WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SALVADOR OCHOA, ***Applicant***

vs.

CANTEEN VENDING SERVICES;
AIU INSURANCE COMPANY, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, ***Defendants***

Adjudication Number: ADJ15277928
Oakland District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on August 14, 2026, wherein the WCJ found in pertinent part that applicant, while employed on July 16, 2021, as a route driver, occupational group number 350, by defendant, sustained an injury arising out of and in the course of employment to his low back and right knee and that the reports of Kristin Schick, D.C., are not substantial evidence and cannot be rehabilitated. The WCJ also issued a Notice of Intention that an independent medical evaluator shall be appointed to evaluate applicant if the parties do not provide notification that they have selected an agreed medical evaluator within a reasonable amount of time.

Applicant contends that the WCJ erred in finding that applicant's occupational group number is 350 instead of 460 and that the reports of Dr. Schick are not substantial evidence and cannot be rehabilitated; and that the Notice of Intention to appoint a regular physician was improper.

We did not receive an answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) in response to applicant's Petition, recommending that it be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons stated discussed below, we will grant the Petition for Reconsideration, amend the F&A to find that applicant was employed by Canteen Vending Services and defendant employer was insured by AIU Insurance Company, administered by Sedgwick Claims Management Services, Inc., at the time of the injury (Finding of Fact 1) and to amend the award to be against AIU Insurance Company, and otherwise affirm the F&A.

BACKGROUND

In her Report, the WCJ provided the following background:

> On July 16, 2021, applicant sustained an injury arising out of and in the course of his employment as a route driver for defendant to his low back and right knee.
>
> On March 12, 2023, Kirsten Schick, D.C., the qualified medical evaluator, issued a report after evaluating applicant stating in relevant part that: Applicant's rating was "satisfactory within the four corners of the AMA Guides," and that applicant had 4% impairment for the partial medial and lateral meniscectomy, 12% for lost range of motion, and 10% for muscle weakness. (Exhibit 104, Report of Kirsten Schick, March 12, 2023, p[p. 16-]17.)
>
> On October 31, 2024, Dr. Schick issued a supplemental report stating that a recent MRI of applicant's right knee revealed tears and mild cartilage thinning. (Exhibit 101, Report of Kirsten Schick, October 31, 2024, p. 13.) Dr. Schick further stated that,
>
> **COMBINING VIA THE COMBINED VALUES CHART OR BY ADDITION:**
> I believe the lumbar and right knee impairments should be combined by addition. There is no muscle or joint overlap between the lumbar spine and right knee, and there is little or no overlap between ADLs affected by either region. The left knee impairment impacts the applicant's ability to walk, get up and down from a chair, ascend or descend stairs, and kneel and squat. The lower back impairment impacts his ability to lift, sit, or stand for extended periods and otherwise routine daily tasks. Some ADLs, such as squatting and lifting, overlap, but the two impairments together create a synergistic effect that makes the overall impairment worse than would not otherwise be adequately characterized by combining the two impairments instead of adding the two impairments together.
>
> **ALMARAZ/GUZMAN** ("Almaraz/ Guzman" generally refers to the *Almaraz-Guzman* line of cases. (See *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd*. (*Almaraz-Guzman III*) (2010) 187 Cal.App.4th 808; *Almaraz v.*

Environmental Recovery Services/Guzman v. Milpitas Unified School Dist. (*Almaraz-Guzman II*) (2009) 74 Cal.Comp.Cases 1084 (Appeals Board en banc).))**:** This rating is satisfactory within the four corners of the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition.

…

IMPAIRMENT RATING:

… [T]he patient has a DRE Lumbar Category II and an **8% WPI** due to lumbar symptoms and examination findings and based on activities of daily living. …

The higher percentage was chosen because of the affectation on the applicant's A[D]L. Please refer to page 381 of the Guides, which states, 'If residual symptoms or objective findings impact the ability to perform ADL despite treatment, the higher percentage in each range should be assigned.

Right Knee Impairment Rating:

The applicant had a range of motion loss, muscle weakness and crepitus. Referencing the Guides, page 526, Table 17-2, Guide to the Appropriate Combination of Evaluation Methods, muscle strength and range of motion loss cannot be combined.

I do not believe the normal AMA Guides methodology accurately reflects Mr. Ochoa's impairment of the right knee. The weakness and range of motion are both limiting factors with separate impacts on activities; they are concurrent and, therefore, both need to be incorporated into the final rating.

