WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

DENISE GIBSON, *Applicant*

vs.

CAL OES, legally uninsured; adjusted by
STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ12881816
Sacramento District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings and Award (F&A) of May 1, 2024, wherein the workers' compensation judge (WCJ) found in relevant part that through January 25, 2019, while employed as an environmental scientist for defendant, applicant sustained injury arising out of and in the course of employment (AOE/COE) to her lungs but not to her feet; applicant has an occupational group number of 213; applicant has sustained 14% permanent disability to her lungs; and applicant will require further medical treatment to cure or relieve from the effects of this injury.

Applicant contends that the WCJ erred in failing to find industrial injury to her feet, and further that the WCJ erred in apportioning 80% of her lung disability to a separate cumulative injury with her prior employers. Applicant also contends that her permanent disability rating should be calculated using occupational group 490.

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 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, we will grant the Petition for Reconsideration, rescind the F&A, and return this matter to the WCJ for further proceedings.

FACTS

Applicant, while employed during the period ending on January 25, 2019, as an environmental scientist by California Office of Emergency Services sustained injury AOE/COE to her lungs and claims to have sustained injury AOE/COE to her feet.

Applicant began working for defendant on July 1, 2012, as an environmental scientist. (2/29/24 Minutes of Hearing/ Summary of Evidence (MOH/SOE), p. 4.) Her job duties included evaluating programs with the Certified Unified Program Agency (CUPA) and evaluating the California Accidental Release Prevention Program (CalARP). (MOH/SOE, p. 4.) She oversaw the facilities in their jurisdiction. (MOH/SOE, pp. 4, 7.) She oversaw or watched the inspectors and instructed them on how to institute relevant programs. (MOH/SOE, pp. 4, 8.) Applicant investigated how certain specified toxic and flammable substances were produced and/or stored at refineries, storage facilities, and water treatment plants for chlorine gas. (MOH/SOE, p. 4.) While out on inspection, applicant's only protective gear was provided by the facility. (MOH/SOE, p. 4.) Usually, she had a hard hat and protective gear for her eyes and ears. (MOH/SOE, p. 4.) Applicant smelled leaks in the facilities. (MOH/SOE, p. 4.) She also spent a few weeks in Mendocino County helping to set up a local assistance center for fire evacuations during an uncontained fire. (MOH/SOE, pp. 5, 8.) Her work varied between doing paperwork while sitting and doing inspections and enforcement at facilities. (MOH/SOE, p. 5.)

Prior to her job with defendant, she had been a firefighter for the U.S. Forest Service starting in 1981 for six seasons. (MOH/SOE, p. 6.) From 1981 to 1988, she was a backcountry ranger for the U.S. National Parks; she fought fires and there were chemicals in the smoke including gas and ammonia. (MOH/SOE, p. 6.) In 1991, she started working the U.S. Forest Service as an outdoor recreations planner and fought fires during this job. (MOH/SOE, p. 6.) She then obtained a master’s degree and worked in the education field. (MOH/SOE, p. 6.) In 1999 or 2000, she worked as a reserve police officer in Auburn and Truckee. (MOH/SOE, p. 6.) In 2002 or 2003, she was a police officer at UCD. (MOH/SOE, p. 6.) She was exposed to hazardous

substances as a police officer. (MOH/SOE, p. 6.) She started experiencing chest pain, vertigo, sneezing, and coughing while working on the UCD police force but she thought it was allergies. (MOH/SOE, p. 7.) She began working for the State of California in 2004, and began working for defendant in 2012. (MOH/SOE, p. 7.)

Applicant was diagnosed with sarcoidosis which causes "paper" lungs. (MOH/SOE, p. 4.) In January 2019, applicant filed a worker's compensation claim for injury to her lungs. (MOH/SOE, p. 4.) Applicant's outward symptoms included coughing, catching her breath, and feeling nauseated and weak. (MOH/SOE, p. 5.) Applicant was also diagnosed with plantar fasciitis, which got much worse in 2018. (MOH/SOE, p. 5.) Her feet were injured from standing and walking. (MOH/SOE, p. 6.)

