

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

VERONICA HERRERA, *Applicant*

vs.

**BREAD AND CIE WHOLESALE, LLC, permissibly self-insured,
administered by PACIFIC CLAIMS MANAGEMENT, *Defendants***

**Adjudication Number: ADJ15756130
San Diego District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Defendant seeks reconsideration of the March 4, 2026 Order, wherein the workers' compensation administrative law judge (WCJ) rescinded a prior order vacating submission and reinstated a Findings and Award (F&A) issued on December 11, 2025. Therein, the WCJ determined that applicant, while employed as a cleaner from June 21, 2021 to January 11, 2022, sustained industrial injury to her neck, lumbar spine, and bilateral knees but did not sustain injury to her trunk, legs, ankles, feet, all fingers and psyche. The WCJ determined that compensation is not barred by Labor Code¹ section 3600(a)(10) as a result of a post-termination claim filing.

Defendant contends that applicant is not a credible witness based on material misrepresentations as set forth in the evidentiary record. Defendant also asserts the reporting of applicant's treating physicians are not substantial evidence and that the opinions expressed therein evince bias. Defendant asserts the reporting of the Qualified Medical Evaluator (QME) is the better reasoned and more persuasive reporting in evidence.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be

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

denied. We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, as our Decision After Reconsideration we will rescind the March 4, 2026 Order and return this matter to the trial level for further proceedings.

FACTS

The relevant factual background is set forth in our June 15, 2026 Opinion and Order Granting Petition for Reconsideration, as follows:

Applicant alleges industrial injury to her back, neck, trunk, legs, knees, ankles, feet, all fingers, and stress (psyche), while employed by defendant Bread and Cie Wholesale, LLC, as a cleaner, from June 21, 2021 to January 11, 2022. Defendant disputes injury arising out and in the course of employment (AOE/COE).

The parties have selected Kevin Metros, M.D., as the Qualified Medical Evaluator (QME) in orthopedic medicine. Applicant has selected Alexander Caligiuri, D.C., as her primary treating physician.

On August 27, 2025, the parties proceeded to trial and framed for decision issues of injury AOE/COE, and whether compensation is barred by operation of section 3600(a)(10). Defendant further asserted that applicant violated section 5803 and sections 3820 through 3823 due to material misrepresentations made under oath and at medical evaluations, and that applicant's claim is "not compensable by law." (Minutes of Hearing and Summary of Evidence, dated August 27, 2025, at p. 2:12.) The WCJ heard applicant's testimony, and ordered the matter submitted for decision as of September 15, 2025.

On December 11, 2025, the WCJ issued the F&A, determining in relevant part that applicant resigned her employment, thus obviating the affirmative defense of a post-termination claim filing. (Finding of Fact No. 4.) Based on the totality of the medical evidence in the record, the WCJ determined that applicant had sustained injury AOE/COE to her neck, lumber spine, and bilateral knees, but not to the trunk, legs, ankles, feet, all fingers and psyche. (Findings of Fact Nos. 1 & 2.) The WCJ also determined that applicant had violated neither section 5813 nor sections 3820 to 3823.

On January 5, 2026, defendant sought reconsideration of the F&A, averring in relevant part that applicant was not a credible witness because she had made multiple material misrepresentations evidenced in the record that materially impaired the reliability of her testimony and the history provided to evaluating physicians. (Petition for Reconsideration, dated January 5, 2026, at p. 4:16.) Defendant asserted applicant's testimony was incompatible with surveillance

video, and that the reporting of PTP Dr. Caliguiri was not substantial evidence. Defendant urged reliance on the reporting of QME Dr. Metros. (*Id.* at p. 15:17.)

On January 6, 2026, the WCJ issued an order vacating her F&A and setting the matter for hearing “so that the parties can discuss how to develop the record, including, but not limited to, an Agreed Medical Evaluator or appointment of a ‘Regular Physician’ by the court, and/or testimony of the employer or provision of a job description.” (Order Vacating Finding of Award (sic) and Orders Dated December 11, 2025 and Setting Hearing, dated January 6, 2026.)