Mr. Ochoa will always walk on a compromised knee with an altered gait. He underwent two knee surgeries, and we now have a recent 10/29/2024 MRI showing new tears of the medial and lateral meniscus. A third surgery that could include repair or a total knee replacement is likely.

Right knee - range of motion loss: Examination of the right knee revealed loss of range of motion inflexion and extension. Please reference page 537 of the Guides, Table 17-10, Knee Impairment. My examination demonstrated limitations in flexion at 109° and a flexion contracture at -5°. Flexion at less than 110° = 4% WPI and flexion contracture 5°-8°= 4% WPI. Combining these using the Combined Values Chart on page 604 of the Guides converts into an **8% WPI**.

Right Knee - muscle weakness: Examination of the right knee showed weakness in flexion grade 4/5 and in extension grade 4/5, (Page 532, Table 17-8 of the Guides). When combining the 5% WPI for both flexion and extension, using the Combined Values Chart on page 604, this converts into **10% WPI.**

Crepitus was noted with flexion/extension. Please reference Table 17-31 on page 544: Direct trauma joint noise, **2% WPI.**

Combining the 8% range of motion loss, the 10% muscle weakness and the 2% crepitation, using the Combined Values Chart on page 604, this equates to a **19% WPI** for the right knee.

(*Id*. at pp. 20-22.)

Dr. Schick further stated that she would give applicant a 1% pain add-on for the lumbar spine and a 2% pain add-on for the knee. (*Id*. at p. 22.)

On July 17, 2025, Dr. Schick testified in relevant part that: Her October 31, 2024, report erroneously referenced left knee impairment and it should say right knee. (Exhibit 107, Deposition of Kirsten Schick, July 17, 2025, pp. 12:20-31:3.) Applicant's impairments should be added because the overlap in his activities of daily living such as lifting and squatting amplifies the effects of his impairments. (*Id*. at pp. 13:13-13:24.) This is because the knee has to flex and bear his upper body weight and the low back has to hold up the torso. (*Id*. at pp. 14:11-15:25.) If applicant were to lift something from the ground, he would have to kneel and his knees would have to hold up the weight that he is lifting, placing more pressure on the knee joint. (*Id*. at pp. 16:13-17:1.) Either a compromised low back or knee can impair the ability to sit for a long time and having both body parts injured makes it more difficult for applicant to perform more ADLs. (*Id*. at pp. 18:3-19:4.) Applicant's impairments should be added because the overall effect of his injuries is an amplification on the overlapping activities of daily living. (*Id*. at p. [20]:10-[20]:15.) The AMA Guides technically state that muscle strength and lost range of motion cannot be combined, but it should be done in this case because they are both limiting factors on his activities of daily living. (*Id*. at pp. 20:16-21:3.) Applicant's knee is compromised and he walks with an altered gait. (*Id*. at p. 21:7-21:8.) A rating for crepitus is appropriate for an individual with direct trauma. (*Id*. at pp. 22:13-23:9.) Applicant had direct trauma from "walking down the stairs." (*Id*. at p. 23:10-23:15.)

On July 29, 2026, the matter progressed to trial on the issues of applicant's occupational code and level of permanent impairment. Defendant's trial exhibits included:

- A job description reflecting that applicant was responsible for loading products into a vehicle, driving to customer locations, filling machines, collecting funds, replenishing money in the machine, performing minor repairs, and unloading his vehicle. (Exhibit A, Job Description.) The description reflects that the physical demands for the job include regular standing, walking, occasional sitting, climbing, stooping, kneeling, crouching, frequently lifting and moving up to 25 pounds and occasional lifting and moving of 50 pounds. (*Ibid*.)
- Applicant's deposition transcript in which applicant testified in relevant par that his job duties were to fill vending machines with snacks and beverages, clean the machines, maintain the machines, maintain the box truck and drive the box truck. (Exhibit B, Deposition of Applicant, November 29, 2021, p:19:1-19:13.)

During the trial, applicant testified in relevant part that: He was a route driver for defendant. His duties included driving a box truck, loading and unloading it with merchandise including beverages and snacks, filling vending machines with the merchandise, cleaning the machines, collecting cash from the machines, and loading the machines with change. On a typical day he would visit 10-12 locations, and he could not provide an estimate as to how much time he spent driving since it

depended on where the locations were. When possible, he would use a cart and use elevators, but once a week or so he would go to a location without an elevator and then, he would have to climb stairs while carrying the merchandise. A box of beverages could weigh between 15 and 35 pounds. If the boxes were not heavy, he would carry more than one box at a time. He would estimate that he climbed approximately six feet to get into his truck 23-35 times a day, and he generally worked nine or ten hours a day. His knee pain started while descending stairs and carrying soda. He did not fall or strike his knee.

