WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

TEOFILO APARACIO, *Applicant*

vs.

KING FISH, INC.;
AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA;
LIBERTY MUTUAL INSURANCE COMPANY, *Defendants*

Adjudication Numbers: ADJ8471459; ADJ10571336
Los Angeles District Office

OPINION AND DECISION AFTER REMITTITUR

The following Decision After Remittitur is issued pursuant to the Order issued on February 20, 2026 by the Second District Court of Appeal, Division 8 (Second District), in which the Court found good cause to grant the request of the Appeals Board to annul the Opinion and Decision after Reconsideration issued on December 10, 2024 (Decision), and remand the matter to the Appeals Board for further proceedings. This is our decision after remittitur and remand.

We originally granted applicant's reconsideration of two concurrently issued Findings of Fact and Orders (F&O) issued by a workers' compensation administrative law judge (WCJ) on May 18, 2022. The WCJ found in the F&O issued in ADJ8471459 that applicant did not sustain a specific injury arising out of and in the course of his employment on November 19, 2011 in the form of a stroke; and, in the F&O issued in ADJ10571336, that applicant did not sustain a cumulative injury during the period ending November 19, 2011 arising out of and in the course of his employment in the form of a stroke. The WCJ issued orders in both ADJ8471459 and ADJ10571336 that applicant take nothing by way of his workers' compensation claims.

Applicant contended that the WCJ erred in finding that he did not sustain injuries arising out of and in the course of her employment in the form of a stroke, but for the reasons stated in the WCJ's Report and Recommendation on Petition for Reconsideration (Report) which were adopted and incorporated, and for the reasons set forth below, we denied reconsideration:

> As noted in the Report, applicant did not attempt to introduce evidence to overcome the testimony of the defense witnesses, which the WCJ found sufficiently credible. A WCJ's credibility determinations are "entitled to great weight because of the [WCJ's] 'opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand….' [Citation.]" (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Any inferences to be drawn from the evidentiary record are generally in the discretion of the trier of fact. (*Sachs v. Sachs* (2020) 44 Cal.App.5th 59, 66.) "The applicant for workers' compensation benefits has the burden of establishing the 'reasonable probability of industrial causation.'" (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.App.4th 644, 650 [63 Cal.Comp.Cases 253] citing *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) Here, the reporting doctors opined that if the trier of fact did not accept that the employer unreasonably delayed the provision of medical treatment or if applicant did not experience mental or physical work stress before the stroke, then the stroke was non-industrial. (December 13, 2018 deposition of qualified medical evaluator internist Paul J. Grodan, M.D. at pp. 18-19; April 1, 2021 report of qualified medical evaluator neurologist Israel Gorinstein, M.D. at pp. 3-4.)

(Decision, pp. 1-2.)

Applicant sought review of the Decision contending that the WCJ and the Appeals Board failed to properly weigh the available evidence pursuant to the requirement of Labor Code[1] section 3202 that "'[a]ny reasonable doubt as to the whether the act is contemplated by the employment...should be resolved in favor of the employee.'" (Petition for Writ of Review (Writ), p. 20, citing *Pacific Indem. Co. v. Industrial Acci. Com.* (1945) 26 Cal. 2d 509, 514, and § II generally.) We concur and note that although it is the employee's burden to demonstrate by a preponderance of the evidence that they sustained a compensable injury (Lab. Code, §§ 3600(a), 3202.5, 5705), "[t]he concept of what constitutes a work-related injury is broad." (*Hughes Aircraft v. Workers' Comp. Appeals Bd. (Billik)* (2017) 2017 Cal.Wrk.Comp. LEXIS 19 (writ den.) citing *South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (2015) 61 Cal.4th 291 [80 Cal.Comp.Cases 849].) Whether an employee's injury arose out of and in the course of their employment "'is generally a question of fact to be determined in light of the circumstances of the particular case.'" (*Melendez v. Ameron International Corp.* (2015) 240 Cal.App.4th 632 [80

[1] All further references are to the Labor Code unless otherwise noted.

Cal.Comp.Cases 1180] citing *Wright v. Beverly Fabrics, Inc.* (2002) 95 Cal.App.4th 346, 353 [67 Cal.Comp.Cases 51].)[2]

Upon receipt and review of applicant's Writ, and after further review of the record in this matter, the Appeals Board identified evidentiary error committed by the WCJ which was not corrected in the Decision.

