WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

RAYMUNDO DEVERA, ***Applicant***

vs.

HEALTHCARE PARTNERS MEDICAL GROUP (formerly known as BAYSHORE MEDICAL GROUP); CALIFORNIA INSURANCE GUARANTEE ASSOCIATION (CIGA) for GREAT STATES INSURANCE COMPANY, in liquidation; STATE COMPENSATION INSURANCE FUND (SCIF); ZURICH NORTH AMERICA, ***Defendants***

Adjudication Numbers: ADJ3375264 (MON 0179814); ADJ4499046 (LBO 0372005); ADJ3207121 (LBO 0366303)
Long Beach District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

CIGA seeks reconsideration of the April 24, 2026 Amended Findings and Orders (F&O) wherein the workers' compensation administrative law judge (WCJ) found that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to the neck and shoulders while employed as a medical records clerk by Healthcare Partners Medical Group (Healthcare Partners, formerly known as Bayshore Medical Group) on March 11, 1993 (ADJ3375264), but did not sustain injury AOE/COE to the neck or upper extremities during the periods from March 12, 2000 through March 12, 2001 (ADJ4499046), or to the neck and shoulders during the period August 23, 2003 through August 23, 2004 (ADJ3207121). The WCJ also held that SCIF and Zurich are not "other insurance" within the meaning of Insurance Code section 1063.1(c)(9), and that the issue of change of administration "is barred by the principles of res judicata" given the prior November 19, 2014 Order denying CIGA's request. The WCJ held that CIGA would remain liable for providing benefits in ADJ3375264, and that applicant take nothing further in ADJ4499046 and ADJ3207121.

CIGA contends that the issue of administration is not barred by res judicata "because the 2014 Minutes order at a Status Conference was not a final determination of [the issue on] the merits." (Petition for Reconsideration (Petition), p. 15.) CIGA further contends that there is substantial medical evidence of injury AOE/COE to the neck during the periods from March 12, 2000 through March 12, 2001 (ADJ4499046) and August 23, 2003 through August 23, 2004 (ADJ3207121) thereby rendering SCIF and Zurich "other insurance" under Insurance Code section 1063.1(c)(9). (*Id*. at p. 16.)

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

We have considered the allegations in the Petition and Answer, the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for the sole purpose of amending the F&O to reflect that determination of CIGA's petition as to the issue of change of administration was not barred by res judicata or collateral estoppel. We otherwise affirm the F&O.

FACTS

While employed by Healthcare Partners on March 11, 1993 (ADJ3375264) as a medical records clerk, applicant sustained injury AOE/COE to the neck and shoulders. At the time of the injury, Healthcare Partners was insured by Great States Insurance Company (Great States).

In August of 1994, ADJ3375264 was settled via Stipulations with Request for Award. The settlement was approved by a WCJ on August 24, 1994 against Bay Shore Medical Group/Great States. Thereafter, a Petition to Reopen for New and Further Disability was filed, and after further discovery, the parties entered into Stipulations with Request for Award based upon thirty-six percent (36%) permanent disability to the neck and shoulders on May 2, 2000. An Award was issued by the WCJ on July 13, 2000. Thereafter, Great States entered into liquidation, at which point CIGA took over administration of the claim.

On April 17, 2001, applicant filed a DWC-1 claim form alleging a March 12, 2001 injury to the bilateral hands in the form of carpal tunnel while employed by Healthcare Partners. At the time, Healthcare Partners was insured by SCIF. (Exhibits 1 and B2.) On July 11, 2001, Lee Silver, M.D. evaluated applicant and issued a corresponding report outlining injury AOE/COE to the

bilateral hands and wrists. (Exhibit A12, pp. 4-5.) The claim was accepted by SCIF but closed due to inactivity. (Exhibits B6 and B9). On or about August 1, 2005, applicant filed an Application for Adjudication of Claim (Application) against Healthcare Partners and SCIF, alleging that he sustained an injury AOEC/COE during the period from January 2, 1991 through March 12, 2001 (ADJ4499046) to the bilateral upper extremities. (Exhibit B10.) On October 24, 2005, Israel Rottermann, M.D. evaluated applicant and diagnosed him with "status post anterior cervical fusion with ongoing left upper extremity symptoms" and "history of bilateral carpal tunnel[.]" (Exhibit A4, p. 8.) Dr. Rottermann concluded that applicant's condition was "caused by a continuous trauma rather than a specific injury." (*Ibid*.)