On August 14, 2026, the Findings of Fact issued, and in relevant part it was found that applicant's occupational code was group number 350 and that based on her misunderstanding of legal principles, the reports of Dr. Schick were not substantial evidence. It was further noted that Dr. Schick may have also prematurely declared applicant to be maximally medically improved. The parties were also notified that an independent medical evaluator would be appointed if they could not agree upon an agreed medical evaluator because Dr. Schick's reports could not be rehabilitated.

(Report, at pp. 1-5.)

Further, in her Opinion on Decision, the WCJ considered the applicant's occupational code, the substantiality of Dr. Schick's reporting, and the need to further develop the record as follows:

APPLICANT'S OCCUPATIONAL CODE IS 350

Section 3 of the 2005 Schedule for Rating Permanent Disabilities governs occupations and group numbers. It states that if an occupation cannot be determined, one is to first determine the basic functions and activities of an occupation and then relate it to a comparable scheduled occupation to determine the correct group number. (2005 Schedule for Rating Permanent Disabilities, p[p. 3-1, 3-]28.)

Occupational group number 460, which applies to loaders and unloaders, is too high for applicant because it requires "strenuous demands on the spine and legs for carrying heavy objects," and neither applicant's testimony nor the job description supports such a finding. (*Id*. at p. 3-35.) Rather, applicant testified that he used a hand cart when possible, and that he only went to sites without an elevator approximately once a month. Similarly, occupational group number 250, light delivery drivers, is too low because it requires the injured worker to primarily drive and does not contemplate enough lifting. (*Id*. at p. 3-31.) Occupational group number 350, which is for truck drivers, best describes applicant's job duties as it contemplates driving and comparable amounts of loading. (*Id*. at p. 3-34.)

APPLICANT'S LEVEL OF PERMANENT IMPAIRMENT

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); (FN omitted) *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627.) To constitute substantial evidence ". . . a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169.)

Since applicant's injury occurred after January 1, 2013, section 4660.1 applies, and the scheduled rating is prima facie evidence of an employee's permanent disability. However, the scheduled rating is rebuttable. (*Almaraz-Guzman III*, *supra*, at p. 8[2]2-8[2]3.) Specifically, the whole person impairment may be rebutted by showing that "a different chapter, table, or method of assessing impairment of the AMA Guides more accurately reflects the injured employee's impairment than the chapter, table, or method used by the physician being challenged." (*Almaraz-Guzman II*, *supra*, at p. 1106.) Physicians must still evaluate permanent impairment while staying within the "four corners of the Guides" pursuant to the Labor Code. (*Id.* at p. 1101.) In short, the evaluating physician may use his or her experience and expertise to interpret and apply *any portion* of the entire AMA Guides. (*Almaraz-Guzman III*, *supra*, at pp. 828-829.)

Further, in *Vigil v. County of Kern* (2024) 89 Cal. Comp. Cases 686 (Appeals Board en banc), the Appeals Board held that applicants who seek to rebut the Combined Values Chart (CVC) must establish the following:

1. The activities of daily living (ADLs) impacted by each impairment to be added, and
2. Either:
a. The ADLs do not overlap, or
b. The ADLs overlap in a way that increases or amplifies the impact on the overlapping ADLs.
(*Id*. at pp. 688–689.)

The Board further stated that,

[The] physician must set forth a reasoned analysis explaining how and why synergistic ADL overlap exists. If parties are searching for a magic word to use

during a doctor's deposition, that word is 'Why?' … [I]t is imperative that parties focus on an analysis that applies critical thinking based on the principles articulated in *Escobedo* to support a conclusion based on the facts of the case. Such an analysis must include a detailed description of the impact of ADLs and how those ADLs interact. (*Vigil, supra*, at pp. 691–693.[)]

