

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

**QUANG NHAT TRINH (deceased), *Applicant***

**vs.**

**FOUR SEASONS RESTAURANT GROUP, dba CAFE ARTIST RESTAURANT;  
EMPLOYERS PREFERRED; STATE OF CALIFORNIA, DEPARTMENT OF SOCIAL  
SERVICES, IN-HOME SUPPORTIVE SERVICES, legally uninsured, administered by  
YORK RISK SERVICES GROUP, *Defendants***

**Adjudication Number: ADJ14834670  
Santa Ana District Office**

**OPINION AND ORDER  
DENYING PETITION  
FOR RECONSIDERATION**

Defendant State of California, Department of Social Services, In-Home Supportive Services (IHSS) seeks reconsideration of the Findings of Fact (Findings), issued by the workers' compensation administrative law judge (WCJ) on March 4, 2026, wherein the WCJ found in pertinent part that Quang Nhat Trinh (decedent), while employed during the period December 3, 2020, through December 17, 2020, sustained injury arising out of and in the course of employment (AOE/COE) by COVID-19, resulting in death, and that IHSS did not meet their burden of proof to establish that decedent had concurrent employment as at the time of his injury.

Defendant IHSS contends that the finding of injury AOE/COE is not supported by substantial evidence because the opinions of panel qualified medical evaluator (QME) Betsy Kuriakose, M.D., do not constitute substantial medical evidence.

We have not received an Answer from any party.

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

We have considered the allegations in the Petition and the contents of the Report with respect thereto.

Based on our review of the record, for the reasons stated in the WCJ's Report, which is adopted and incorporated herein, and for the reasons discussed below, we will deny defendant's Petition for Reconsideration.

## BACKGROUND

We will briefly review the relevant facts.

Applicant claimed that decedent sustained injury in the form of COVID-19, resulting in his death on December 17, 2020, while employed by defendant as a caregiver.

On September 12, 2023, defendant IHSS filed a Petition for a replacement QME panel, stating:

On or about 5/15/2023, parties submitted advocacy letters to Internal QME Avi Hettena, who was selected by the parties from Internal Medicine Panel #7535739, requesting that he issue a report addressing causation of Applicant's COVID Death Claim. He was scheduled to examine the records on 5/15/2023.

...

To this day [September 12, 2023], QME Hettena has not issued his initial QME report. It has been over 120 days since the initial evaluation date.

(Petition for replacement QME panel, p. 1.)

Following a status conference on September 13, 2023, an Order for replacement QME panel issued. (September 14, 2023 minutes and Order, p. 1.)

On March 18, 2024, Dr. Kuriakose issued a QME report. (Ex. 1, QME report dated March 18, 2024.) Dr. Kuriakose reviewed applicant Thi Van Tran's deposition transcript (*Id.*, pp. 6-7), decedent's medical records (*Id.*, pp. 8-11), the report of prior QME Avi Hettena, dated September 13, 2023 (*Id.*, pp. 11-13), and interviewed applicant.

Dr. Kuriakose states in, in relevant part, as follows:

Per the wife, the applicant was working at a restaurant in 2019 and then began with IHSS home care in early 2020, during which time, he moved in to the patient, Chris Le's home to take care of him full time. The applicant's wife was also a care provider who worked for IHSS for the same patient and was also living with the patient, Chris Le, at that time. Based on the history from the wife, Mr. Quang Trinh did not work anywhere else besides for the patient, Mr. Chris Le, and IHSS during this time in 2020.

