the decision, the WCJ dismisses ADJ21919813, but amends case ADJ21919815 to now allege injury to psyche. Although the WCJ's decision is not very clear, it appears that in addition to dismissing ADJ21919813, he stayed the QME process initiated in that case, so that applicant cannot yet procure a qualified medical evaluator with regard to her psyche claim.

Applicant contends the WCJ erred in dismissing case ADJ21919813 and in staying discovery in that case. We have received an answer from defendant and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

As explained below, we will grant reconsideration, rescind the WCJ's decision, and issue a new decision deferring the issue of whether the cases should be deemed a single cumulative injury pending further development of the medical record and analysis.

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code 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 Labor Code 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 7, 2026 and 60 days from the date of transmission is October 6, 2026. This decision is issued by or on October 6, 2026, so that we have timely acted on the Petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 7, 2026, and the case was transmitted to the Appeals Board on August 7, 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 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 August 7. 2026.

II.

Turning to the merits, as explained above, applicant simultaneously filed two applications for adjudication of claim alleging two separate cumulative injuries. In case ADJ21919813, applicant alleged that while employed during a cumulative period from November 1, 2024 to November 1, 2025, she sustained industrial injury to the psyche. In case ADJ21919815, applicant alleges that while employed during a cumulative period from November 26, 2024 to November 26, 2025, she sustained industrial injury to her back and hand. Defendant filed a Declaration of Readiness to Proceed (DOR) alleging that these were "duplicative" applications pursuant to Appeals Board Rule 10455 (Cal. Code Regs., tit. 8, § 10455) and sought a stay of the qualified medical evaluator process given that Administrative Rule 31.7 allows a qualified medical evaluation in a second medical specialty only upon agreement of the parties or an order by the WCAB.

Trial on the issue took place on May 14, 2026. The only "evidence" taken was defendant's DOR, applicant's Objection to the DOR, and the QME panels issued in each case. No testimony or medical evidence forms part of the evidentiary record.

Rule 10544(a) states that "Only one application shall be filed for each injury. Duplicative applications are subject to summary dismissal." The WCJ apparently found that the injuries were duplicative in that, although the different body parts were alleged in each injury, the alleged period of exposure of the psyche injury completely overlapped the alleged period of exposure of the back and hand injury. Without any testimony or medical evidence, the WCJ found that both alleged injuries were in fact one cumulative injury encompassing both body parts.

In his Report, the WCJ cites *Ortiz v. County of Los Angeles* (2018) 2018 Cal. Wrk. Comp. P.D. LEXIS 190, *9-12 (Appeals Bd. panel). In that case, an Appeals Board panel explained:

> The general rule is that where an applicant suffers contemporaneous injury to different body parts over an extended period of employment, he or she has suffered one cumulative injury. [*Gravlin v. City of Vista* (2017) 2017 Cal. Wrk. Comp. P.D. LEXIS 413, 17 (Appeals Board noteworthy panel decision)] To do

otherwise would improperly attribute causation of permanent disability to separate injuries when, in fact, an applicant's current permanent disability was caused by a single period of injurious exposure. [*City of Anaheim v. Workers' Comp. Appeals Bd. (Ott)* (2010) 75 Cal. Comp. Cases 371, 375 (writ denied)] In addition, while there may be different dates of injury within a temporal period of cumulative trauma to various parts of body, a single date of injury may be found notwithstanding different beginning or ending dates of the cumulative trauma periods for each part of body. [See *Ace USA Insurance Company v. Workers' Comp. Appeals Bd. (Sena)* (2017) 82 Cal. Comp. Cases 1183 (writ denied) (WCAB rejected defendant's assertion that the WCJ should have found that an applicant suffered separate cumulative and specific injuries with different dates of injury, rather than a single, continuous cumulative trauma)]

Instead, a WCJ must decide (1) whether there are multiple cumulative trauma periods with different dates of injury pursuant to *Aetna Casualty & Surety Co. v. Workmen's Comp. Appeals Bd. (Coltharp)* (1973) 35 Cal. App. 3d 329, 110 Cal. Rptr. 780, 38 Cal. Comp. Cases 720, 730–731 and *Ferguson v. City of Oxnard* (1970) 35 Cal. Comp. Cases 452, 460 (Appeals Board en banc) (separate cumulative injuries occur where "periods of disability and/or need for medical treatment [are] interspersed within the alleged course of the repetitive activities"); or (2) whether there is a single cumulative trauma period with one date of injury because any periods of temporary disability are linked by a continued need for medical treatment under *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal. App. 4th 227, 20 Cal. Rptr. 2d 26, 58 Cal. Comp. Cases 323, 329.