Here, Dr. Schick does not have a correct understanding of the governing legal principles for evaluating impairment. For example, the *Almaraz/Guzman* section of her report states that she is not invoking it, yet, in other portions of her report, she appears to invoke it by stating that mandates set forth in the Guides should be disregarded in the name of a more accurate rating. (Exhibit 101 pp. 20-22; Exhibit 107 at pp. 20:16-21:8.) However, the *Almaraz* does not permit an evaluator to disregard mandates set forth in the Guides regarding which impairments may be combined. Rather, the evaluator must explain why the usual table does not apply and then select another table that most accurately describes the worker's impairment while staying within the "four corners of the Guides." (*Almaraz-Guzman II*, *supra*, at p. 1101.) Dr. Schick did not follow this process. Further, Dr. Schick's understanding of when impairments may be added in accordance with *Vigil* is also flawed. She is correct that impairments may be added when the impact on ADLs overlaps in a way that amplifies or increases their impact, but her explanation of why this applies to applicant is insufficient. She testified that the knee and back have different functions when it comes to performing activities such as lifting, kneeling and sitting. (Exhibit 107 at pp. 14:11-17:1.) This may be true, but her analysis focuses on the biomechanics of each body part and not on the impact that the impairments have on applicant's ADLs. Additionally, her logic of why applicant's impairments should be added would appear to apply to any applicant with an injury to the knee and lumbar spine, and she does not adequately explain why the combined values chart would not accurately describe applicant's impairment. Therefore, her determinations regarding applicant's level of impairment do not constitute substantial evidence, and her reports cannot form the basis of an Award.

THE RECORD REQUIRES DEVELOPMENT

There is a duty to further develop the record when there is a complete absence of or even insufficient medical evidence on an issue. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122.) Therefore, a Workers' Compensation Judge has the authority to order the parties to obtain additional medical reports. (Cal. Lab. Code §§ 5701, 5906; *Tyler*, 56 Cal.App.4th at pp. 392-393.) Generally, the preferred method is to return to the physicians who previously reported in a matter, but if those reports cannot be rehabilitated, then other physicians may be considered. (*McDuffie v. L.A. County Metro. Transit Auth*. (2002), 67 Cal. Comp. Cases 138, 142.)

> In this matter, the record requires development because there are no reports that could form the basis of an Award. Dr. Schick has repeatedly incorrectly applied the principles set forth in *Almaraz/Guzman* (Exhibit 104, Exhibit 101, Exhibit 107.) Further, it does not appear that she considered other tables which may have more accurately described applicant's impairment such as the gait derangement tables. Additionally, she did not correctly apply the principles set forth in *Vigil*, and it is possible that she prematurely found applicant to be maximally medically improved since the most recent MRI revealed new tears in applicant's knee. Based upon these facts, her reports cannot be rehabilitated. The parties are urged to select an agreed medical evaluator. However, if the parties have not selected such an evaluator within a reasonable amount of time, then an independent medical evaluator shall be appointed.

(Opinion on Decision, August 14, 2026, at pp. 6-9.)

In her Report, the WCJ considered the applicant's occupational code, the substantiality of Dr. Schick's reporting, and the appropriateness of proceeding with a different medical-legal evaluator as follows:

Applicant's Occupational Code is 350

> The 2005 Schedule for Rating Permanent Disabilities states that persons in occupational group number 460 have strenuous demands on the spine and legs for lifting and carrying heavy objects and that typical occupations in this group number include baggage handlers, chain offbearers, and laborers. (2005 Schedule for Rating Permanent Disabilities, p. 3-35.) The Schedule further states that persons in occupational group number 350 operate heavy vehicles, may do some loading and unloading, and that this group number includes newspaper delivery drivers. (*Id*. at pp. 3-9, 3-34.)
>
> Applicant contends that occupational group code 460 best describes the position he held while working for defendant because he was required to repetitively load and unload materials for nine to ten hours a day. However, as explained in the Opinion on Decision, there is no substantial evidence to support that assertion. Rather, applicant's job description reflected that applicant was responsible for frequently lifting up to 25 pounds and occasionally lifting and moving up to 50 pounds. (Exhibit A, Job Description.) This description was supported by applicant's testimony that that he used a hand cart when possible, and that he only went to sites without an elevator approximately once a month. In short, the evidence reflects a finding that applicant was required to drive a truck and occasionally, not frequ[]ently, lift up to 50 pounds, and best described by occupational group code 350.

Dr. Schick's Reporting is not Substantial Evidence

As explained in the Opinion on Decision, decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627.) To constitute substantial evidence ". . . a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169.)