As per the wife, in early December of 2020, around December 8 or 9, the patient, Chris Le, began to show symptoms, that were unspecified and was evaluated by a nurse as well as a doctor. He was found to be positive at that time, and therefore, the deceased as well as the wife, Ms. Tran, began to wear masks in order to continue to take care of the patient, Chris Le. As per the wife, the deceased, Mr. Trinh, began to experience symptoms on December 11, 2020 with a cough and fever. He otherwise did not display any other symptoms. He

was eventually tested per the wife on December 14, 2020 and was found to be positive along with his wife, Mrs. Tran. On the morning of December 17, 2020, around 5:00 a.m., the deceased was found to be unresponsive and therefore, the patient called 911. Per medical records, EMS noted that they arrived around 8:00 a.m. and the deceased was noted to be in asystole. No bystander CPR was initiated. Nonetheless, CPR was initiated and the deceased was taken to Hoag Hospital. Per medical records, CPR and ACLS was continued. However, as the deceased was noted to be in asystole for a prolonged period of time, the code was halted and the applicant was pronounced at 8:24 a.m. on December 17, 2020. The deceased's wife is claiming that the deceased contracted COVID-19 from the patient Chris Le, whom they were taking care of through IHSS home care.

(Ex. 1, QME report, p. 14.)

Per the testimony, Mrs. Tran as well as the patient, Chris Le, began displaying symptoms on December 11, 2020. A nurse evaluated Mr. Le on December 11, 2020 and was tested positive. It appears that on December 12, 2020, the deceased, Mrs. Tran, as well as Chris Le went to a test location and tested and received results of being positive on December 14, 2020. Medical records and progress notes from Dr. Mary Tran, who is the deceased's primary care provider, notes symptoms on December 10, 2020 with cough, pain and fever. The note indicates that the deceased was COVID positive.

...

There is also a mention of telephone interview with the brother of Quang Trinh. However, I do not have these medical records available to me. There is discrepancy in what Mrs. Tran has stated as far as concurrent work while taking care of Mr. Chris Le. Per the brother, the deceased was working at a restaurant about three times per week at the same time he was taking care of Mr. Chris Le as a caretaker.

(Ex. 1, QME report, p. 15.)

Based on the medical records, it appears that the deceased started to show symptoms around December 10, 2020 as medical records from the primary care provider indicates. He was noted to be positive for COVID at that time. Per the wife's testimony as well as on my evaluation, it appears that the patient, Mr. Chris Le, as well as the wife, Mrs. Tran, had symptoms prior to this. However, there is some discrepancy in this exact history. Nonetheless, the only official COVID positive test is from December 10, 2020 as indicated by the primary care provider. As per the wife, there was a positive test result on December 14, 2020.

...

COVID-19 symptoms will usually be seen on an average of five days after exposure. If this is the case, then a confirmed COVID-19 positive test was found on December 10, 2020, indicating that the deceased probably contracted COVID-19 in early December, around the fourth or fifth or so. If the deceased only worked with Chris Le through IHSS, then it is evident that the deceased contracted COVID-19 from Mr. Chris Le as he was also noted to have a positive test and displayed symptoms per the wife. However, if as the records indicated and as the deceased's brother indicated the deceased worked at a restaurant while taking care of Mr. Chris Le, then it is possible that the deceased may have contracted COVID-19 outside of Mr. Chris Le's home. I do not have evidence of that at this time.

(Ex. 1, QME report, p. 19.)

#### APPORTIONMENT

While he may have worked a restaurant around the time that he contracted Covid, I have no evidence that he contracted covid from that facility and I did not find evidence that anyone at the restaurant had Covid around that time. There was evidence of some Covid in the Le home around the time when Mr. Trinh came down with Covid.

(Ex. 1, QME report, p. 20.)

On August 21, 2025, the matter proceeded to trial on the following issues: Employment and injury arising out of and in the course of employment. (Minutes of Hearing and Summary of Evidence (MOH/SOE), August 21, 2025 trial (filed September 17, 2025), p. 3.)

Applicant (and decedent's widow) Thi Van Tran testified in relevant part as follows:

The patient, Chris Le, tested positive for COVID. She believed that the test was conducted some time either on December 9, or December 10 of 2020.

(Ms. Tran's trial testimony, MOH/SOE, August 1, 2025, p. 4.)

Decedent and applicant tested positive for COVID on December 14, 2020.

