WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

PHILLIP NEWELL, *Applicant*

vs.

MIRACLE PLUMBING, INC.;
SECURITY NATIONAL INSURANCE COMPANY,
administered by AMTRUST, *Defendants*

Adjudication Number: ADJ14478546
San Francisco District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact (Findings) issued on July 29, 2026. The workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant sustained an injury arising out of and in the course of employment (AOE/COE) to his left lower extremities, left leg, left ankle, low back, and right lower extremities and that there is good cause to re-open the prior Award.

Defendant contends that the WCJ erred by disregarding a prior opinion that applicant did not meet his burden to prove industrial causation to the low back, that the evidence does not justify finding injury to the low back and right lower extremity or good cause to re-open, and that the WCJ ignored the bar of Labor Code sections 5502(d)(3) and 5815.[1]

Applicant filed an answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report)

We have considered the allegations of the Petition, Answer, and Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will deny reconsideration.

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

FACTS

The WCJ stated the relevant facts in her Report as follows:

1. Procedural background

The primary issues in this trial were whether there was good cause to reopen the prior Award, and nature and extent of injury. Applicant was employed by the defendant as a plumber on the date of the injury. Applicant has an admitted, specific injury of September 25, 2019, to his left lower extremities, left leg, and left ankle. The matter had previously proceeded to trial on January 30, 2023. The Honorable Colleen Casey issued a Findings and Award (F&A; Award) and Opinion on Decision (OOD) on February 2, 2023, judicial notice of which has been taken. The dispute here arose following applicant's filing of a petition to reopen for new and further disability, filed on February 21, 2024, of which I also took judicial notice. In his petition to reopen, applicant claims he sustained new and further disability to his low back and right lower extremity. Defendant contends applicant is barred from reopening the prior Award, as Judge Casey had stated in her OOD that: "applicant has not met his burden of proof on this issue of causation of industrial injury to the low back." (p. 5.)

The matter previously proceeded to trial on November 12, 2025. Following a petition for reconsideration and Order granting the petition, the matter proceeded to trial again on July 14, 2026. At that trial, the additional issue was whether there was good cause to reopen.

2. Evidence at trial and decision

As discussed in detail below, the parties offered five exhibits at the November 12, 2025, trial. There was no testimony at trial. I received briefs from both applicant and defendant. I took judicial notice of these trial briefs.

a. QME Michael Fujinaka, M.D.

i. Report of February 3, 2025

Applicant's Exhibit 8 is a re-evaluation report of QME Dr. Fujinaka dated February 3, 2025. In his report, Dr. Fujinaka took a history and provided a summary of previous evaluations. He stated since the prior evaluation, "[t]he applicant reports that he has fallen down the stairs a couple of times because of his legs giving out." (p. 5.) Applicant stated he has pain in his back, bilateral legs, and bilateral ankles, which increases with certain activities. He has difficulty sleeping due to the pain. (pp. 5-6.) Dr. Fujinaka reviewed and summarized medical reports and conducted a physical evaluation of applicant. He diagnosed applicant with: lumbar spine radiculopathy and "fracture, left ankle with subsequent and ongoing Complex Regional Pain Syndrome". (p. 16.)

Regarding causation for the lumbar spine, Dr. Fujinaka stated:

> The applicant sustained an industrial injury on September 25, 2019, while performing his usual job duties as a field technician for Miracle Plumbing Inc. The mechanism of injury involved a fall from the step of his work van while removing a ladder, causing his left foot to strike a curb and resulting in a forceful impact to his buttocks. This type of fall is biomechanically significant as it subjects the lumbar spine to sudden axial compression upon impact, combined with a hyperflexion moment as the applicant landed. The abrupt force transmitted through the spine can lead to structural injury, including acute discogenic trauma, facet joint irritation, and possible vertebral endplate stress. Additionally, the impact likely triggered paraspinal muscle strain and reactive spasms, contributing to ongoing discomfort.
>
> Throughout the medical records, there is documentation of persistent lower back pain and symptoms that support the causal relationship between this injury and the applicant's lumbar spine condition. While the applicant initially focused on his ankle injury, it is common for lumbar pathology to become more apparent over time, particularly as compensatory mechanics develop due to an altered gait from the ankle injury. The combination of the direct impact to the lumbar spine during the fall and subsequent biomechanical strain from favoring the injured ankle provides a clear mechanism for ongoing lower back dysfunction. To a degree of reasonable medical probability, the applicant's lumbar spine condition is industrially related to the September 25, 2019, injury.
> (pp. 17- 18.)