Lawrence Collins, deputy chief of special operations and hazardous materials unit of fire and rescue for defendant, also testified at the hearing. (MOH/SOE, p. 8.) He started working with applicant in November 2016. (MOH/SOE, p. 10.) He testified that applicant was responsible for oversight and mentorship of the CUPAs to abide by the regulations. (MOH/SOE, p. 9.) In 2016, applicant would review CUPAs' plans on-site but this changed to a hybrid review after Covid. (MOH/SOE, p. 9.) On-site visits would include visits to the office as well as cold storage facilities and water treatment plants. (MOH/SOE, p. 9.) The employer did not provide protective gear when applicant went on-site for visits. (MOH/SOE, p. 10.) Collins testified that it was reasonable to assume that applicant was exposed to pesticides and pest control spay during on-site visits. (MOH/SOE, p. 9.) He confirmed that applicant worked in major disaster areas including a fire in Mendocino County and to recovery efforts following the Camp Fire in 2017 or 2018. (MOH/SOE, p. 9.) Collins noticed applicant's symptoms when he started working with her; her coughing spells lasted about 30 seconds and seemed painful. (MOH/SOE, p. 10.)

In the initial Panel Qualified Medical Evaluator's (PQME) comprehensive medical-legal report of October 4, 2019, Dr. Stewart Lonky, PQME in internal medicine and pulmonary disease, reviewed applicant's medical history from 1980 to the present. (Jt. Ex. AA, PQME report of Dr. Lonky dated 10/4/19, p. 4.) Dr. Lonky concluded that applicant likely suffered from sarcoidosis as early as 2005 to 2009. (Jt. Ex. AA, p. 48.) However, at that point, Dr. Lonky concluded that he could not link the sarcoidosis to any workplace exposure during her employment with defendant without being provided further information such as material safety data sheets or other exposure information. (Jt. Ex. AA, pp. 51-53.) Dr. Lonky stated that a 45% whole person impairment (WPI)

was appropriate for applicant. (Jt. Ex. AA, p. 51.) Dr. Lonky produced three other PQME reports on December 8, 2020 (Jt. Ex. BB); February 13, 2021 (Jt. Ex CC); and April 11, 2020. (Jt. Ex. DD).

However, as of the PQME report of April 11, 2022, Dr. Lonky found that 10% of "her disability related to her pulmonary impairment should be considered industrially related and related to the exposure to irritants and inducers" during her employment for defendant. (Ex. DD, PQME report of Dr. Lonky dated 4/11/22, p. 11.) As of his final PQME report of July 5, 2023, following a more thorough review of information and review of applicant's deposition, Dr. Lonky concluded that applicant still had a 45% WPI. (Jt. Ex. EE, PQME report of Dr. Lonky dated 7/5/23, pp. 5-6.) Dr, Lonky apportioned 20% of her disability to her time working for defendant due to the worsening of her disease during that time. (Jt. Ex. EE, p. 6.) Dr. Lonky apportioned the remaining 80% due mostly to her work as a firefighter with CalFire with less than 5% due to "day-to-day" exposure to smoke in California. (Jt. Ex. EE, pp. 6-7.)

A visit summary from Kaiser from December 7, 2018, showed that applicant was diagnosed with bilateral plantar fasciitis. (App. Ex. 1, Medical report of Robert Soulier, DPM, Kaiser, dated 12/7/18, p. 5.) The single PQME report regarding applicant's foot injury was from Dr. Vincent Marino, PQME in primary podiatric medicine, on December 30, 2020. (Def. Ex. A, Vincent Marion DPM, dated 12/30/20.) Dr. Marino concluded that applicant's plantar foot predated her employment with defendant and that it was not caused or aggravated by her employment with defendant. (Def. Ex. A, p. 5.)