(Ms. Tran's trial testimony, MOH/SOE, August 1, 2025, p. 5.)

Mr. Le, the patient for whom both applicant and decedent were employed as caretakers, testified in pertinent part as follows:

The decedent's wife worked and stayed at his house seven days per week. Both the decedent and his widow told Mr. Le that he worked part-time because he had another place he had to return to, the other days of the week. He also had to return to the place that he rented.

(Mr. Le's trial testimony, MOH/SOE, December 16, 2025, p. 3.)

In December of 2020, Mr. Le contracted a mild case of COVID-19. He was also aware that the widow and the decedent also contracted COVID.

(Mr. Le's trial testimony, MOH/SOE, December 16, 2025, p. 4.)

Mr. Le confirmed that the decedent worked for him three days per week. The allotted number of hours the decedent had was 100 per month. Generally, he worked from noon to nighttime except on Sunday when he would leave at 11:00 a.m.

On average, the decedent's schedule would begin on Fridays at 11:00 a.m. where he would stay overnight. On Saturdays, he was already there, so he worked Saturday, staying overnight until Sunday. On Sunday he would wake up and leave at 11:00 a.m.

Some hours that he worked as part of an overnight shift did include sleeping hours; however, he was available to provide assistance if there was pain and he needed to call him.

When the decedent was not working at his place staying overnight, he had another place to go where he also lived. The decedent told him about this other place and that is where he also went when he wasn't working for Mr. Le.

The widow stayed at the witness' place and did not live at the other place at any time.

(Mr. Le's trial testimony, MOH/SOE, December 16, 2025, p. 6.)

Decedent's brother testified at trial, but he provided no testimony contradicting Mr. Le's or applicant's testimony. (MOH/SOE, October 23, 2025, pp. 2-3.) No other witnesses testified.

On March 4, 2026, the WCJ issued the following Findings:

1. Quang Nhat Trinh deceased, born [] while employed during the period December 3, 2020, through December 17, 2020, as a caregiver, at Garden Grove, California, by State of California, Department of Social Services In-Home Supportive Services (IHSS), and allegedly employed by Four Seasons Restaurant Group, sustained injury arising out of and in the course of employment by COVID-19, resulting in death.
2. Co-Defendant IHSS failed to sustain their burden of proving applicant decedent had concurrent employment as an employee of Four Seasons Restaurant Group at the time of his injury.

(March 4, 2026 Findings, pp. 1-2.)

## DISCUSSION

### I.

Former Labor Code section<sup>1</sup> 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 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 March 27, 2026, and 60 days from the date of transmission is May 26, 2026. This decision is issued by or on May 26, 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 by the WCJ, the Report was served on March 27, 2026, and the case was transmitted to the Appeals Board on March 27, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus,

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<sup>1</sup> All statutory references are to the Labor Code unless otherwise stated.

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 March 27, 2026.

## II.

To be compensable, an injury must arise out of and occur in the course of employment. (Lab. Code, § 3600.) The employee 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 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.) Medical evidence that industrial causation was reasonably probable, although not certain, constitutes substantial evidence for a finding of injury AOE/COE. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 417 [33 Cal.Comp.Cases 660].) “That 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].)

Turning to whether there is substantial medical evidence of industrial causation, 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. (*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 (Appeals Bd. en banc).)

In cases where an applicant's injury is caused by a communicable disease, the essential questions of when and where applicant contracted the disease may be unanswerable with any certainty. Medical evidence is required to establish industrial causation by demonstrating that it is more likely applicant acquired the disease at work or that the employment subjected the employee to a special risk of exposure in excess of that of the general population. (*Bethlehem Steel Co. v. Industrial Acc. Com.* (1943) 21 Cal.2d 742 [8 Cal.Comp.Cases 61]; *Clark, supra*, 61 Cal.4th at p. 301.) It is a medical expert's job to assess whether is medically probable that disease transmission occurred at work. The opinions of qualified physicians are entitled to consideration “since it is part of their vocation to observe diseases and how they spread and to draw conclusions from those observations.” (*Pacific Employers Ins. Co. v. Industrial Acc. Com. (Ehrhardt)* (1942) 19 Cal.2d 622, 629 quoting *San Francisco v. Industrial Acc. Com. (Slattery)* (1920) 183 Cal. 273, 284.)