On January 28, 2026, the WCJ conducted an additional hearing with the parties and ordered the parties to brief additional issues relevant to the sufficiency of the medical reporting by March 1, 2026.

On March 4, 2026, the WCJ conducted an additional hearing at which time defendant declined to use an Agreed Medical Evaluator (AME) or to accede to the appointment of a regular physician pursuant to section 5701. (Report, at p. 3.) The WCJ issued an Order rescinding her prior Order Vacating the December 11, 2025 F&A. The WCJ then “reinstated” the December 11, 2025 F&A but also ordered the case “submitted as of today.” (Minutes of Hearing, dated March 4, 2026.)

Defendant’s Petition contends that applicant is not a credible witness based on inconsistencies in the evidentiary record and that any finding of injury AOE/COE is based on material misrepresentations. (Petition, at p. 4:15.) Defendant asserts applicant misrepresented the timing of the filing of the claim, and that her statements to reviewing medical evaluators are inconsistent with surveillance video. Defendant asserts applicant has a history of “questionable” claims. (*Id.* at p. 10:10.) Defendant contends the reporting of Dr. Caliguiri is not substantial medical evidence, while the reporting of QME Dr. Metros is substantial evidence and should be relied upon herein. (*Id.* at p. 14:6; 16:25.)

Applicant’s Answer responds that per the WCJ’s F&A and supporting Opinion, defendant did not meet its evidentiary burden of establishing a post-termination filing because applicant resigned her employment. (Answer, at p. 3:7.) Applicant also observes that the WCJ’s determination as to the basis for injury AOE/COE was a review of the entire body of medical evidence, rather than isolated evidence. (*Id.* at p. 2:23.)

The WCJ’s Report makes it clear, however, “applicant’s credibility was NOT used to support the finding AOE/COE,” and that the WCJ relied on objective diagnostic and other evidence to reach the conclusion that applicant had sustained injury AOE/COE. The WCJ observes that finding applicant “to be not credible would not defeat the finding [AOE/COE].” (Report, at p. 5.) With respect to the sufficiency of the medical reporting, the WCJ observes that the reporting of PTP Dr. Caligiuri found causation only to the body parts of

neck, back and bilateral knees. (*Id.* at p. 6.) The WCJ also observed that the reporting of the QME was not substantial evidence because the reporting did not “discuss the question of ‘injury’ to the correct legal standard.” (*Ibid.*) Accordingly, the WCJ recommends that we deny reconsideration.

(O&O, at pp. 2-5.)

DISCUSSION

We first address several procedural irregularities that are relevant to our grant of reconsideration.

The WCJ issued her initial decision in this matter on December 11, 2025, and defendant filed a Petition for Reconsideration on January 5, 2026. In response, the WCJ exercised the authority granted under Workers’ Compensation Appeals Board (WCAB) Rule 10961 to “rescind the entire order, decision or award and initiate further proceedings within 30 days.” (Cal. Code Regs., tit. 8, § 10961(b).) On January 6, 2026, the WCJ issued an Order vacating the December 11, 2025 decision, and set the matter for hearing on January 28, 2026. The WCJ designated the hearing as a forum in which the parties could discuss how to develop the record, including, but not limited to, an AME or appointment of a regular physician by the court and/or “testimony of the employer or provision of a job description.” (Order Vacating Findings of Award, dated January 6, 2026.)

The WCJ conducted additional trial proceedings on January 28, 2026, and ordered supplemental briefing. The parties returned to trial on March 4, 2026, and the hearing minutes state:

Order vacating submission is rescinded as of today, it [is] hereby ordered that the F&A issued December 11, 2025 is reinstated, that the time to appeal runs 25 days from today, and case is [ordered] submitted as of today.

(Minutes of Hearing, dated March 4, 2026.)