Applicant's position duty statement listed her title as Environmental Scientist and included both professional scientific office and fieldwork as well as being mobilized to work in emergency operations. (Jt Ex. GG, Position Duty Statement, pp. 1-2.)

Following the trial, the WCJ found in relevant part that applicant sustained industrial injury to her lungs but not to her feet for the period ending on January 25, 2019; that applicant was an environmental scientist with an occupational group number of 213; that she had 14% permanent disability to her lungs; and that she will require further medical treatment to cure or relieve from the effects of the injury. (F&A, pp. 1-2.) The WCJ awarded her permanent disability of 14% after apportionment entitling applicant to 46.25 weeks of disability indemnity at the rate of $290.00, in the total sum of $13,412.50, less credit to defendant for all sums already paid and less attorney

fees; and future medical treatment to the lungs reasonably required to cure or relieve from the effects of the injury. (F&A, p. 2.)

DISCUSSION

I.

The employee bears the burden of proving the injury arose out of and in the course of employment (AOE/COE) by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a), 3202.5.) An injury may be either "specific," occurring as the result of one incident or exposure which causes disability or need for medical treatment; or "cumulative," occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. (Lab Code § 3208.1.) "In any given situation, there can be more than one injury, either specific or cumulative or a combination of both, arising from the same event or from separate events." (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 227, 234, citing *Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.* (1990) 219 Cal.App.3d 1265, 1271.) The number and nature of the injuries suffered are questions of fact for the WCJ or the Appeals Board to determine. (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 227, 234-235.)

Labor Code section 3208.2[1] provides:

> When disability, need for medical treatment, or death results from the combined effects of two or more injuries, either specific, cumulative, or both, all questions of fact and law shall be separately determined with respect to each such injury, including, but not limited to, the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit.

(Lab. Code § 3208.2.)

Section 5303 provides, in pertinent part:

> There is but one cause of action for each injury coming within the provisions of this division. … [N]o injury, whether specific or cumulative, shall, for any purpose whatsoever, merge into or form a part of another injury; nor shall any award based on a cumulative injury include disability caused by any specific

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

> injury or by any other cumulative injury causing or contributing to the existing disability, need for medical treatment or death.

Section 5412 provides:

> "The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment."

Cumulative injury occurs when the employee's repetitive physical or mental activities at work over a period of time cause disability or the need for medical treatment. (§ 3208.1; *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (*Austin*) (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323]; *Bassett-McGregor v. Workers' Comp. Appeals Board* (*Bassett-McGregor*) (1988) 205 Cal.App.3d 1102, 1112-1115 [53 Cal. Comp. Cases 502]; *J.T. Thorp, Inc., v. Workers' Comp. Appeals Bd.* (*Butler*) (1984) 153 Cal.App.3d 327, 332-333 [49 Cal.Comp.Cases 224].) The date of injury for a cumulative injury is when an employee knew or should have known that the disability was caused by employment. (§ 5412; *Bassett-McGregor*, *supra*, 205 Cal.App.3d at pp. 1109-1110; *City of Fresno v. Workers' Comp. Appeals Board* (*Johnson*) (1985) 163 Cal.App.3d 467, 469-471 [50 Cal.Comp.Cases 53].) The date of injury may be established by the date the employee received expert medical or legal advice that the disability was caused by employment. (*Bassett-McGregor*, *supra*, 205 Cal.App.3d at pp. 1109-1115; *Johnson*, *supra*, 163 Cal.App.3d at pp. 472-473.) Disability refers to compensable temporary disability or lost wages, or compensable permanent disability which may be shown by the need for medical treatment or modified work. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Rodarte*) (2004) 119 Cal.App.4th 998, 1003-1006 [69 Cal.Comp.Cases 579]; *Austin*, *supra*, 16 Cal.App.4th at p. 234; *Bassett-McGregor*, *supra*, 205 Cal.App.3d at p. 1110; *Butler*, *supra*, 153 Cal.App.3d at pp. 336-343.) The issue of how many cumulative injuries an employee sustained is a question of fact for the WCAB. (*Austin, supra,* 16 Cal.App.4th at pp. 234–235*; Aetna Casualty & Surety Co. v. Workmen's Comp. Appeals Bd. (Coltharp)* (1973) 35 Cal.App.3d 329, 341 [38 Cal.Comp.Cases 720] *(Coltharp)*.)