> First, and as noted in the Writ, prior statements of both defense witnesses, Mr. Kagawa and Mr. Acosta, were made in 2012 and used during trial to impeach both witnesses. (See Writ §§ II-III; Writ Exhs. 9, 11.) Petitioner contends in the Writ that he was made aware of these statements at the time of trial, and that defendant failed to produce any prior written statements. (Writ, p. 12.)
> . . .
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> The WCJ then excluded these prior inconsistent statements from evidence even though the WCJ had already permitted them to be used for the purpose of impeachment. (Evid. Code, §§ 780(h), 352.)
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> In addition, it appears that witnesses Mr. Acosta and Mr. Kagawa gave a second statement in 2018, to iUnlimited Investigative Services, along with another employee named Gladys Lopez – who the defense witnesses admit has personal knowledge of petitioner's stroke incident. (Writ Exh. 9, at BATES 157.) In fact, the WCJ issued a minute order on the first day of trial, July 23, 2019, ordering defendant insurance carrier to "provide the parties with the recorded statements of the defense witnesses + any transcripts of those statements forthwith per the 11/19/18 investigation report." (Writ Exh. 9, at BATES 158; Writ Exh. 10, Other/Comments.)
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> Although the Appeals Board was able to find the excluded 2012 statements of Mr. Acosta and Mr. Kagawa used for impeachment purposes during trial uploaded in the Electronic Adjudication Management System ("EAMS"), the Appeals Board could not locate the 2018 statements and/or the November 19, 2018 investigation report in EAMS.

[2] Cases involving the issue of industrial causation "may run a gamut from the blatantly obvious to the scientifically obscure." (*Peter Kiewit Sons v. Industrial Acci. Com.* (1965) 234 Cal.App.2d 831, 839 [30 Cal.Comp.Cases 188]; see *Liberty Mut. Ins. Co. v. Industrial Acci. Com.(Serafin)* (1948) 33 Cal.2d 89, 96-97 [13 Cal.Comp.Cases 267].) **In addition, circumstantial evidence is sufficient to support a finding of compensability and "may be based upon the reasonable inferences that arise from the reasonable probabilities flowing from the evidence; neither absolute certainty [of causation] nor demonstration is required."** (*Pacific Employers Ins. Co. v. Industrial Acci. Com*. (1942) 19 Cal.2d 622, 629-630 [7 Cal. Comp. Cases 71], emphasis added; see *Rosas v. Workers' Comp. Appeals Bd.* (1993) 126 Cal.App.4th 1692, 1700-1701 [58 Cal.Comp.Cases 313].)

> It also appears undisputed that neither QME Dr. Grodan nor QME Dr. Gorinstein were provided with the prior statements of Mr. Acosta, Mr. Kagawa, or Ms. Lopez – all of which were made closer in time to the 2011 stroke. (Writ, pp. 11, 16.)

(Appeals Board Letter Brief to the Court of Appeals (Letter Brief), February 18, 2025, pp. 2-3.)

As a result, the Appeals Board was compelled to admit to the Second District that the record lacked substantial evidence to support the F&O and/or the Decision, and that the WCJ and/or the Appeals Board should have ordered further development of the record to fully adjudicate the issues. (Letter Brief, pp. 3-4.)

> The Board took the uncommon step to respond to the petition. The Board admitted that the record in the case, as it currently stood, lacked substantial evidence to support the decision and that the WCJ and Board should have ordered further development of the record to fully adjudicate the issues. The Board quoted to the WCJ's summary of testimony where it stated that Kagawa's and Acosta's testimony "became unclear" regarding the chronology of events. The Board noted that the WCJ excluded the prior inconsistent statements even though the WCJ had already permitted them to be used for the purpose of impeachment.
>
> The Board also noted that Kagawa, Acosta, and another employee, Gladys Lopez, gave second statements to an investigation service. These statements were ordered to be produced, but were not uploaded into the electronic system nor provided to the medical evaluators for review. The Board therefore requested that the decision be annulled and the matter remanded to the Board for further proceedings to address the evidentiary issues and to ensure full development of the evidentiary record "in accordance with the due process rights of all parties."

(*Aparicio v. Workers' Comp. Appeals Bd.* (Dec. 5, 2025, No. B343586) 91 Cal.Comp.Cases 1, 6 [2025 Cal.App.Unpub. LEXIS 7800] (*Aparicio*).)[3]

The Second District agreed, ordering that the Decision be annulled and this matter remanded "for further development of the record." (*Aparicio*, *supra*, 91 Cal.Comp.Cases at p. 3.)

> When determining whether the Board's conclusion was supported by substantial evidence, the evidence must be considered in light of the entire record. (§ 5952, subd. (d); *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal. 3d 627, 637 [83 Cal. Rptr. 208, 463 P.2d 432].) "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

[3] *Aparicio* is citable and relied on herein as law of the case. (Cal. Rules of Court, Rule 8.115, subd. (b).)