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*,

*supra*, 70 Cal.Comp.Cases 604; see also *E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687].) The doctor must set forth the basis for the opinion, and may not rely on facts that are not germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372; *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358].)

Here, decedent worked as a caregiver approximately three days per week, providing round-the-clock care. On his days off, he returned to his own apartment. (Mr. Le's trial testimony, MOH/SOE, December 16, 2025, pp. 3, 6.) Decedent's spouse provided care to the same patient, also providing round-the-clock care, however, she remained at the patient's home on her days off. (*Id.*) Thus, applicant and decedent were in proximity to one another even on their days off. With respect to industrial exposure, decedent's employer Mr. Le and decedent's co-worker (and spouse) also contracted COVID-19 within days of decedent.

It is unclear what decedent did on his days off, however the WCJ found that IHSS failed to sustain their burden of proving decedent had concurrent employment at the time of his injury. IHSS does not challenge this finding and, based on the record, we will not disturb the WCJ. Perhaps more importantly, however, the evidence does not establish an alternate source of exposure, whether industrial or non-industrial.

Although there are some inconsistencies, the record indicates the following basic timeline. We note that the underlying medical records were not entered into evidence, however they were provided to the QME by defendant and there appears to be no dispute regarding the QME's summary:

- December 8-9, 2020: decedent's employer Mr. Le started experiencing symptoms on December 8th or 9th, 2020, or else possibly December 11, 2020. (Ex. 1, QME report, pp. 7, 14-15.)
- Mr. Le testified that his was a mild case of COVID-19. (Mr. Le's trial testimony, MOH/SOE, December 16, 2025, p. 4.)
- December 10, 2020: medical records indicate that decedent was experiencing symptoms on December 10, 2020, and his primary care physician Mary Tran, D.O. notes with COVID-19. (Ex. 1, QME report, p. 10.)
- December 11, 2020: applicant recalls that she and Mr. Le displayed symptoms on December 11, 2020, that decedent cared for them, and that on December 12, 2020, decedent displayed symptoms. (Ex. 1, QME report, p. 7.)

- December 11, 2020: applicant reports that a nurse tested Mr. Le on December 11, 2020, and he tested positive for COVID-19. (Ex. 1, QME report, p. 7.)
- December 12, 2020: decedent, decedent's wife, and decedent's employer Mr. Le went to a test location to obtain COVID-19 tests. All three received positive test results on December 14, 2020. (Ex. 1, QME report, pp. 14-15.)
- December 17, 2020: decedent was taken to the hospital and was pronounced dead later in the day.

Defendant contends that the QME failed to identify a specific industrial exposure event or evaluate whether work exposure was a contributing cause. This is contradicted by the discussion of the employer's positive COVID-19 test, the timing of the decedent's, applicant's, and employer's symptoms and positive test results, the amount of time decedent spent in the employer's home, as well as exposure to applicant (who was also a co-worker and was with the employer 24 hours per day, seven days per week.)

We note that the severity and onset of COVID-19 symptoms vary person to person. Decedent's employer Mr. Le testified that he had a mild case of COVID-19. (Mr. Le's trial testimony, MOH/SOE, December 16, 2025, p. 4.) At trial defendant did not ask Mr. Le about when his symptoms commenced or when he first tested positive. Applicant testified that she believed that Mr. Le first tested positive on either December 9 or December 10 of 2020 and then again on December 12, 2020. (Ms. Tran's trial testimony, MOH/SOE, August 1, 2025, pp. 4-5.)