SCIF denied applicant's claim On October 27, 2005, and advised that their denial was based upon the opinions of Dr. Rottermann who found that applicant did not sustain injury AOE/COE during the period from March 12, 2000 through March 12, 2001. (Exhibit B7.)

On January 10, 2005, applicant filed a DWC-1 claim form alleging a cumulative injury from August 23, 2003 through August 23, 2004 to the neck while employed by Healthcare Partners. Thereafter, an Application was filed for injury to the shoulders and back (ADJ3207121). Zurich provided coverage during this period.

Applicant, SCIF, and Zurich retained Alan Sanders, M.D. as the orthopedic panel Qualified Medical Evaluator (PQME) for the cumulative injury claims. He was later replaced by Steven Nagelberg, M.D., then Lawrence Feiwell, M.D.

In his report dated November 12, 2008, Dr. Sanders opined that:

> With regard to the [applicant's] hands and shoulders, [applicant's] disability is related to his prior claims, cases, injuries, degenerative process, and arthritis existing up to and through 2002, when he settled his last claim. There is no additional continual trauma. He simply has had exacerbations, but not aggravations.

(Exhibit A13, pp. 36-37.)

With respect to applicant's neck complaints, Dr. Sanders similarly noted that applicant's "continued work until 2005 did nothing but cause exacerbation" and notwithstanding applicant's neck surgery, he did not sustain "any further disability, impairment, limitations, or restrictions." (*Id*. at p. 36.)

In a report dated January 17, 2008, Dr. Nagelberg opined that applicant sustained a twenty-eight percent (28%) whole person impairment (WPI) to the neck based upon DRE category IV and a nine percent (9%) WPI due to sleep disorder. (Exhibit A10, p. 4.).) He further noted that he

continued to believe there was one entire period of cumulative trauma and that each carrier was responsible on a pro rata basis. (*Id*. at p. 5.) With respect to causation and apportionment, he noted that this was addressed in his initial report of December 6, 2005, and his supplemental report of October 10, 2007, and that he would incorporate these prior medical opinions by reference. (*Ibid*.) The October 10, 2007 report is not located in the record. In his December 6, 2005 report, Dr. Nagelberg noted that "it is highly probable that [applicant] has sustained an overuse syndrome related to his repetitive hand/upper extremity-intensive and prolonged activities with this employer, which constitutes a continuous-trauma work injury." (Exhibit A7, p. 9.) He did not provide an opinion on apportionment.

On January 12, 2009, SCIF issued a second denial letter as to the March 12, 2001 date of injury on the basis that Dr. Nagelberg indicated applicant's cumulative injury extended through applicant's last date of employment in December 2005, which was outside their period of coverage per section 5500.5. (Exhibit B5.)

On July 15, 2014, CIGA filed a Petition for Change of Administration seeking an order designating SCIF and/or Zurich as the new administrator pursuant to Insurance Code section 1063.1(c)(9).

The matter proceeded to a status conference on November 19, 2014, and in the Minutes of Hearing the WCJ indicated the following:

> CIGA's Petition for Change of Administrators in ADJ3375264 is denied as there is not an add[itional] defendant in that case that can be the administrator. [CIGA] wants [the] administrator changed to a different more recent case where the med[ical records] differ as to whether [future medical treatment] is necessary for the newer cases.

The matter was ordered off calendar, and service of the Minutes of Hearing was delegated to defense counsel for CIGA. On November 27, 2017, CIGA filed an Amended Petition for Change of Administration alleging that per the findings of Drs. Rottermann and Nagelberg, applicant sustained one continuous cumulative injury rather than a specific injury thereby rendering SCIF and Zurich other insurance under Insurance Code section 1063.1(c)(9).

On December 12, 2018, applicant was evaluated by Dr. Feiwell, who issued a report on the same date. In his report, Dr. Feiwell stated that "[a]t this juncture, I can state that very little if any of complaints or findings are likely due to cumulative trauma and are due to the sequalae of the specific injury, his prior car accident and most significantly his cerebral palsy." (Exhibit A3, p.

42.) In a report dated May 24, 2019, Dr. Feiwell opined that applicant had "findings consistent with cerebral palsy with atypical changes status post anterior fusion at C4-5, auto fusion C5-6, status post posterior decompressive surgery" with a resulting twenty-nine percent (29%) WPI to the cervical spine. (*Ibid*.) In a supplemental report dated December 8, 2020, he explained that "49% of [applicant's] current neck findings were due to cumulative trauma injury" and the remainder due to applicant's "prior accident and his specific injury of 2003." (Exhibit A1, p. 2.) Further explanation was not provided. He also opined that "[t]here was no indication that [applicant's] shoulder complaints of findings were in any way related to cumulative trauma while working for Healthcare partners since [applicant] had a normal shoulder examination other than resection arthroplasty of the distal clavicle which was performed for [the] specific injury in 1993." (*Id*. at p. 2.)