Defendant presently seeks reconsideration in response to the “reinstated” Findings and Award originally dated December 11, 2025. We note in the first instance, however, that to the extent that WCAB Rule 10961(b) permits the rescission of an Award, the effect of such a rescission

is to render the underlying decision a nullity. Accordingly, a decision that has been rescinded pursuant to Rule 10961 may not be reinstated because there is no decision to “reinstate.”²

We also observe that the March 4, 2026 order is internally inconsistent insofar as it purports to submit the matter for decision while simultaneously “reinstating” the December 11, 2025 F&A. In addition, while the “time for filing a petition for reconsideration pursuant to Labor Code section 5903 will run from the filing date of the amended order, decision or award,” the provisions of Rule 10961 operate only within 15 days of the filing of a petition for reconsideration. (Cal. Code Regs., tit. 8, § 10961.) Here, the WCJ did not issue an amended order, decision or award, and the March 4, 2026 order issued well beyond the 15 days following defendant’s January 4, 2026 filing of a Petition for Reconsideration.

We acknowledge the WCJ’s efforts to appropriately develop the record to address potential deficiencies in the evidence, and following exhaustion of those efforts, to expedite the issuance of a decision. However, the procedural irregularities herein cause us to conclude that the March 4, 2026 order was void ab initio. Accordingly, as our decision after reconsideration, we will rescind the March 4, 2026 order and return this matter to the trial level for further proceedings and decision by the WCJ.

In addition, we offer the following nonbinding guidance to the WCJ and the parties.

It is well established that 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 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) 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

² We note that best practice in conformity with Rule 10961 would be the issuance of a complete order, decision, or award in the first instance, rather than “reinstatement” of a prior decision that was rescinded.

findings if it is based on surmise, speculation, conjecture or guess.” (*Hegglin v. Workmen’s Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Here, the WCJ has expressed concerns regarding the adequacy of the evidentiary record. (Report, at pp. 6-7.) The WCJ has previously ordered development of the medical reporting of QME Dr. Metros (Report, at p. 6) and has gone so far as to offer the parties the opportunity to address the issue of applicant’s alleged prior injuries and to develop the record through supplemental reporting or the appointment of a regular physician pursuant to section 5701. (Minutes of Hearing, dated January 28, 2026.) We also note the concerns raised in the record regarding whether the question of exacerbation versus aggravation has been assessed to a correct legal standard (Report, at p. 7), and whether the PTP Dr. Caliguiri reviewed the full measure of available medical and medical-legal evidence necessary to support medically substantial opinions. (Petition, at p. 3:17.)

Generally, when a WCJ identifies deficiencies in the record, augmentation of the record begins by addressing the issues to the evaluating physicians. (Lab. Code, §§ 5701, 5906; *Tyler v. Worker’s Comp. Appeals Bd.* (1997) [56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board en banc) [“the preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case”].) Allowing the parties and the evaluating physician the opportunity to cure any identified deficiencies in the medical-legal report advances the goals of a full adjudication based on a complete record.

However, insofar as the parties are unable to reach an agreed course of action with respect to development of the record, the WCJ maintains wide latitude in the determination of discovery disputes and the need for development of the record at the trial level. (Cal. Code Regs., tit. 8, § 10955(a); *Allison v. Workers’ Comp. Appeals Bd.* (1999) 72 Cal.App.4th 654 [64 Cal.Comp.Cases 624]; *Hardesty v. McCord & Holdren, Inc.* (1976) 41 Cal.Comp.Cases 111 [1976 Cal. Wrk. Comp. LEXIS 2406].) The authority of the WCJ in this respect includes the designation of a regular physician under section 5701 should the WCJ determine, in her sound judgment, that the record requires development in order to constitute an adequate basis upon which to issue a just and reasoned decision.

Here, we share the WCJ’s concerns regarding the adequacy of the current record and encourage the parties to seek consensus as to a discovery plan that will augment the record

sufficiently to allow for the issuance of a final decision based on substantial medical evidence. We further emphasize that to the extent that decisions of the WCJ and the Appeals Board must be based on substantial medical evidence (Lab. Code § 5903; *LeVesque v. Worker's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635-637 [35 Cal.Comp.Cases 16]), the WCJ has considerable authority with respect to the development of the record necessary to support a just and reasoned final decision.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the March 4, 2026 Order is **RESCINDED** and that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 22, 2026

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

**VERONICA HERRERA
CAMPOS LAW
COLEMAN CHAVEZ & ASSOCIATES**

SAR/abs

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