WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

YESENIA ARAMBURO, ***Applicant***

vs.

CHULA VISTA ELEMENTARY SCHOOL DISTRICT, permissibly self-insured, administered by CORVEL CORPORATION, ***Defendants***

Adjudication Number: ADJ19604992
San Diego District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the March 17, 2026 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a special education assistant from November 7, 2021 to November 7, 2022, sustained industrial injury to her bilateral knees. The WCJ found that applicant sustained 6 percent permanent partial disability after apportionment to applicant's prior industrial right knee injury.

Applicant contends that the apportionment opinions expressed by both the primary treating physician (PTP) and the Qualified Medical Evaluator (QME) do not constitute substantial medical evidence, entitling applicant to an unapportioned award of disability.

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

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&A, and return this matter to the trial level for development of the record and for further proceedings.

FACTS

Applicant sustained admitted injury to her bilateral knees while employed as a special education assistant by defendant Chula Vista Elementary School District from November 7, 2021 to November 7, 2022.

Applicant has previously sustained industrial injury to her right knee on December 9, 2008, resolved by way of Stipulations with Request for Award on April 19, 2011. The parties stipulated therein that applicant sustained four percent permanent disability.

The parties selected Payam Moazzaz, M.D., to act as QME in orthopedic medicine. Applicant further selected John Lane, M.D., as her primary treating physician.

On March 2, 2026, the parties proceeded to trial and framed for decision the issues of permanent disability, apportionment, and attorney's fees. Neither party called any witnesses, and the WCJ ordered the matter submitted on the documentary record.

On March 17, 2026, the WCJ issued the F&A, determining in relevant part that applicant sustained industrial injury with corresponding permanent partial disability. (Finding of Fact No. 1.) The F&A did not make an express finding with respect to apportionment, but the WCJ's Opinion on Decision observed that both the QME and the PTP had identified apportionment to applicant's 2008 right knee injury, and that "there is valid apportionment as it pertains to applicant's left and right knees." (Opinion on Decision, at p. 5.)

Applicant's Petition asserts that although "[b]oth the PTP and the QME apportion 60% of applicant's right knee injury to the prior 2009 right knee injury … neither the PTP nor the QME adequately explained how and why the 2009 knee injury is presently causing disability." (Petition for Reconsideration (Petition), dated March 26, 2026, at p. 3:23.) In addition, applicant observes that her 2008 injury involved the *lateral* meniscus of the right knee, while her 2022 injury involved the *medial* meniscus, and that the medical record does not adequately address the relationship, if any, between the two knee injuries. (*Id.* at p. 4:18.) Because the apportionment opinions of the evaluating physicians are not substantial evidence, applicant asserts entitlement to an unapportioned award.

Defendant's Answer observes that both PTP Dr. Lane and QME Dr. Moazzaz have relied on imaging studies, applicant's clinical presentation, and their respective medical expertise to arrive at considered apportionment opinions that constitute substantial medical evidence. Defendant further asserts that while the PTP and the QME note the presence of a current injury to

the medial meniscus of the right knee, their respective apportionment opinions are based solely on an assessment of injury to the lateral meniscus. (Answer, at p. 7:14.)

The WCJ's Report observes that both PTP Dr. Lane and QME Dr. Moazzaz have identified apportionment, both reports constitute substantial medical evidence, and that the opinions of both physicians are based on prior documented pathology and impairment. (Report, at p. 3.) Accordingly, the resulting apportionment opinions constitute substantial evidence.

DISCUSSION

I.

Former Labor Code[1] 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, 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 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 April 2, 2026, and 60 days from the date of transmission is June 1, 2026. This decision is issued by or on June 1, 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

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

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.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on April 2, 2026, and the case was transmitted to the Appeals Board on April 2, 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 April 2, 2026.

II.

Applicant challenges the WCJ's findings of permanent disability after apportionment to her prior injury. The parties do not dispute that applicant sustained a prior December 9, 2008 industrial injury in the form of a lateral meniscus tear in her right knee, resulting in an award of four percent permanent disability.

In the instant matter, both PTP Dr. Lane and QME Dr. Moazzaz have identified permanent disability arising out of applicant's cumulative injury ending November 7, 2022, and both physicians have apportioned sixty percent of applicant's present permanent disability to the 2008 injury. (Ex. 3, Report of John Lane, M.D., dated November 5, 2024, at p. 5; Ex. 1, Report of Payam Moazzaz, M.D., dated February 28, 2025, at p. 52.) The F&A reflects a finding of current permanent disability net of 60 percent apportionment. (Finding of Fact No. 1.)