On November 4, 2022, CIGA filed a Petition for Consolidation and on December 8, 2022, the WCJ ordered consolidation of all three claims.

On November 7, 2024, applicant and SCIF entered into a Compromise and Release Agreement (C&R) for settlement of the cumulative injury claim from March 12, 2000 – March 12, 2001 (ADJ449046) to the hands and wrists. The C&R indicated that settlement "related solely to case number ADJ449046" as applicant "previously amended case number ADJ3207121 to allege a cumulative trauma during applicant's one last year of employment" and since SCIF had filed a petition seeking to be "dismissed from said subsequent cumulative trauma." The settlement was based upon reporting from Drs. Nagelberg, Feiwell, and Sanders but did not include any permanent disability. On November 25, 2024, the WCJ issued an Order Approving Compromise and Release (OACR).

On April 23, 2025, applicant and Zurich entered into a C&R for settlement of the cumulative injury claim from August 23, 2003 to August 23, 2004 (ADJ320712) to the neck, back, and shoulders. The settlement indicated that the claim was denied "per Dr. Sanders who found no CT under coverage of Zurich." Permanent disability was not indicated and the OACR was issued by the WCJ on April 23, 2025.

On October 17, 2025, CIGA filed a Declaration of Readiness to Proceed regarding their Petition for Change of Administration. All three claims proceeded to hearing and were ultimately set for trial, to be held on February 23, 2026.

At trial, the following issues were set for determination in all three claims: CIGA's Petition for Change of Administration and whether said petition was barred by the WCJ's November 19, 2014 Order. In ADJ3375264, the issue of whether SCIF and/or Zurich are other insurance pursuant to Insurance Code section 1063.1(c)(9) was also set for determination. In ADJ4499046, additional issues set for determination included injury AOE/COE; parts of body injured; and statute of limitations. Lastly, in ADJ320712, the issue of injury AOE/COE was also set for determination.

On April 24, 2026, the WCJ issued a F&O which held that applicant sustained injury AOE/COE to the neck and shoulders while employed as a medical records clerk by Healthcare Partners Medical Group (formerly known as Bayshore Medical Group) on March 11, 1993 (ADJ3375264), but did not sustain injury AOE/COE to the bilateral upper extremities or neck during the period from March 12, 2000 through March 12, 2001 (ADJ4499046), or neck and bilateral shoulders during the period from August 23, 2003 through August 23, 2004 (ADJ3207121). The WCJ also held that SCIF and Zurich are not "other insurance" within the meaning of Insurance Code section 1063.1(c)(9), and that the issue of administration "is barred by the principles of res judicata" as it was previously determined via a November 19, 2014 Order. The WCJ therefore held that CIGA would remain liable for providing benefits in ADJ3375264, and that applicant take nothing further in ADJ4499046 and ADJ3207121.

It is from this F&O that CIGA seeks reconsideration.

DISCUSSION

I.

Preliminarily, former Labor Code[1] section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

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

> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected under the Events tab in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on June 1, 2026, and 60 days from the date of transmission is July 31, 2026. This decision was issued by or on July 31, 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 constitute notice of transmission.

Here, according to the proof of service for the Report, the Report was served on June 1, 2026, and the case was transmitted to the Appeals Board on June 1, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on June 1, 2026.

II.

Turning now to the merits of the Petition, Insurance Code section 1063.2(a) specifies that CIGA's fundamental statutory mandate is to pay and discharge the "covered claims" of insolvent insurers. Insurance Code section 1063.1(c)(1) sets forth the general definition of "covered claims," which, as relevant here, includes "the obligations of an insolvent insurer ... (i) imposed by law and within the coverage of an insurance policy of the insolvent insurer … [and] (vi) in the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the

workers' compensation law of this state… ." (See also *Cal. Ins. Guar. Ass'n v. Workers' Compensation Appeals Bd.* (2004) 117 Cal.App.4th 356 [69 Cal.Comp.Cases 186]; *Cal. Ins. Guar. Ass'n v. Workers' Compensation Appeals Bd.* (2003) 112 Cal.App.4th 364 [68 Cal.Comp.Cases 1448].) Insurance Code section 1063.1(c)(9)(i) provides that "[c]overed claims [do] not include any claim to the extent it is covered by any other insurance of a class covered by this article [14.2] available to the claimant or insured [.]" As such, in cases where there is coverage by a solvent insurer, CIGA has no duty to pay and discharge any claims and may in fact seek reimbursement from the "other" insurer for any benefits paid after insolvency for which the "other" insurer would have been liable. This may arise in cases wherein CIGA shares coverage in a cumulative injury with another insurer or where there is a separate injury, whether specific or cumulative, that involves overlapping body parts.