In deciding this issue, a WCJ should consider whether the Applicant lost time from work and whether, if after returning to work from a period of temporary disability and/or a need for medical treatment, the Applicant's repetitive work activities again resulted in injurious trauma (i.e., if the Applicant's occupational activities after returning to work from a period of temporary disability caused or contributed to a new period of temporary disability, to a new or increased level of permanent disability, or to a new or increased need for medical treatment). If so, then there are multiple separate and distinct cumulative trauma injuries that cannot be merged into a single injury pursuant to *Coltharp*. Conversely, if the Applicant's occupational activities after returning to work were not injurious (i.e., if any new period of temporary disability, new or increased level of permanent disability, or new or increased need for medical treatment result solely from an exacerbation of the original injury), then there is only a single cumulative trauma injury pursuant to *Austin*.

In order for a WCJ to decide this issue, a medical opinion is essential in order to ascertain whether the medical evidence supports one or two cumulative trauma injuries and, if so, the beginning and end dates of the cumulative trauma or cumulative traumas injuries.

(Emphasis added.)

While it may well turn out to be the case that this case is an example of the general rule explained in *Gravlin, supra*, the record herein does not contain the evidence and analysis to reach the conclusion that these cases are duplicative.

The WCJ in this case relied on *Garcia v. CKE Holdings* (2021) 2021 Cal. Wrk. Comp. LEXIS 149 (Appeals Bd. panel), where the WCJ found two cases duplicative due to complete overlap of periods of exposure and, unlike the present case, complete overlap of alleged body parts injured. We note that in *Garcia,* the evidentiary record included applicant's trial testimony, whereas in this case there was no true evidence taken. Additionally, we note that unlike in the present case, the WCJ in *Garcia* determined that the duplicative application was filed for an improper purpose. Unlike here where the two applications were filed simultaneously, the allegedly duplicative application in *Garcia* was filed a year and a half after the first application, when the first case was already set for trial and discovery had been closed, so it appears that the second application was filed as an end-run against the closure of discovery. In this matter, the only practical difference in filing two applications appears to be that applicant does not need to show "good cause" to obtain a QME panel in a second specialty.

We find that the WCJ improperly found that these cases are duplicative without considering the evidence or conducting the analysis discussed in *Ortiz, supra.* We therefore grant reconsideration, rescind the WCJ's decision, and enter a new decision deferring the issues of whether these applications alleged duplicative injuries or whether the applicant sustained one or multiple (or any) cumulative injuries. We find that defendant is not entitled to stay of the QME process.

We note that the WCJ states that applicant's objection to the WCJ's findings were not timely because the WCJ appeared to state at the May 18, 2026 trial that he was finding the cases duplicative, and this statement was noted in the Minutes. However, the Minutes show the case as "submitted" and these findings were not final until an actual decision was issued and served as required by Labor Code section 5313.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Joint Findings and Order of July 10, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings and Order of July 10, 2026 is **RESCINDED** and that the following is **SUBSTITUTED** therefor:

FINDINGS

1. The issues of whether the injuries alleged in ADJ21919813 and ADJ21919815 are duplicative, whether applicant sustained any industrial injury in either or both cases and whether applicant sustained one or multiple injuries is deferred with jurisdiction reserved.

2. Defendant is not entitled to a stay of discovery including a stay of the qualified medical evaluator process in either case.

3. All other issues are deferred, with jurisdiction reserved.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 6, 2026

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

NORMA OCHOA
ALEXANDER SOLHI & ASSOCIATES
STUART NAGEL

DW/oo

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