With respect to timing, the QME provided:

COVID-19 symptoms will usually be seen on an average of five days after exposure. If this is the case, then a confirmed COVID-19 positive test was found on December 10, 2020, indicating that the deceased probably contracted COVID-19 in early December, around the fourth or fifth or so. If the deceased only worked with Chris Le through IHSS, then it is evident that the deceased contracted COVID-19 from Mr. Chris Le as he was also noted to have a positive test and displayed symptoms per the wife.

(Ex. 1, QME report, p. 19.)

The QME reviewed, analyzed, and weighed the evidence provided to her, and specifically addressed her approach to the evidence:

The decedent's widow testified that he tested positive for COVID-19 on December 11, 2020 and that the following day, the decedent, his wife, and he were retested and all informed of positive results on December 14, 2020. The only test result documented in the records was the positive result handwritten in Dr. Tran's note. **The records provided did not contain any of the other test results. Since the only documentation of COVID symptoms and testing**

was the 12/10/2020 note by Dr. Tran, **this record carried more weight than undocumented testimony.**

(Ex. 1, QME report, pp. 11-12, emphasis added.)

While it is not possible to pinpoint when decedent and his employer each contracted COVID-19, defendant's arguments about "directionality of infection" and "epidemiological timing" are not persuasive.

Defendant contends that the QME failed to address alternative sources of infection. The QME noted that there is "is also a mention of telephone interview with the brother []. However, I do not have these medical records available to me. ... Per the brother, the deceased was working at a restaurant about three times per week at the same time he was taking care of Mr. Chris Le as a caretaker." (Ex. 1, QME report, p. 15.) The QME concluded that while decedent may have worked a restaurant around the time that he contracted COVID-19, she had no evidence that he contracted COVID-19 from that facility and did not find evidence that anyone at such a restaurant had COVID-19 around that time. (Ex. 1, QME report, pp. 19-20.)

The QME notes at the end of her report that, as a caregiver for IHSS, decedent reasonably meets the criteria for health care workers as a provider of in-home supportive services. Defendant's contention that the QME report explicitly bases causation on the decedent's status as an IHSS worker falling within Senate Bill (SB) 1159 categories, rather than an independent medical analysis, is also unpersuasive and misguided.

Sections 3212 through 3213 contain a series of statutory presumptions regarding the industrial nature of various injuries. These presumptions are a reflection of public policy whose purpose is to provide additional compensation to employees who provide vital and hazardous services "by easing their burden of proof of industrial causation." (*City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal. App. 4th 298, 310-311 [70 Cal.Comp.Cases 109].) Sections 3212.86, 3212.87, and 3212.88 were enacted pursuant to SB 1159 as urgency statutes in the context of the COVID-19 pandemic - necessary for the immediate preservation of the public peace, health, or safety, on September 17, 2020. In broad terms section 3212.86 applies to the time frame from March 9, 2020 to July 5, 2020; section 3212.87 applies to front-line workers; and section 3212.88 applies to workers not described in section 3212.87, who meet certain criteria.

Here, defendant appears to misapprehend how presumptions operate. Generally, once a worker demonstrates that they are entitled to the presumption, they are relieved of the burden of

showing, by a preponderance of the evidence, that industrial causation was reasonably probable. In other words, a full causation analysis may not be required. Here, the QME provided a full analysis of causation and apportionment. The WCJ noted that the parties did not raise the COVID-19 presumptions and that as such the WCJ decided the matter after considering the evidentiary record.

Here, Dr. Kuriakose's QME report is well-reasoned, based on an adequate history, and discloses a solid underlying basis for the opinion. (*Escobedo, supra*, 70 Cal.Comp.Cases 604; *Gatten, supra*, 145 Cal.App.4th 922.) Dr. Kuriakose sets forth the reasoning behind the her opinions. (*Hegglin, supra*, 4 Cal.3d 162; *Granado v. Workmen's Comp. Appeals Bd.* (1970) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *Escobedo, supra*, 70 Cal.Comp.Cases 604.) Eschewing speculation or surmise, Dr. Kuriakose repeatedly notes that her opinions are based on the available evidence. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Brooks)* (2013) 215 Cal.App.4th 785, 797 [78 Cal.Comp.Cases 379]; *Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 923.)