Here, CIGA contends that there is substantial medical evidence of injury AOE/COE to the overlapping body part of the neck during the periods from March 12, 2000 through March 12, 2001 (ADJ4499046), and August 23, 2003 through August 23, 2004 (ADJ3207121), and as such, SCIF and Zurich, the carriers for the respective cumulative injury claims, are "other insurance" within the meaning of Insurance Code section 1063.1(c)(9) and should take over administration. (Petition, p. 16.)

As the parties are well aware, substantial medical evidence is used to establish industrial causation. "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) Pursuant to *E.L. Yeager v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th922, 928 [71 Cal.Comp.Cases 1687], "[a] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (citations.) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (citation.)" "A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial

evidence to support a denial of benefits. (citation.)" (*Kyle v. Workers' Comp. Appeals Bd* (*City and County of San Francisco*) (1987) 195 Cal.App.3d 614, 621.)

Here, in her Opinion on Decision (OOD), the WCJ provided the following explanation regarding her finding that there was no substantial medical evidence of injury AOE/COE to the neck and bilateral shoulders during the periods from March 12, 2000 through March 12, 2001 (ADJ4499046) and from August 23, 2003 through August 23, 2004 (ADJ3207121):

> Dr. Feiwell, at the request of CIGA, evaluates Applicant, over four years after the Order issued dismissing the original Petition for Change of Administration. In his report of December 12, 2018, he states "At this juncture, I can state that very little if any of complaints or findings are likely due to cumulative trauma and are due to the sequalae of the specific injury, his prior car accident and most significantly his cerebral palsy."[21] He further states, "I cannot state with medical certainly that any of his increasing complaints of pain are due to anything other than his underlying cerebral palsy and the prior specific injury in 2003."[22] He does request the complete medical file and treating physicians records, as well as a formal job analysis.
>
> In his report of December 8, 2020, Dr. Feiwell, after multiple reports, cross examination, and records review, changes course and ultimately opines that 49% of the Applicant's "current neck findings were due to cumulative trauma injury through 2004, and the remainder is a combination of his documented cerebral radiculopathy after an injury in 1993, his subsequent car accident and his cerebral palsy." He fails to offer an adequate analysis of causation and fails to explain how and why the subsequent cumulative trauma injuries were caused.[23] Dr. Feiwell opines that subsequent cumulative trauma injuries were caused by the injured workers' pathology, not "physically traumatic activities," as required by Labor Code §3208.1.
>
> There was no "formal job analysis" provided to Dr. Feiwell. Applicant did not provide testimony at trial to clarify what his job duties were as a medical records clerk, and if these duties changed over the course of his employment. CIGA relies on a variety of sources describing Mr. Devera's job duties, from the reporting of Nagelberg, to the Applicant's deposition testimony and mere speculation. Dr. Feiwell specifically states, when referring to the weightlifting requirements of the job, that he does not "even know if it's accurate. I assume that some of it was, which was why I apportioned according to pathology versus what he said he was doing."[24] The medical reports of Dr. Feiwell are not substantial medical evidence since he relied on an inaccurate, or at least unclear, history of Mr. Devera's job activities.

[21] CIGA Exhibit A3 (Feiwell report, p. 42. EAMS Doc ID # 57168329).
[22] There is no specific injury alleged for a date in 2003; CIGA's Exhibit A3 (Feiwell report, p. 42. EAMS Doc ID # 57168329).
[23] CIGA Exhibit A1 (Feiwell report, p.11; EAMS Doc. ID#57168327)
[24] CIGA Exhibit A5 (Deposition Transcript, Feiwell, pg. 2, 17; EAMS Doc ID #57168334).

