WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SOCORRO GONZALES, *Applicant*

vs.

LAKE ELSINORE UNIFIED SCHOOL DISTRICT, permissibly self-insured, administered by TRISTAR, *Defendants*

Adjudication Numbers: ADJ9606449, ADJ8903066, ADJ9552074
Santa Ana District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the "Joint Findings and Award" (F&A) issued on July 14, 2026, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant, while employed during the period October 1, 2010, to February 24, 2014, performing clerical work, by defendant, sustained injury arising out of and in the course of (AOE/COE) employment to her neck, right shoulder, left wrist, left shoulder, and psych (ADJ9606449); applicant, while employed on October 25, 2012, performing clerical work, sustained injury AOE/COE to her neck, right wrist, right shoulder, right knee, and psych (ADJ955204); and applicant, while employed on October 1, 2010, performing clerical work, sustained injury AOE/COE to her neck, right shoulder, left wrist, and psych (ADJ8903066); and that the permanent disability from the three injuries was inextricably intertwined. She awarded a joint and several award of permanent total disability.

Defendant contends that the reporting of the qualified medical evaluator (QME) does not constitute substantial medical evidence on the issue of apportionment, and thus, the determination that the permanent disability is intertwined is not based upon substantial medical evidence.

We have received an Answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, we will deny defendant's Petition for Reconsideration.

DISCUSSION

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.

(§ 5909.)

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 August 18, 2026, and 60 days from the date of transmission is Saturday, October 17, 2026, which by operation of law means this decision is due by Monday, October 19, 2026. (Cal. Code Regs., tit. 8, § 10600.).[1] This decision is issued by or on October 19, 2026, so that we have timely acted on the Petition as required by section 5909(a).

[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.

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 and Recommendation shall be notice of transmission.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on August 18, 2026, and the case was transmitted to the Appeals Board on August 18, 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 August 18, 2026.

II.

Per the WCJ's Report:

FACTS

> The parties stipulated that Applicant, Socorro Gonzales, sustained three injuries arising out of and in the course of her employment (AOE/COE) while working for the Lake Elsinore Unified School District as an account clerk. The injuries involved overlapping body parts. (Minutes of Hearing/Summary of Evidence (MOH/SOE), October 6, 2022, pp. 2–4.)
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> Applicant sustained a cumulative trauma injury to her neck, right wrist, right shoulder, left wrist, and left shoulder during the period from September 30, 2011, through February 25, 2014. She sustained two specific injuries: one on October 25, 2012, to her neck, right wrist, and right knee; and one on October 1, 2010, to her neck, right wrist, right shoulder, and left wrist.
>
> The parties utilized orthopedist PQME Dr. Charles Schwarz for all dates of injury (Joint Exhibits 101–112, 137–140), and psychiatrist PQME Dr. Allen Lee for the psyche portion of all dates of injury (Joint Exhibits 113–116).
>
> After the matter was submitted for decision, the WCJ issued an Order Vacating Submission and Ordering Further Development of the Record. The parties were directed to have PQME Dr. Schwarz address the issue of apportionment between the cumulative trauma injury and the two specific injury claims (EAMS Doc. ID 76615391).

Dr. Charles Schwarz thereafter issued supplemental reports and was cross-examined regarding apportionment. In his report dated February 28, 2025 (Joint Exhibit 140), Dr. Schwarz stated that Applicant's injuries occurred in close temporal proximity and involved overlapping body parts and symptomatology. Dr. Schwarz stated that he could not establish apportionment between the specific injuries and the cumulative trauma. (Charles Schwarz, M.D., February 28, 2025, p. 2, Joint Exhibit 140.)

The WCJ issued a Joint Findings and Award on July 14, 2026 (EAMS Doc. ID 80536096), finding that Applicant is permanently totally disabled and requires further medical treatment. The findings include a finding that permanent disability is not apportionable as between the cumulative trauma injury and the two specific injuries because the impairment is inextricably intertwined and cannot be parceled out with reasonable medical probability (Findings of Fact # 2). The Petition for Reconsideration is directed to the latter finding and the issue of apportionment.

DISCUSSION

Apportionment of permanent disability is governed by LC § 4663. Under LC § 4663(c), a physician must determine the approximate percentage of permanent disability caused by the direct result of the industrial injury and the approximate percentage caused by other factors, including prior industrial injuries. To constitute substantial medical evidence, a medical opinion on apportionment must be framed in terms of reasonable medical probability, be based on an adequate history and examination, apply the correct legal standard, and explain the "how and why" of the physician's conclusions rather than merely state ultimate percentages. See *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604; E.L. Yeager Construction v. WCAB (Gatten) (2006) 71 Cal.Comp.Cases 1687.

The burden of proving apportionment rests with Defendant. *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604. Thus, the issue presented by the Petition is not simply whether Dr. Schwarz declined to apportion permanent disability. The issue is whether Defendant produced substantial medical evidence establishing a medically supportable basis for apportioning Applicant's permanent disability among the three admitted industrial injuries.