Applicant asserts "neither the PTP nor the QME adequately explained how and why the 2009 knee injury is presently causing disability." (Petition, at p. 3:20.) Applicant contends her present injury involves the medial meniscus of the right knee, while her 2008 injury involved the lateral meniscus, and "[n]either the PTP nor the QME explain how a 2009 (sic) injury to the outside of the knee is now causing disability to a 2022 injury to the inside of the knee." (*Id.* at p. 4:18.) Applicant further contends that apportionment opinions of the PTP conflate risk factors arising out of her prior injury with causation of permanent disability. (*Id.* at p. 5:13.) Insofar as the

apportionment identified by both the PTP and the QME apply an incorrect legal theory of apportionment, applicant asserts entitlement to an unapportioned award.

Defendant's Answer observes in the first instance that the reports of both the PTP and the QME offer opinions based on reasonable medical probability and that both reports constitute substantial medical evidence. Defendant also observes that irrespective of the presence of a *medial* meniscus tear in applicant's right knee, the basis for applicant's rating was *lateral* joint space narrowing which was also the basis for the rating of applicant's prior 2008 injury. (Answer, at p. 7:1.) Similarly, QME Dr. Moazzaz rates applicant's present impairment by assessment of joint space narrowing of the lateral compartment of the right knee. (*Id.* at p. 7:10.) Thus, the record establishes an appropriate basis for overlapping pathology justifying apportionment to prior industrial factors.

We observe generally that applicant herein bears "the initial burden of establishing an industrial injury," and that "both the overall level of permanent disability and that at least some of this permanent disability was industrially-caused." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 612 (Appeals Bd. en banc); Lab. Code, §§3202.5, 5705.) Conversely, "in accordance with section 4663(c) … defendant has the burden of establishing the approximate percentage of permanent disability caused by factors other than the industrial injury." (*Id.* at p. 613.)

Apportionment of permanent disability is based on causation and the "employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment." (Lab. Code, §§ 4663(a); 4664(a).) "The plain reading of 'causation' in this context is causation of the permanent disability." (*Escobedo*, *supra*, at p. 611.) Therefore, examining physicians must "make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries." (Lab. Code, § 4663(c).)

However, the mere fact that a physician's report addresses the issue of causation of permanent disability and makes an apportionment determination by finding the approximate respective percentages of industrial and non-industrial causation does not necessarily render the report substantial evidence upon which we may rely. Rather, the report must, in part, disclose

familiarity with the concepts of apportionment, describe in detail the exact nature of the apportionable disability, and set forth the basis for the opinion that factors other than the industrial injury at issue caused permanent disability (i.e. the report must explain how the "other factors" caused permanent disability) so that the Board can determine whether the physician is properly apportioning under correct legal principles. (*Escobedo*, *supra*, at p. 621.)

In addition, section 4664 provides that "[i]f the applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury." (Lab. Code, § 4664 (b).) "Section 4664(b) creates a conclusive presumption of the continued existence of a prior permanent disability when the claimant received an award of permanent disability benefits based on that disability," and that defendant "has the burden of proving overlap between the current disability and the previous disability in order to establish its right to apportionment…." (*Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229].)

Here, both the QME and the PTP have identified industrial injury with corresponding percentages of impairment, subject to apportionment to prior industrial factors. QME Dr. Moazzaz finds right knee impairment based on "narrowing of the lateral compartment to 3 mm," and left knee impairment based on patellofemoral crepitus. (Ex. 1, Report of Payam Moazzaz, M.D., dated June 25, 2025, at pp. 2-3.) However, Dr. Moazzaz also notes that causation of applicant's right knee impairment is "a combination of the prior the industrial injury sustained to the right knee on December 9, 2008 and the cumulative trauma industrial injury sustained to the bilateral knees from November 7, 2021 through November 7, 2022." (Ex. 2, Report of Payam Moazzaz, M.D., dated February 28, 2025, at p. 52.)