Regarding causation for the right lower extremity, Dr. Fujinaka stated:

> The applicant's right lower extremity symptoms are consistent with a phenomenon known as "mirroring" in complex regional pain syndrome (CRPS), in which the neuropathic and autonomic dysfunction initially affecting one limb begins to manifest in the contralateral limb. Mirrored CRPS is well-documented in medical literature, particularly in cases where prolonged altered biomechanics and central nervous system sensitization contribute to the spread of neuropathic pain and dysautonomia.
>
> Mirroring in CRPS is believed to occur due to maladaptive changes within the central nervous system, particularly within the spinal cord and brain. Chronic pain and inflammation in the initially affected limb can lead to central sensitization, a process where the nervous system becomes hyper-responsive to pain stimuli. This heightened sensitivity can cause pain signals to be amplified and spread to adjacent or even contralateral regions, a phenomenon sometimes referred to as "neuroplasticity gone awry." Additionally, alterations in the sympathetic nervous system can lead to

vascular and trophic changes, resulting in temperature dysregulation, skin discoloration, hair loss, and abnormal nail growth in the contralateral limb.

In the applicant's case, his CRPS initially developed in the left lower extremity following his left ankle injury. Due to persistent pain, altered weight-bearing, and ongoing biomechanical strain on the right leg, the nervous system likely underwent progressive sensitization, leading to the development of similar symptoms in the right lower extremity. The presence of burning pain, electric shocks, temperature changes, skin discoloration, hair loss, and abnormal toenail growth all support a diagnosis of mirrored CRPS. The worsening of his symptoms, including allodynia (pain from non-painful stimuli such as water in the shower), suggests an advancing stage of central sensitization, reinforcing that the nervous system is now amplifying and spreading pain signals beyond the initially injured region.

This mirrored CRPS is not simply a result of local tissue damage in the right leg but rather an indication of widespread nervous system dysfunction driven by prolonged pain signaling from the left side. The fact that the applicant initially experienced symptoms of fatigue and neuropathic pain in the right leg due to overcompensation supports the hypothesis that prolonged biomechanical strain contributed to the right-sided involvement. Over time, as the nervous system remained in a persistent state of hyper-reactivity, the pain and autonomic dysfunction spread, leading to the full development of CRPS-like symptoms in the right lower extremity.

To a degree of reasonable medical probability, the applicant's right lower extremity CRPS is industrially related to the September 25, 2019, injury. (p. 18.)

Dr. Fujinaka stated applicant is in need of further medical treatment for CRPS and the lumbar spine. He also provided work restrictions. (pp. 21-22).

ii. Report of August 7, 2025

Applicant's Exhibit 7 is a supplemental report of QME Dr. Fujinaka dated August 7, 2025. In his report, Dr. Fujinaka reviewed vocational testing and reporting, and commented on work restrictions.

iii. Deposition transcript of QME Dr. Fujinaka

Joint Exhibit 1 is a deposition transcript of QME Dr. Fujinaka dated November 6, 2025. Dr. Fujinaka testified, "I believe…in my report on February 3, 2025, I re-issued my opinion on the lumbar spine." (p. 12.) He further testified: applicant was experiencing burning and aching pain in his lower back as of December 8, 2021, he was having pain symptoms arising from sitting at that time, he had 10/10

pain, and he had interference with activities of daily living (ADLs). (pp. 14-16.) Dr. Fujinaka testified in looking at his May 31, 2022, report, applicant has well-documented lumbar spine pain. (pp. 17-18.) Most of applicant's lumbar spine impairment pre-existed the award. (p. 35.) He went on to testify that the "…rating should not have been given back in 2022 without the full physical evaluation of the spine"; there is essentially no rating from him that predates his February 2025 lumbar spine rating. He found that the right lower extremity is an injury that is a compensable consequence of that to the left. (p. 55.) Additionally, part of the lumbar spine complaints are compensable consequences of the altered gait of the right lower extremity. It is common that these types of compensable consequence injuries arise when someone has a left lower extremity injury that is resulting in an altered gait, especially when it is a long period of time affected. (p. 56.)

b. Reports of Thomas Klein, D.O.

Joint Exhibit 2 is comprised of several reports of Thomas Klein, D.O. The reports contain in relevant part the diagnosis of complex regional pain syndrome.

(Report, at pp. 2-5.)

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909,[2] 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

[2] Unless otherwise noted, all further statutory references are to the Labor Code.

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 8, 2026 and 60 days from the date of transmission is Saturday, November 7, 2026. The next business day that is 60 days from the date of transmission, is Monday, November 9, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision is issued by or on Monday, November 9, 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 September 8, 2026, and the case was transmitted to the Appeals Board on September 8, 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 September 8, 2026.

