WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ROBERT OPSAL, *Applicant*

vs.

CALIFORNIA HIGHWAY PATROL, legally uninsured, administered by STATE COMPENSATION INSURANCE FUND, *Defendant*

Adjudication Number: ADJ15556443
Lodi District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact and Award of June 30, 2026, wherein it was found that while employed on November 18, 2021 as a Highway Patrol officer, applicant sustained industrial injury to the shoulders, neck, lungs, ankles, left eye, head, chest, psyche and knees causing permanent disability of 87% and the need for further medical treatment. In finding permanent disability of 87%, the WCJ combined the disabilities attributable to the various body parts utilizing the Combined Values Chart of the 20025 Schedule for Rating Permanent Disabilities and found that the vocational reporting of applicant's expert Scott Simon did not constitute substantial medical evidence to rebut the scheduled rating.

Applicant contends that the WCJ erred in not following the vocational evidence that he submitted to find that applicant was not employable and not amenable to vocational rehabilitation and was thus permanently totally (100%) disabled. We have received an Answer from the defendant and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

As explained below, we will grant reconsideration and defer the issue of permanent disability pending further development of the medical and vocational record and decision by the WCJ.

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909, which states that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

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

Here, according to Events, the case was transmitted to the Appeals Board on July 22, 2026 and 60 days from the date of transmission is Sunday, September 20, 2026. The next business day that is 60 days from the date of transmission is Monday, September 21, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on Monday, September 21, 2026, so that we have timely acted on the Petition as required by Labor Code section 5909(a).

Labor Code section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals

[1] 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.

Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on July 22, 2026, and the case was transmitted to the Appeals Board on July 22, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 22, 2026.

II.

Turning to the merits, in this matter applicant sustained injury to numerous body parts and systems when he was thrown from his motorcycle. Various reporting physicians opined as to applicant's permanent work restrictions, and applicant's vocational expert Scott Simon and defense expert Howard Twomey issued reports addressing applicant's ability to sustain employment and his amenability to vocational rehabilitation. The WCJ found that Mr. Simon's report was not substantial evidence because it unduly relied upon work restrictions outlined by qualified medical evaluator Michael S. Klein, M.D. Applicant had had a "sports hernia" surgically repaired prior to the industrial injury, and it was aggravated by the industrial accident. A "sports hernia" involves a soft tissue tear or strain and does not involve a protrusion like a classical hernia. Dr. Klein stated that these types of hernias were not in his domain, but opined that applicant was temporarily precluded from lifting, pushing or pulling greater than 25 pounds until he could be evaluated by an appropriate specialist. (July 25, 2023 report at p. 6.) Dr. Klein repeatedly mentioned in his reports that sports hernias were outside of his expertise. It does not appear that applicant was evaluated by a sports hernia specialist or ever given a permanent impairment rating or permanent work restrictions with regard to the aggravation of his sports hernia.

Although the structure of Mr. Simon's vocational report is not completely clear, he appears to have utilized the temporary work restrictions from Dr. Klein to conclude that applicant was limited to light work. (July 11, 2025 report at p. 15.) Then Mr. Simon apparently compared the remaining jobs within this initial preclusion and evaluated applicant's amenability for these jobs with the preclusions found by the reporting physicians in the other specialties. "The same

considerations used to evaluate whether a medical expert's opinion constitutes substantial evidence are *equally applicable* to vocational reporting. In order to constitute substantial evidence, a vocational expert's opinion must detail the history and evidence in support of its conclusions, as well as 'how and why' any specific condition or factor is causing permanent disability." (*Nunes v. State of California* (2023) 88 Cal.Comp.Cases 741, 751 [Appeals Bd. en banc].) The WCJ correctly determined that rebuttal partially based on temporary restrictions from a doctor admitting that the condition was beyond his specialty did not constitute substantial evidence to rebut the scheduled permanent disability.

Nevertheless, our review of the record leads us to conclude that further development of the evidentiary record is needed on the issue of permanent disability. First, it is unclear if applicant is still seeking permanent disability with regard to his "sports hernia" complaints. It does not appear that any specialist ultimately evaluated this condition or attributed any permanent impairment to it.

Secondly, the parties should be afforded the opportunity to develop the vocational record utilizing the correct, permanent work restrictions. Additionally, we note that review of vocational evidence may be beneficial to the reporting physicians in this case in clarifying applicant's work restrictions. (*Nunes, supra*, 88 Cal.Comp.Cases at p. 751.) In the further proceedings, the physicians should be invited to review and comment upon the vocational evidence. The vocational evidence should also be updated to incorporate all of applicant's permanent work restrictions.

In parallel to the development of the vocational evidence, the medical evidence should be updated to discuss the application to this matter, if any, of the principles expressed in *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 [Appeals Bd. en banc], both with regard to whether applicant's different impairments caused separate, non-overlapping impairments to applicant's activities of daily living, as well as with regard to whether the any overlapping impairments to activities of daily living amplified the impairment.

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) medical evidence on an issue. The WCAB has a constitutional mandate to ensure "substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) In accordance with that

mandate, we will grant reconsideration and defer the issue of permanent disability pending further development of the medical and vocational record and pending further analysis and decision by the WCJ.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings of Fact and Award of June 30, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Award of June 30, 2026 is **AMENDED** as follows:

* * *

FINDINGS OF FACT

Based on the Stipulations of the parties reflected in the Minutes of Hearing dated March 3, 2026, Joint exhibits 1 through 17, Applicant exhibits 1 through 6, Defendant Exhibits A through C, and Court Exhibits 1 through 3:

1. The issue of permanent disability is deferred, with jurisdiction reserved.

2. The issue of apportionment, if any is alleged, is deferred, with jurisdiction reserved.

3. There is need for further medical treatment.

4. The issue of attorneys' fees is deferred, with jurisdiction reserved.

5. The issue of vocational rebuttal of the permanent disability rating is deferred, with jurisdiction reserved.

AWARD

AWARD IS MADE in favor of Robert Opsal against State of California as follows:

1. The applicant is entitled to an ongoing award of medical treatment to the bilateral shoulders, neck, lungs, bilateral ankles, left eye, head, chest, psychiatric, and bilateral knees.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 21, 2026

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

ROBERT OPSAL
JONES, CLIFFORD LLP
STATE COMPENSATION INSURANCE FUND

DW/oo

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