While the WCJ could have ordered further medical reporting with respect to applicant's COVID-19 injury, based on the record before us we conclude that the QME's reporting is sufficient to find that decedent's COVID-19 injury is industrial.

Accordingly, we deny defendant's Petition for Reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

I CONCUR,

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

**/s/ PAUL F. KELLY, COMMISSIONER**



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

**MAY 26, 2026**

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

**THI VAN TRAN  
PVM LAW GROUP  
HANNA, BROPHY, MacLEAN, McALEER & JENSEN, LLP  
TOBIN LUCKS LLP**

***JB/pm***

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

**REPORT AND RECOMMENDATION  
ON PETITION FOR RECONSIDERATION**

**INTRODUCTION**

Defendant, STATE OF CA - DEPT OF SOCIAL SERVICES - IHSS, has filed a timely, verified petition for reconsideration, on the standard statutory grounds, from the trial court's March 4, 2026 Findings and Award, pleading that:

- 1) The Board acted without or in excess of its powers.
- 2) The evidence does not justify the findings of fact.
- 3) The findings do not support the Award.

**STATEMENT OF FACTS**

Quang Nhat Trinh deceased, born [ ], while employed during the period December 3, 2020, through December 17, 2020, as a caregiver, at Garden Grove, California, by State of California, Department of Social Services In-Home Supportive Services (IHSS), and allegedly employed by Four Seasons Restaurant Group, sustained injury arising out of and in the course of employment by COVID-19, resulting in death. This matter proceeded to trial as Defendant denied decedent's claim.

The parties presented for trial and the matter was submitted on December 16, 2025 and a Finding issued on January 16, 2026. Following a Petition for Reconsideration, the WCJ vacated the Findings and Opinion on Decision and then resubmitted the matter on February 12, 2026. A Findings of Fact and Opinion on Decision issued on March 4, 2026 and is the subject of the instant Petition for Reconsideration.

Parties offered witness testimony from decedent's widow, brother, client/patient, and a purported concurrent employer. Additional evidence included medical reporting from PQME Dr. Betsy Kuriakose, dated March 18, 2024.

**DISCUSSION**

Two issues were raised at trial. First, whether decedent had concurrent employment with Four Seasons Restaurant Group as alleged by petitioner, and second, whether decedent applicant met the burden of injury AOE/COE. The WCJ found that petitioner did not meet the burden of

proving there was concurrent employment with the restaurant, and also that decedent did meet his burden of proving injury AOE/COE.

The opinion of a single physician may constitute substantial evidence, unless it is erroneous, beyond the physician's expertise, no longer germane, or based on an inadequate history, surmise, speculation, conjecture, or guess. (*Bolton, supra*, 34 Cal.3d at p. 169 [full citation: *Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159 [48 Cal.Comp.Cases 566]]; see also *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. en banc).) The medical opinion in a report must be based on reasonable medical probability in order for the report's findings to be considered substantial evidence, though it does not need to be based on scientific certainty.

Parties did not raise the presumption for compensability to COVID-19. Therefore, the WCJ decided the matter based on the review of the evidence that addresses injury AOE/COE.

As to COVID-19, case law has addressed where compensability from an infectious disease can be supported. The Supreme Court of California explained in *Latourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644, 654, that "[I]n the area of nonoccupational disease, '[t]he fact that an employee contracts a disease while employed or becomes disabled from the natural progress of a nonindustrial disease during employment will not establish the causal connection.'" The court explained, "The narrower rule applicable to infectious diseases arises from the obvious problems of determining causation when the source of injury is of uncertain etiology, the product of invisible and often widespread viral, bacterial, or other pathological organisms. The potentially high costs of avoidance and treatment for infectious diseases, coupled with the fact that such illnesses often cannot be shown with certainty to have resulted from exposure in the workplace, also explain the different line-drawing by our courts in the area of nonoccupational disease." (*Ibid.*)

Nevertheless, there are two exceptions to the general rule of non-compensability for nonoccupational disease. An injury resulting from a nonoccupational disease may be compensable if:

1. The employment subjects the employee to an increased risk compared to that of the general public; or
2. The immediate cause of the injury is an intervening human agency or instrumentality of the employment.