Under *Benson v. WCAB* (2009) 74 Cal.Comp.Cases 113, permanent disability must ordinarily be apportioned among distinct industrial injuries. However, Benson also recognized that there may be "limited circumstances" in which an evaluating physician cannot parcel out, with reasonable medical probability, the approximate percentages to which each distinct industrial injury causally contributed to the employee's overall permanent disability. In those limited circumstances, the defendant has failed to meet its burden of proof, and a combined award may still be justified. Benson v. WCAB (2009) 74 Cal.Comp.Cases 113.

Here, the record demonstrates that the issue of apportionment was not overlooked or left undeveloped. To the contrary, after submission, the record was reopened specifically so that PQME Dr. Charles Schwarz could address apportionment between the cumulative trauma claim and the two specific injuries. Dr. Schwarz thereafter provided supplemental reporting and was deposed concerning the issue. He explained that the injuries occurred in close temporal proximity, involved overlapping body parts and symptomatology, and presented a particularly difficult causation and apportionment analysis.

In his supplemental report dated February 28, 2025, Dr. Schwarz concluded that he could not apportion between the two specific injuries and the cumulative trauma claim. Dr. Schwarz indicates: "For these reasons, based upon all the information from the medical records, information from the applicant, and my evaluations, I cannot apportion between the specific injuries and the cumulative trauma. Therefore, it is my conclusion that the impairment calculated for the industrial injuries is inextricably intertwined. The impairment cannot be parceled out to the cumulative trauma injury and the two specific injuries with reasonable medical probability." (Charles Schwarz, M.D., February 28, 2025, p. 2, Joint Exhibit 140.)

In deposition, he further testified that the issue was one of the most difficult apportionment questions he had encountered and that he had "very rarely gone down the path" of concluding that injuries were inextricably intertwined.

This testimony does not render Dr. Schwarz's opinion insubstantial. Rather, it supports the conclusion that he did not use the phrase "inextricably intertwined" as a substitute for an apportionment analysis. The record reflects that he was specifically asked to address apportionment after the WCJ ordered further development of the record, and that he provided supplemental reporting and deposition testimony addressing the issue. After that further development, Dr. Schwarz remained unable to identify a medically supportable basis upon which to parcel out the causative contribution of each injury to Applicant's permanent disability with reasonable medical probability.

The distinction is significant. A bare statement that injuries are "inextricably intertwined," without supporting medical reasoning, would not constitute substantial medical evidence. Here, however, Dr. Schwarz did more than merely invoke that phrase. He identified the close temporal proximity of the injuries, the overlapping body parts involved, and the difficulty in distinguishing the respective contribution of each injury to Applicant's overall impairment. He ultimately concluded that he could not medically parcel out the respective contributions of the three injuries with reasonable medical probability. In doing so, Dr. Schwarz also satisfied the requirement of LC § 4663(c) that, where a physician cannot make an apportionment determination, the physician must state the specific reasons why.

Under these circumstances, the absence of apportionment percentages does not render Dr. Schwarz's opinion insubstantial, because his opinion was that the

respective contributions of the three injuries could not be medically parceled out with reasonable medical probability. Rather, his inability to medically parcel out the impairment means that Defendant has not established, through substantial medical evidence, a valid basis for apportionment under LC § 4663, *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, and *Benson v. WCAB* (2009) 74 Cal.Comp.Cases 113.

In doing so, Dr. Schwarz also satisfied the requirement of LC § 4663(c) that, where a physician cannot make an apportionment determination, the physician must state the specific reasons why.

Nor does the record indicate that additional development would likely produce a different result. The parties returned to Dr. Schwarz after further development of the record was ordered, obtained additional reporting, and cross-examined him regarding apportionment. Dr. Schwarz nevertheless remained unable to identify a medically supportable basis for apportioning Applicant's permanent disability among the three industrial injuries. Dr. Schwarz described the difficulty he encountered in determining whether apportionment could be made among the injuries. He testified: "This whole issue of apportionment over the years and number of injuries is difficult, probably one of the most difficult I've had, you know, in my evaluations." (Deposition of Charles Schwarz, M.D., dated September 10, 2025, 37:5–8, Joint Exhibit 138.) Thus, the record reflects not a failure to consider apportionment, but a considered medical conclusion that the impairment cannot be apportioned with reasonable medical probability.

Because the burden of proving apportionment rests with Defendant, and Defendant has not produced substantial medical evidence establishing a valid basis for apportionment, the WCJ properly denied apportionment.

(WCJ's Report, pp. 2-4.)

Accordingly, we deny defendant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Joint Findings and Award issued on July 14, 2026, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

PAUL F. KELLY, COMMISSIONER
CONCURING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 19, 2026

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

SOCORRO GONZALES
LAW OFFICES OF MARVIN L. MATHIS
DOMINGO, ELIAS & VU

EDL/cm

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