The testimony of Applicant was not offered by Defendant CIGA at trial. Although applicant's attorney did appear, none of the parties called the injured worker as a witness. CIGA sought to submit the deposition of Applicant into evidence, however, SCIF and Zurich objected, as the Applicant was available. CIGA chose not to call the applicant as a witness at trial, although it was undisputed that he was "available." The objection was sustained and the deposition transcript of Applicant, dated August 4, 2006, was not entered into evidence and was stricken from the record.

CIGA also submits the medical legal reports of Dr. Steven Nagelberg. This doctor indicates that Mr. Devera did sustain a cumulative trauma work injury to his cervical spine and that this continued through his last day of employment. He indicates there is one entire period of cumulative trauma and that each carrier is responsible, on a pro rata basis for the medical care and treatment as well as the temporary partial and temporary total disability.[25] Dr. Nagelberg fails to explain why he reaches this conclusion.

The medical legal report of Dr. Silver dated July 11, 2001, indicates there is a cumulative trauma to the hands and wrists (carpal tunnel), bilateral trigger thumbs. He also notes "Given the positive Adson testing, there is potential of contribution related to thoracic outlet syndrome." He determines the causation was due to employment during SCIF's CT period but fails to explain why he comes to this conclusion. He does not address the cervical spine.[26]

In the medical legal report of Dr. Israel Rottermann, dated November 2, [2005], he opines he agrees with Dr. Silver, that applicant had a pre-existing cervical spine and shoulder problem, and his injury for carpal tunnel is "related to continuous trauma rather than a specific injury, and involved only the hands, not the cervical spine, shoulders or rest of the upper extremities."[27]

On November 12, 2008, Dr. Sanders issues a medical legal report at the request of Zurich. He states, **"**this does not appear to be reasonable or appropriate and is not based upon reasonable medical probability that any of his disability or impairment would be apportioned to his continual trauma through 2005."[28] He does not explain the reasoning for his opinion, and states "This patient has had all the same diagnoses, problems, and limitations which pre-existed his last continual trauma period. It is demonstrated by the records noting such findings. With regard to the patient's hands and shoulders, his disability would be related to his prior claims, cases, injuries, degenerative process, and arthritis existing up to and through 2002, when he settled his last claim. There is no additional continual trauma. He simply has had exacerbations, but not aggravations. Therefore, 1 [sic] would indicate that his continued work until 2005 did nothing but cause exacerbation, at which point

[25] CIGA Exhibit A10 (EAMS Doc. ID #57168347).
[26] CIGA Exhibit A12 (EAMS Doc. ID #571683500)
[27] CIGA Exhibit A4 (EAMS Doc. ID #57168350) (*sic*.)
[28] CIGA/Zurich Exhibit A13 at p. 36-37 (EAMS Doc. ID #59495668).

> the patient decided to proceed with treatment to include the surgery to his neck. It did not cause any further disability, impairment, limitations, or restrictions."
>
> Despite numerous reports solicited by the parties from a variety of medical legal evaluators, none are substantial medical evidence with regard to causation of the subsequent injuries, and the corresponding parts of body for each date of injury. CIGA has failed to establish injury arising out of employment and in the course of employment as to ADJ3207121 and ADJ4499046. CIGA has failed to prove that there was joint and several liability with SCIF and Zurich. Therefore, Defendants Zurich and SCIF are not available "other insurance" and therefore, does not remove applicant's claim from the category of "covered claims" as provided in Insurance Code 1063.1.

(OOD, pp. 6-8.)

Based upon our review of the evidentiary record as well as the rationale set forth in the WCJ's OOD and Report, and taking into consideration the medical records, the C&R settlements detailing a continuing dispute regarding injury AOE/COE for the periods from March 12, 2000 through March 12, 2001 (ADJ4499046) and August 23, 2003 through August 23, 2004 (ADJ320712), we agree that CIGA has not established substantial medical evidence of injury AOE/COE to overlapping body parts which would warrant finding SCIF and Zurich "other insurance" within the meaning of Insurance Code section 1063.1(c)(9).

III.

CIGA further contends that the issue of change of administration is not barred by res judicata "because the 2014 Minutes order at a Status Conference was not a final determination of the [issue on the] merits." (Petition, p. 15.)

Res judicata refers to both claim preclusion and issue preclusion. "Claim preclusion, the 'primary aspect' of res judicata, acts to bar claims that were, or should have been, advanced in a previous suit involving the same parties. Issue preclusion, the 'secondary aspect' historically called collateral estoppel, describes the bar on relitigating issues that were argued and decided in the first suit." (*Hudson v. Foster* (2021) 68 Cal.App.5th 640, fn. 10.)