> on incorrect legal theories." (*Hegglin v. Workmen's Comp. Appeals Bd*. (1971) 4 Cal. 3d 162, 169 [93 Cal. Rptr. 15, 480 P.2d 967].)
>
> *The Board's Decision is Not Supported by Substantial Medical Evidence*
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> The medical opinions here fail the substantial evidence test because the evaluators themselves identified missing evidence as necessary for their analysis. Dr. Grodan deferred his final opinion "to review of coworker's testimony or statement, if available," and Dr. Gorinstein likewise noted that "more detailed and documented information is missing" regarding the events of the day. An opinion explicitly dependent on unavailable evidence cannot constitute substantial evidence under section 5952.
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> . . .

(*Aparicio*, *supra*, 91 Cal.Comp.Cases at pp. 6-7.)

After describing with particularity the problems in the analysis and ultimate disposition of the WCJ, the Court found that "[t]he WCJ's conclusion that there was no delay in medical treatment because Aparicio's aphasia occurred while he was with the paramedics is not supported by substantial medical evidence." (*Aparicio*, *supra*, 91 Cal.Comp.Cases at p. 7.) As a result, the court concluded that:

> The chronology of events in these allegedly inconsistent statements was necessary to determine whether the disability caused by the stroke was at least in part connected to the employment. As observed by the Board in its response to the petition, the prior statements provided by Kagawa, Acosta and Lopez, though mentioned throughout, were not in the record.
>
> More importantly, those statements were never provided to the medical evaluators. ...
>
> ...Without review of the statements, both at trial and earlier, the medical opinions are based on an incomplete history and cannot constitute substantial medical evidence.

(*Aparicio*, *supra*, 91 Cal.Comp.Cases at pp. 7-8.)

The Court held that the Decision was not supported by substantial medical evidence "from either side and the Board had a duty to develop the record." (*Aparicio*, *supra*, 91 Cal.Comp.Cases at p. 9, citing *Lundberg v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 436, *Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, *San Bernardino Community Hospital v.*

Workers' Comp. Appeals Bd. (1999) 74 Cal.App.4th 928, and *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389.)

> In this matter, the medical reporting indicated that Dr. Grodan did not review any witness statements and Dr. Gorinstein did not review statements made by witnesses closer in time to Aparicio's stroke. These statements were requested by Dr. Grodan to determine whether there was any industrial causation for the stroke. Dr. Gorinstein deferred to Dr. Grodan as the internal medicine specialist as to whether the employment had a role in the development or aggravation of hypertension. These statements were in King Fish's possession and ordered produced to the parties. It is unclear whether production was made to Aparicio. It is certain that these statements were not provided to the medical evaluators. The omission of these more contemporaneous accounts of the events leading up to the fall and stroke demonstrates the inadequate history provided to the QMEs. Given the WCJ's characterization of Kagawa's and Acosta's testimony as "unclear," the Board's decision is not supported by substantial medical evidence from either side and the Board had a duty to develop the record.

(*Aparicio*, *supra*, 91 Cal.Comp.Cases at pp. 9-10.)

Accordingly, it is our decision after remittitur to rescind the F&O in both ADJ8471459 and ADJ10571336 and return both matters to the trial level for further development of the record consistent with this decision and with the Court's Order and full decision in *Aparicio*.

For the foregoing reasons,

IT IS ORDERED as the Decision after Remittitur of the workers' Compensation Appeals Board that applicant's Petition for Reconsideration of the Findings of Fact and Orders issued by a workers' compensation administrative law judge on May 18, 2022 in ADJ8471459 and the Findings of Fact and Orders issued by a workers' compensation administrative law judge on May 18, 2022 in ADJ10571336 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision after Remittitur of the Workers' Compensation Appeals Board that the Findings of Fact and Orders issued by a workers' compensation administrative law judge on May 18, 2022 in ADJ8471459 and the Findings of Fact and Orders issued by a workers' compensation administrative law judge on May 18, 2022 in ADJ10571336 are **RESCINDED** and these cases are **RETURNED** to the trial level for further proceedings consistent with this decision and the Order and decision of the Second District Court of Appeal, Division 8, in *Aparicio v. Workers' Comp. Appeals Bd.* (Dec. 5, 2025, No. B343586) 91 Cal.Comp.Cases 1, 6 [2025 Cal.App.Unpub. LEXIS 7800].

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 20, 2026

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

TEOFILO APARACIO
SOLOV & TEITELL
BRADFORD & BARTHEL
LAW OFFICE OF CHRISTY L. DUNCAN

AJF/mc

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