Dr. Moazzaz observes applicant has a "history of prior right knee injury on December 9, 2008 and the claimant was found to have a normal medial meniscus at that time with tear of the lateral meniscus." (Ex. 2, Report of Payam Moazzaz, M.D., dated February 28, 2025, at p. 52.) However, applicant now has a "complex tear of the medial meniscus on the updated imaging as well as arthritis and joint space narrowing worse in the lateral compartment (where she had her prior lateral meniscectomy)." (*Ibid*.) Based on these findings, the QME opines that "40% of the current disability has been caused by the cumulative trauma industrial injury and 60% has been caused by the industrial injury sustained to the right knee on December 9, 2008." (*Ibid*.)

It is unclear, however, whether applicant's medial meniscus tear is related to her cumulative injury, and if so, whether such injury resulted in impairment. The QME's discussion of apportionment describes injury to both the medial and lateral compartments of applicant's right knee, but impairment appears to be based solely on "narrowing of the lateral compartment." (Ex. 1, Report of Payam Moazzaz, M.D., dated June 25, 2025, at p. 2.) In addition to an incomplete discussion of factors of causation, Dr. Moazzaz does not describe how he determined that applicant's 2008 injury caused 60 percent of applicant's present permanent disability, whether there was involvement with the medial meniscus, or how he arrived at the particular percentages identified. It is also unclear whether the physician has considered apportionment to applicant's prior disability and the concomitant issue of overlap, as set forth in section 4664. (Lab. Code, § 4664 (b); *Kopping*, *supra*, 142 Cal.App.4th at p. 1115; see also *Shadoan v. City of San Diego* (2025) 91 Cal.Comp.Cases 352 (writ den. sub nom. *Shadoan v. Workers' Comp. Appeals Bd.* (April 29, 2026, D087484 [ADJ11349617; ADJ11349806]).) We thus find the analysis of both causation and apportionment in the QME reporting to be incomplete.

PTP Dr. Lane notes that per diagnostic imaging, applicant's right knee has only two millimeters of "*lateral* tibiofemoral joint space," and that applicant is status post right knee arthroscopy and partial lateral meniscectomy. (Ex. 3, Report of John Lane, M.D., dated November 5, 2024, at p. 4, italics added.) The PTP does not identify injury to applicant's right *medial* meniscus, and it is unclear whether Dr. Lane has been provided the November 15, 2022 MRI study to the right knee which, by report, identified a "[c]omplex tear posterior horn *medial* meniscus." (Ex. 2, Report of Payam Moazzaz, M.D., dated February 28, 2025, at p. 43, italics added.) Dr. Lane apportioned 60 percent of applicant's right knee joint space narrowing and need for a partial lateral meniscectomy to the 2008 injury, "due to the fact that the patient did have a prior industrial claim with surgery, and over time this contributed to her development of lateral compartment disease." (Ex. 3, Report of John Lane, M.D., dated November 5, 2024, at p. 5.) However, as was the case with Dr. Moazzaz, the PTP does not identify the mechanism by which applicant's prior injury is now resulting in permanent disability, nor does it discuss how the physician identified the particular percentages used. In addition, the PTP does not discuss apportionment or overlap as described in section 4664. (*Kopping*, *supra*, 142 Cal.App.4th at p. 1115.) We thus find the analysis of both causation and apportionment in the PTP reporting to be incomplete.

The WCJ and the Appeals Board have an affirmative duty to further develop the record when there is insufficient evidence to adjudicate an issue. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) 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].) Accordingly, the WCJ or the Board may not leave undeveloped matters within its acquired specialized knowledge (*Id*. at 404). In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that "[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record … the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete." (*McDuffie*, *supra*, at p. 141.) The affirmative duty to develop the record is triggered when "neither side has presented substantial evidence on which a decision could be based." (*San Bernardino Community Hospital v. Workers. Comp. Appeals Bd.* (*McKernan*) (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986].) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie*, *supra*, at p. 141.)

Here, neither the PTP nor the QME reporting fully address the issues of causation and apportionment to the extent necessary to support a final decision in this matter. Consequently, and following our complete review of the evidence submitted herein, we conclude that development of the record is necessary. We will grant applicant's Petition, accordingly, rescind the F&A, and return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of March 17, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the March 17, 2026 Findings and Award is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 1, 2026

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

YESENIA ARAMBURO
LAW OFFICE OF JOHN A. DON
SIEGEL, MORENO & STETTLER

SAR/abs

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