In the case of *Le Parc Community Assn. v. Workers' Comp. Appeals Bd.* (*Curren*) (2003) 110 Cal.App.4th 1161 [68 Cal. Comp. Cases 1041], the Court of Appeal further explained res judicata as follows:

> Under the doctrine of *res judicata*, a valid, final judgment on the merits precludes parties or their privies from re-litigating the same "cause of action" in a subsequent

> suit. (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896 [51 P.3d 297, 123 Cal. Rptr. 2d 432] (*Mycogen*); *Slater v. Blackwood* (1975) 15 Cal.3d 791, 795 [543 P.2d 593, 126 Cal. Rptr. 225].) *Res judicata*, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them… Under the doctrine of *res judicata*, if a plaintiff prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent lawsuit; a judgment for the defendant serves as a bar to further litigation of the same cause of action. (*Mycogen,* at pp. 896–897, citation and fn. omitted.)

(*Id.* at p. 1169)

The Supreme Court in *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921 explained collateral estoppel as follows:

> Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings. The doctrine applies only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. The party asserting collateral estoppel bears the burden of establishing these requirements.

(*Id.* at p. 943.)

Here, the doctrine of collateral estoppel rather than res judicata is at issue since the question is not whether applicant's injury claims were adjudicated, but, rather, whether the singular issue of change of administration was adjudicated. Issue preclusion (collateral estoppel) is an affirmative defense. Thus, SCIF and Zurich are tasked with establishing all the necessary elements of collateral estoppel. (Lab. Code, § 5705 ["The burden of proof rests upon the party or lien claimant holding the affirmative of the issue."].)

Based upon our review of the record, we do not see that the necessary elements of collateral estoppel have been met. As noted above, the requirements include: (1) an identical issue (2) actually litigated (3) and necessarily decided in a former proceeding (4) wherein the decision was final and, on the merits, and (5) the party against whom preclusion is sought is the same as, or in privity with, the party to the former proceeding.

Here, the WCJ indicated in the Minutes of Hearing from the November 19, 2014 status conference that:

> CIGA's Petition for Change of Administrators in ADJ3375264 is denied as there is not an add[itional] defendant in that case that can be the administrator. [CIGA] wants [the] administrator changed to a different more recent case where the med[ical records] differ as to whether [future medical treatment] is necessary for the newer cases.

Given that the issue of the right to a change in administration was decided by the WCJ during a status conference without creating a record, the issue was not actually litigated, and the decision was therefore not final and on the merits. As such, the necessary elements for collateral estoppel have not been met here. However, we do agree with the WCJ that CIGA's petition for change of administration must fail as there is insufficient evidence of industrial causation to overlapping parts of body with respect to applicant's other claims against Zurich and SCIF.

Accordingly, we grant CIGA's Petition for the sole purpose of amending the F&O to reflect that the issue of change of administration was not barred by res judicata or collateral estoppel. We otherwise affirm the F&O.

For the foregoing reasons,

IT IS ORDERED that CIGA's Petition for Reconsideration of the April 24, 2026 Amended Findings and Orders issued by the workers' compensation administrative law judge, is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the April 24, 2026 Amended Findings and Orders issued by the workers' compensation administrative law judge, is **AFFIRMED**, **EXCEPT** as **AMENDED** below.

FINDINGS OF FACT (MF ADJ3375264)

> 4. CIGA's Amended Petition for An Order Changing Administration filed on December 11, 2017 was not barred by res judicata or collateral estoppel due to the WCJ's order denying CIGA's Petition for Change of Administration as reflected on the Minutes of Hearing dated November 19, 2014.

FINDINGS OF FACT (ADJ4499046)

> 3. CIGA's Amended Petition for An Order Changing Administration filed on December 11, 2017 was not barred by res judicata or collateral estoppel due to the WCJ's order denying CIGA's Petition for Change of Administration as reflected on the Minutes of Hearing dated November 19, 2014.

FINDINGS OF FACT (ADJ3207121)

3. CIGA's Amended Petition for An Order Changing Administration filed on December 11, 2017 was not barred by res judicata or collateral estoppel due to the WCJ's order denying CIGA's Petition for Change of Administration as reflected on the Minutes of Hearing dated November 19, 2014.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 21, 2026

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

RAYMUNDO DEVERA
JANOFF, KARPEL & COWN, A.P.C.
GUILFORD SARVAS & CARBONARA LLP
STATE COMPENSATION INSURANCE FUND
TOBIN LUCKS LLP

RL/*cs*

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