WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

TROY MORKAL, *Applicant*

vs.

CABINET CRAFTERS; SECURITY NATIONAL INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ10300370
Lodi District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant, who is representing himself, seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact and Order of January 13, 2026, wherein it was found that applicant did not sustain industrial injury to the neck and that "no temporary disability is or was caused by asthma or hearing." In this matter, while employed as a cabinet maker during a cumulative period ending September 11, 2024, applicant sustained industrial injury to his hearing and in the form of asthma and claims industrial injury to the neck.

Applicant contends that the WCJ erred in not finding industrial injury to the neck and in not finding temporary disability caused by this injury. We have not received an answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will grant reconsideration, rescind the WCJ's decision and issue a new decision deferring the issue of industrial injury to the neck. We believe that the record should be further developed on this issue and that this matter is best served by the WCJ's appointing an independent medical evaluator pursuant to Labor Code section 5701. We affirm the finding that applicant did not prove his entitlement to temporary disability from his hearing or asthma injuries. However, we defer the issue of any temporary disability caused by any potential injury to the neck.

Preliminarily, we note that former Labor Code 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, Labor Code 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.
>
> (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 February 25, 2026 and 60 days from the date of transmission is Sunday, April 26, 2026. The next business day that is 60 days from the date of transmission is Monday, April 27, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on April 27, 2026, so 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 Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

---

[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.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on February 25, 2026, and the case was transmitted to the Appeals Board on February 25, 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 February 25, 2026.

We note that in the Report, the WCJ indicates that applicant's Petition is untimely. Labor Code section 5903 states, "At any time within 20 days after the service of any final order, decision, or award made and filed by the appeals board or a workers' compensation judge granting or denying compensation, or arising out of or incidental thereto, any person aggrieved thereby may petition for reconsideration…." Appeals Board Rule 10605(a) states:

> **When any document is served by mail**, fax, e-mail or any method other than personal service, **the period of time for exercising or performing any right or duty to act or respond shall be extended by**:
>
> (1) Five calendar days from the date of service, if the place of address and the place of mailing of the party, attorney or other agent of record being served is within California;
>
> (2) **Ten calendar days from the date of service, if the place of address and the place of mailing of the party, attorney or other agent of record being served is outside of California but within the United States; and**
>
> (3) Twenty calendar days from the date of service, if the place of address and the place of mailing of the party, attorney or other agent of record being served is outside the United States.

(Emphasis added.)

In this matter, the Findings of Fact and Order was served on January 13, 2026. Because applicant was served at his residence in Arizona, a place "outside of California but within the United States," applicant's time to file a Petition for Reconsideration was extended by ten days. Thus, applicant had 30 days from January 13, 2026, or until February 12, 2026 to file his Petition. Applicant's filing on February 10, 2026 is thus timely.

Turning to the merits, applicant was evaluated for his claim of neck injury by qualified medical evaluator orthopedist Jeffrey O. McGillicuddy, M.D. In his initial report of July 19, 2023, Dr. McGillicuddy wrote:

> There is no provided objective medical evidence to suggest that his described mechanism of injury beginning in September of 2013 and ending in September 2014 is industrial causation for his current 3/10 neck pain.
>
> There is no documentation that the examinee was on modified work secondary to a work-related neck injury. There is no indication or provided documentation that there were periods of los[t] time at work due to the reported mechanism of injury. There is no provided medical history or documentation to support an industrial cumulative trauma mechanism of injury.
>
> ***
>
> His current complaint of 3/10 neck pain is not consistent with his described mechanism of injury supporting sheets of plywood with his head as he carried them with his arms within the work place.

(July 19, 2023 report a p. 16.)

Similarly, in a supplemental report of December 5, 2023, Dr. McGillicuddy wrote, "There is no provided objective medical evidence to suggest that the examinee sustained any industrial injury, cumulative or otherwise, to his neck and/or to his cervical spine between 1985 when he worked for H&H Commercial Cabinets through September 2014 when he last worked for Cabinet Crafters." (December 5, 2023 report at p. 7.)