Although, the scheduled rating is prima facie evidence of applicant's permanent disability, his whole person impairment may be rebutted by showing that "a different chapter, table, or method of assessing impairment of the AMA Guides more accurately reflects the injured employee's impairment than the chapter, table, or method used by the physician being challenged." (*Almaraz-Guzman II, supra*, at p. 1106.) Physicians must still evaluate permanent impairment while staying within the "four corners of the Guides" pursuant to the Labor Code. (*Id*. at p. 1101.) In short, the evaluating physician may use his or her experience and expertise to interpret and apply *any portion* of the entire AMA Guides. (*Almaraz-Guzman III, supra,* at pp. 828-829*.)*

Further, in *Vigil v. County of Kern* (2024) 89 Cal. Comp. Cases 686 (Appeals Board en banc), the Appeals Board held that where an applicant seeks to rebut the Combined Values Chart (CVC), they must establish the following:

1. The activities of daily living (ADLs) impacted by each impairment to be added, and
2. Either:
a. The ADLs do not overlap, or
b. The ADLs overlap in a way that increases or amplifies the impact on the overlapping ADLs.
(*Id*. at pp. 688–689.)

The Board further stated that,

[The] physician must set forth a reasoned analysis explaining how and why synergistic ADL overlap exists. If parties are searching for a magic word to use during a doctor's deposition, that word is 'Why?' … [I]t is imperative that parties focus on an analysis that applies critical thinking based on the principles articulated in Escobedo to support a conclusion based on the facts of the case. Such an analysis

must include a detailed description of the impact of ADLs and how those ADLs interact.
(*Vigil*, supra, at pp. 691–693.[)]

Here, Applicant contends that the finding that Dr. Schick's report was not substantial evidence was based on a finding that applicant was not medically maximally improved. This contention is incorrect. Rather, the finding was based on Dr. Schick's misunderstanding of the governing legal principles for evaluating impairment. For example, the *Almaraz/Guzman* sections of Dr. Schick's reports state that she is not invoking it. However, she also invokes its principles by stating that mandates set forth in the Guides should be disregarded in favor of a more accurate rating. (Exhibit 101 pp. 20-22; Exhibit 107 at pp. 20:16-21:8.) This is an incorrect application *Almaraz-Guzman,* because its principles do not permit an evaluator to disregard the mandates set forth in the Guides regarding which impairments may be combined. Rather, the evaluator must explain why the usual table does not apply and then select another table that most accurately describes the worker's impairment while staying within the "four corners of the Guides." (*Almaraz-Guzman II*, *supra*, at p. 1101.) Dr. Schick did not follow this process.

Further, Dr. Schick's understanding of when impairments may be added in accordance with *Vigil* is also flawed. She is correct that impairments may be added when the impact on ADLs overlaps in a way that amplifies or increases their impact, but her explanation of why this applies to applicant is insufficient. She testified that the knee and back have different functions when it comes to performing activities such as lifting, kneeling and sitting. (Exhibit 107 at pp. 14:11-17:1.) This may be true, but her analysis focuses on the biomechanics of each body part and not on the impact that the impairments have on applicant's ADLs or why applicant's impairments would be different from another person who also injured a knee and the lumbar spine. Further, Dr. Schick does not adequately explain why the combined values chart would not accurately describe applicant's impairment. Therefore, her determinations regarding applicant's level of impairment do not constitute substantial evidence, and her reports cannot form the basis of an Award.

An Independent Medical Evaluator is Appropriate

When there is an absence of substantial medical evidence, the proper procedure is to develop the record. (*McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117, 1121–1122; *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389, 394–395; Lab. Code, §§ 5701, 5906.) The typical procedure is to return the parties to the original QME in order to further develop the record. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) However, if the evaluator's reports cannot be rehabilitated, the WCJ may appoint a regular physician to examine applicant pursuant to section 5701. (Lab. Code, § 5701.) The parties also retain the right to select an agreed medical evaluator.

> Here, it is true that the Opinion touched upon concerns with Dr. Schick's reporting including whether applicant was declared applicant maximally medically improved and whether Dr. Schick considered all of the relevant tables in the AMA Guides. Had these been the only issues with her reporting, the parties would have been ordered to develop the record by returning to her. However, these were not the basis for determining that Dr. Shick's reports could not be rehabilitated. Rather, the finding was primarily based on Dr. Schick's misunderstanding of the applicable legal principles. Applicant's concerns about delay are understandable, but attempting to correct Dr. Schick's misunderstandings would cause more delay and expense in this matter than an evaluation with an independent medical evaluator. Further, those same delays would occur if the parties were to be granted a new panel of evaluators.