II.

The WCJ provides the following analysis for the inclusion of the lumbar spine and lower right extremities:

> Applicant 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, 297-298, 302; Lab. Code, §§ 3600(a); 3202.5.) To be substantial evidence, a medical opinion must be well-reasoned, based on an adequate history and examination, and it must disclose a solid underlying basis for the opinion. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc)). Dr. Fujinaka's reporting is unequivocal and unrebutted regarding whether injury to the low back is industrial in nature. (See applicant's Exhibit 8, pp. 17-18.) He

[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.

explained in detail how both the mechanism of injury and the overcompensating due to CRPS cause the low back injury. I therefore found that applicant sustained injury AOE/COE to his low back.

The crux of the dispute here, however, is whether the February 2, 2023, F&A bars a finding here of injury AOE/COE to the low back. As stated above, the prior F&A was silent on the body part of the low back; the OOD stated that applicant had not met his burden of causation of industrial injury to the low back. The prior OOD notes that while Dr. Fujinaka's reporting addressed injury and impairment to the low back, it did not address *causation* of injury to the lumbar spine. (p. 5.) The 2023 F&A included no finding regarding the additional body part of lumbar spine at issue here. Moreover, under "Award" in the F&A, it stated that, "All other issues are deferred at this time." Thus, although the body part was listed as an issue and discussed in the 2023 OOD, the issue was not actually "decided on the merits," as required.

In its petition, defendant contends that, under section 5815, applicant is barred from reopening the prior Award, as Judge Casey had stated in her OOD that: "applicant has not met his burden of proof on this issue of causation of industrial injury to the low back." (p. 5.)

There is now a report in evidence addressing causation. (See applicant's Exhibit 8, pp. 17-18.) Additionally, Dr. Fujinaka testified – in 2025 – that part of the lumbar spine complaints are compensable consequences of the altered gait of the right lower extremity. It is common that these types of compensable consequence injuries arise when someone has a left lower extremity injury that is resulting in an altered gait, especially when it is a long period of time affected. (Joint Exhibit 1, p. 56.)

Sections 5313 and 5815 thus require the WCJ to "file finding upon *all* facts involved in the controversy" and to issue a corresponding award, order or decision that states the "reasons or grounds upon which the [court's] determination was made." (Italics added; see also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Board en banc).)

It has long been the law that section 5410, in conjunction with section 5803, defines the Appeals Board's continuing jurisdiction and authority, "to award compensation for a new disability resulting from the original injury or for an increase of the disability for which compensation has been awarded or paid voluntarily." (*Broadway-Locust Co. v. Industrial Accident Comm*., (1949) 92 Cal. App. 2d 287, 290 [14 Cal.Comp.Cases 111].) Defendant makes various arguments to support its assertion that there was no good cause to reopen applicant's injury claim.

In its *Nicky Blair's Restaurant v. Workers' Comp. Appeals Bd.*, (1980) 109 Cal. App. 3d 941 decision the Second District Appellate Court stated:

> The principle of reopening for "good cause" does not permit an attempt to simply relitigate the original award. A petition to reopen may not be used to litigate issues which should have been raised by a timely petition for reconsideration. "Good cause" to reopen does not consist of medical evidence obtained subsequent to the original decision which merely disagrees with the medical opinion relied upon by the Board at the time of the original decision. …¶ … Through many court decisions it has become well settled that, in order to constitute 'good cause' for reopening, new evidence (a) must present some good ground, not previously known to the Appeals Board, which renders the original award inequitable, (b) must be more than merely cumulative or a restatement of the original evidence or contentions, and (c) must be accompanied by a showing that such evidence could not with reasonable diligence have been discovered and produced at the original hearing (*Ibid*. at 956, citations omitted.)

Labor Code section 5410 confers on the Workers' Compensation Appeals Board continuing jurisdiction over a prior award when a timely petition is filed within five years of the date of injury. The section provides:

> Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period. This section does not extend the limitation provided in Section 5407.

(Lab. Code, § 5410.)

More recently, the Court of Appeal in *Applied Materials v. Workers' Comp. Appeals Bd.* (2021) 64 Cal.App.5th 1042 (*Applied Materials*), defined new and further disability as "disability resulting from some demonstrable change in the employee's condition, including a gradual increase in disability, a recurrence of TD, a new need for medical treatment, or the change of a temporary disability into a permanent disability." (*Id.* at p. 1080.)