In a final supplemental report of December 27, 2025, Dr. McGillicuddy wrote:

> For clarification, the examinee described to me that he would carry a sheet of plywood in his two hands and that he would lean his head against the sheet of plywood to stabilize it. The examinee did not indicate to me that he carried anything on his head.
>
> ***
>
> As to the weight of the plywood sheet that would be transferred to the cervical spine … it would be minimal. Within a reasonable degree of medical probability, the examinee's use of his head to stabilize on or more sheets of plywood being supported and carried by the examinee's hands, and not on top of his head, within a reasonable degree of medical probability, that method of carrying is not the mechanism of causation of the examinee[']s cervical spine degenerative changes noted first on the cervical spine x-rays taken on October 5, 2015.

Where the medical evidence or opinion on an issue is incomplete, stale, and no longer germane, or is based on an inaccurate history, or speculation, it does not constitute substantial evidence. (*Place v. Workers' Comp. Appeals Bd*. (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

We believe that Dr. McGillicuddy's reporting in this matter does not constitute substantial medical evidence. Although Dr. McGillicuddy appears to base his decision on the lack of "objective medical evidence" of causation and the fact that no time was taken off work because of applicant's cervical complaints, neither is necessary for a finding of industrial injury. Unless the injured worker's history of injury is found not credible for whatever reason, the relevant inquiry should be whether such a history caused disability or a need for medical treatment. Although Dr. McGillicuddy did opine that the way applicant carried plywood was not consistent with applicant's pathology or symptoms, a more detailed history is necessary to determine if any other work functions contributed to disability or the need for medical treatment in the cervical spine. The applicant should give the reporting physician a complete history or his work duties and movements. In any case, the reporting physician should reevaluate the issue of whether the way applicant carried plywood may have contributed to a cervical injury.

We affirm the finding that applicant's asthma and hearing injury did not cause any periods of temporary disability. Applicant had the burden of proof on this issue (Cal. Lab. Code, §§ 3202.5, 5705) and did not present any medical evidence of temporary disability caused by asthma or lack of hearing.

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]) 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, rescind the WCJ's decision, and return this matter to the trial level for further development of the record and decision on the issue of industrial injury to the neck. We believe that this case would be best served by the appointment of an independent medical evaluator pursuant to Labor Code section 5701, and thus the WCJ should issue an order for the appointment of a Labor Code section 5701 doctor upon return of this case. Since any industrial neck injury may

have caused temporary disability, we defer the issue of temporary disability caused by any neck injury. We express no opinion on the outcome of any outstanding issue in this case.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings of Fact and Order of January 13, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Order of January 13, 2026 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT-ADJ10300370

1. Applicant Troy Morkal, age 62, while employed during the period of September 11, 2013 to September 11, 2014, as a cabinet maker, Occupational Group 320 at Lockeford, California, by Cabinet Crafters, sustained injury arising out of and in the course of employment to his hearing and asthma.

2. The issue of industrial injury to the cervical spine is deferred, with jurisdiction reserved. The WCJ shall appoint an independent medical evaluator pursuant to Labor Code section 5701 to assist in the determination of this issue.

3. At the time of injury, the employer's workers' compensation insurance carrier was Security National Insurance Company.

4. At the time of injury, the employee's earnings were $785.64 per week, warranting an indemnity rate for temporary disability of $523.76 and permanent disability at $290.

5. Permanent disability was paid by the carrier for the period 10/26/2016 to 3/14/2019 at the weekly rate of $290 which equates to $37,990.00.

6. No temporary disability is or was caused by asthma or hearing. The issue of any temporary disability caused by any neck injury is deferred, with jurisdiction deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 27, 2026

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

TROY MORKAL
LAUGHLIN, FALBO, LEVY & MORESI

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