(Report, at pp. 5-9.)

DISCUSSION

I.

Preliminarily, we note that petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section[1] 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 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 September 14, 2026, and 60 days from the date of transmission is November 13, 2026. This

[1] All statutory references are to the Labor Code unless otherwise stated.

decision is issued by or on November 13, 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 14, 2026, and the case was transmitted to the Appeals Board on September 14, 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 14, 2026.

II.

We first turn to the issue of timeliness of the Petition. It is well established that there are 20 days allowed within which to file for reconsideration from a "final" decision. (Lab. Code, §§ 5900(a), 5903.) This time limit is extended by 5 calendar days to allow for service upon an address within California and 10 calendar days to allow for service upon an address outside of California. (Cal. Code Regs., tit. 8, § 10605(a)(1).) It is further extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be considered timely, a petition for reconsideration must be filed with (i.e., received by) the Appeals Board within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).) This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008]; *U.S. Pipe & 2 Foundry Co. v. Industrial Acc. Com.* (*Hinojoza*) (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

Here, the F&A issued on August 14, 2026, and according to the proof of service, Sedgwick Claims Management Services was served at an address in Kentucky. Thirty days from this date is Sunday, September 13, 2026. The parties therefore had until Monday, September 14, 2026, to file a petition for reconsideration. Applicant's Petition was filed on September 8, 2026, and was therefore timely.

III.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd*. (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ's decision includes findings regarding threshold issues of employment, occupational group number, injury arising out of and in the course of employment, and need for future medical care. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

We first note that at trial, the WCJ awarded compensation against Canteen Vending Services, a final order. The employer is listed on the official address record as Canteen Vending Group. According to the pre-trial conference statement, applicant's employer was Compass Group. Unfortunately, the stipulations at trial do not identify the name of the employer. At trial, the parties

stipulated that defendant employer was insured by AIU Insurance Company, administered by Sedgwick Claims Management Services, Inc. Thus, we will grant the Petition for Reconsideration solely to amend the F&A to find that Canteen Vending Group was the employer and AIU Insurance Company, administered by Sedgwick Claims Management Services, Inc., was the insurer and to amend the award to be against AIU Insurance Company. Defendant is cautioned that it is expected to correct any discrepancies forthwith. (See *DiFusco v. Hands On Spa* (2025) 90 Cal.Comp.Cases 1007, 1017 (Appeals Bd. en banc).)

Here, petitioner is challenging a final finding as to occupational group number and is challenging the WCJ's interlocutory finding that Dr. Schick's reporting is not substantial evidence and cannot be rehabilitated. As explained by the WCJ, applicant's proper group number is 350, and we do not disturb the WCJ's conclusion. With respect to petitioner's challenge to the finding as to the Dr. Schick, we will apply the removal standard to our review. (See *Gaona, supra*.)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd*. (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).) Here, based upon the WCJ's analysis of the merits of the petitioner's arguments, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

Therefore, we grant the Petition for Reconsideration, amend the F&A to find that applicant was employed by Canteen Vending Services and defendant employer was insured by AIU Insurance Company, administered by Sedgwick Claims Management Services, Inc. (Finding of Fact 1) at the time of the injury and to amend the award to be against AIU Insurance Company, and otherwise affirm the F&A.

For the foregoing reasons,

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

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued by the workers' compensation administrative law judge on August 14, 2026 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Salvador Ochoa, while employed on July 16, 2021, as a route driver, occupational group number 350, by defendant Canteen Vending Services, sustained an injury arising out of and in the course of employment to his low back and right knee. At the time of the injury, defendant employer was insured by AIU Insurance Company, administered by Sedgwick Claims Management Services, Inc.

***

AWARD

AWARD IS MADE in favor of SALVADOR OCHOA against AIU INSURANCE COMPANY of:

a. Medical treatment to cure or relieve the effects of the injury.

b. Temporary Total disability at the weekly rate of $665.60 for the periods September 8, 2021 to March 8, 2022, March 11, 2022 to March 9, 2023, and August 30, 2023 to February 27, 2024.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 9, 2026

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

SALVADOR OCHOA
LAW OFFICE OF CHRISTINA LOPEZ
TOBIN LUCKS

SL/abs

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