Applying these principles to the present matter, the salient question becomes whether applicant's alleged low back and right lower extremities injury resulted in a "demonstrable change in the employee's condition, including a gradual increase in disability, a recurrence of TD, a new need for medical treatment, or the change of a temporary disability into a permanent disability." (*Applied Materials, supra*, at p. 1080.)

The claim for injury to low back and right lower extremity was timely raised, and the petition for new and further disability properly included: a new need for medical treatment, a claim for additional permanent disability caused by injury to the low back and right lower extremities, a worsening of his "lower extremity CRPS", a

> claim for permanent total disability, and claims of compensable consequence injuries and pain.

(Report, at pp. 6-8.)

On its face, the F&A deferred a finding of causation for the lumbar spine and the issue remained open to development. Defendant contends essentially that there was a preclusion of re-litigation based on the opinion attached to the prior F&A. Here, the question regarding causation of the lumbar spine was deferred in the F&A. In order to preclude litigation on an already decided issue, the decision in the prior proceeding must be final and on the merits. (*Pacific Lumber, Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 943.) There was not final decision on this issue in the prior F&A and therefore the issue is not precluded.

Additionally, defendant argued that pursuant to section 5502 any additional medical evidence obtained following the Mandatory Settlement Conference prior to the 2023 trial should be excluded. Again, the WCJ in 2023 deferred a finding of causation for the lumbar spine after review of the evidence available to her at the time. Though she made comments as to burden of proof in her opinion, she did not make a finding and thus the record remained open. Without any further clarification of the F&A, the record remained open and was effectively treated as an inconclusive opinion on causation. It is within the WCJ's discretion to order development of the record in cases where the record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) Moreover, all the subsequent reporting was admitted without objection at the trial on November 25, 2025. Thus, while we disagree that section 5502 would preclude admissibility of the later obtained reports, any objection to those reports was waived when they were admitted November 25, 2025.

III.

The WCJ addressed good cause to reopen for new and further disability as follows:

> Good cause to reopen may also exist pursuant to section 5803. (*Aliano v. Workers' Comp. App. Appeals Bd.* (1979) 100 Cal.App.3d at p. 366.) To reopen for good cause pursuant to section 5803 there must exist some ground, not within the knowledge of the appeals board at the time of making the former award or order which renders the original award inequitable; this cannot be premised on a mere change of opinion by the appeals board. (*Walters v. Ind. Acci. Com.* (1962) 57 Cal.

2d 387, 394). "Good cause" is discussed in great detail in *Nicky Blair's Restaurant v. Workers' Comp. Appeals Bd.* (*Macias*) (1980) 109 Cal. App. 3d 941, [45 Cal.Comp.Cases 876] in which the court states:

> The principle of reopening for "good cause" does not permit an attempt to simply relitigate the original award. A petition to reopen may not be used to litigate issues which should have been raised by a timely petition for reconsideration. "Good cause" to reopen does not consist of medical evidence obtained subsequent to the original decision which merely disagrees with the medical opinion relied upon by the Board at the time of the original decision. …¶ … Through many court decisions it has become well settled that, in order to constitute 'good cause' for reopening, new evidence (a) must present some good ground, not previously known to the Appeals Board, which renders the original award inequitable, (b) must be more than merely cumulative or a restatement of the original evidence or contentions, and (c) must be accompanied by a showing that such evidence could not with reasonable diligence have been discovered and produced at the original hearing.

(*Id*. at p. 956, citations omitted.)

> Here, applicant's injury to his low back qualifies as "new and further disability." While applicant unquestionably had low back symptoms at the time of the earlier 2023 award, it was not until 2025 that Dr. Fujinaka addressed causation; Dr. Fujinaka did not say that the low back symptoms were causally related to the industrial injury or causing disability prior to the 2023 Award. Furthermore, Dr. Fujinaka opined that applicant's lumbar spine complaints *progressed* to the point of them now also being part of the are compensable consequences of the altered gait of the right lower extremity: it is common that these types of compensable consequence injuries arise when someone has a left lower extremity injury that is resulting in an altered gait, especially when it is a long period of time affected. (Joint Exhibit 1, p. 56.)

Defendant argues that the QME's opinions are not substantial medical evidence. When a physician's report is well-reasoned, is based on an adequate history and examination, and sets forth the reasoning behind the physician's opinion, not merely their conclusions, the report constitutes substantial evidence. (*Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408 [33 Cal.Comp.Cases 660]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) The WCJ found the reports to be substantial and we agree.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 5, 2026

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

PHILLIP NEWELL
GIMBEL LAW FIRM PC
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN, LLP

TF/*cs*

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