The first exception is exemplified by the case of *Bethlehem Steel Co. v. Industrial Acci. Com.* (1943) 21 Cal.2d 742. In that case, employees working in shipyards contracted the contagious eye disease known as kerato conjunctivitis. Although there was evidence the disease was also epidemic in San Francisco, the Supreme Court found the evidence “quite convincing that the disease in the community outside of the shipyards was of much less proportion compared to the population.” It found “the epidemic in the shipyards constituted a special exposure in excess of that of the commonalty.” (Id. at pp. 749-750.) Therefore, the Supreme Court found evidence that the employees’ risk of contracting the disease by virtue of the employment was materially greater than that of the general public and affirmed a decision finding the employees’ claims compensable.

Thus, if an employee could demonstrate that he or she had a greater risk of exposure at the workplace compared to that of the general public, the courts could find an employee’s exposure to the coronavirus compensable. Per *Bethlehem Steel*, this could be established if the evidence establishes a greater proportion of the employees at the worksite were exposed than the general population such that they were subject to special exposure. Therefore, if the employment places an employee in a position of greater risk to the coronavirus than the general public, the courts could also find an employee’s exposure to the coronavirus compensable. Doctors, nurses, or other health care workers, who are required to treat patients with the coronavirus could potentially file their own workers’ compensation claim if they contract the virus. Moreover, employees who are required to work in close proximity to large numbers of people could argue they are subject to an increased risk compared to that of the general public. Based on a review of the facts of this case, and the evidentiary record, it is reasonable to conclude that decedent worked in a position that placed him in a position of greater risk. This leads to the issue of medical reporting supporting whether decedent contracted COVID-19 at work.

Petitioner argues the medical reporting is not substantial medical evidence in addressing causation; however, the undersigned concluded that the reporting was well-reasoned and persuasive concerning applicant’s employment as a care taker in an environment that could foster exposure to COVID-19. It should be noted that this matter took place over several trial days for witness testimony as petitioner’s claim initially rested heavily on the supposition that decedent’s COVID-19 illness could have been due to concurrent employment with a restaurant – in other words, a high exposure to large numbers of people. The medical reporting suggested petitioner

pursue a strategy for finding another source for decedent's COVID-19 related death. As provided in the Opinion on Decision, the medical report indicated: "If the deceased only worked with Chris Le through IHSS, then it is evident that the deceased contracted COVID-19 from Mr. Chris Le as he was also noted to have a positive test and displayed symptoms per the wife. However, if as the records indicated and as the deceased's brother indicated the deceased worked at a restaurant while taking care of Mr. Chris Le, then it is possible that the deceased may have contracted COVID-19 outside of Mr. Chris Le's home. I do not have evidence of that at this time." (Applicant's Exhibit 1, March 18, 2024, page 19.) Also as previously noted, Dr. Kuriakose's causation section concluded that "Based on the available evidence and review of the mechanism of injury, I find the condition of COVID-19 is related to the injury claimed in December 2020. The injury is supported by the medical records along with diagnostic testing." The concurrent employment claim was unsupported, therefore, the possible scenario described by the QME as to exposure somewhere else cannot be established. The WCJ relied on the medical reporting's conclusion that decedent contracted COVID-19 during the course of his employment resulting in an industrial injury leading to his death.

### **RECOMMENDATION**

For the reasons discussed, it is respectfully recommended that the petition for reconsideration be denied.

Date: March 27, 2026

**Jennifer Kaloper-Bersin**  
Workers' Compensation  
Administrative Law Judge  
SANTA ANA DISTRICT OFFICE