In *Coltharp,* applicant's initial work duties, which he described as "heavy labor," caused cumulative trauma resulting in disability and a need for medical treatment, including back surgery. After the applicant returned to work, he was assigned "lighter work" but he still had to do some

lifting as well as crawling through pipe. He said of his post-return work duties, "regardless of everything I did, it was aggravating on my back." A physician stated that applicant's post-return cumulative work activities were "the immediate precipitating factor that necessitated" another back surgery. Based on these facts, the *Coltharp* court found that the applicant had sustained two separate cumulative injuries, i.e., one before and one after the initial period of disability and need for treatment, and that to conclude otherwise would violate the anti-merger provisions of sections 3208.2 and 5303.

In *Austin,* applicant's increasing work responsibilities precipitated a major depression, resulting in temporary disability and a need for treatment, including psychiatric hospitalization. After receiving psychiatric treatment and being off work for a period of time, the applicant returned to work. However, when the applicant returned to work, he had not fully recovered from his depressive episode, he remained under a doctor's care and on medication, and he became progressively worse. It was the same stress that resulted in the initial hospitalization that further exacerbated applicant's problem after he returned to work. Based on these facts, the *Austin* court concluded the applicant had only one continuous compensable injury because, unlike *Coltharp*, his two periods of temporary disability were linked by the continued need for medical treatment and the two periods were not "distinct."

When the holdings of *Austin* and *Coltharp* are harmonized and read in conjunction with the section 3208.1 definition of "cumulative injury" and the anti-merger provisions of sections 3208.2 and 5303, the following principles are revealed: (1) if, after returning to work from a period of industrially-caused disability and a need for medical treatment, the employee's repetitive work activities again result in injurious trauma—i.e., if the employee's occupational activities after returning to work from a period of temporary disability cause or contribute to a new period of temporary disability, to a new or an increased level of permanent disability, or to a new or increased need for medical treatment—then there are two separate and distinct cumulative injuries that cannot be merged into a single injury (Lab. Code, §§ 3208.1, 3208.2, 5303; *Coltharp, supra,* 35 Cal.App.3d at p. 342); and (2) if, however, the employee's occupational activities after returning to work from a period of industrially-caused disability are not injurious—i.e., if any new period of temporary disability, new or increased level of permanent disability, or new or increased need for medical treatment result solely from an exacerbation of the original injury—then there is only a single cumulative injury and no

impermissible merger occurs. (Lab. Code, §§ 3208.1, 3208.2, 5303; *Austin, supra*, 16 Cal.App.4th at p. 235.)

"[A] system of apportionment based on causation requires that each distinct industrial injury be separately compensated based on its individual contribution to a permanent disability." (*Benson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535, 1560 [74 Cal.Comp.Cases 113] (*Benson*).) Section 4663(a) provides that "[a]pportionment of permanent disability shall be based on causation." Section 4664(a) provides that: "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."

Section 5500.5 was enacted in 1951 to codify the holding in *Colonial Ins. Co. v. Industrial Acc. Com.* (1946) 29 Cal.2d 79 [11 Cal.Comp.Cases 226] that an employee who sustains an injury as a result of a progressive occupational disease may obtain an award for the entire amount of permanent disability from any one employer or insurer and the defendant held liable will have the burden of seeking contribution from other employers. Section 5500.5 states

> If, based upon all the evidence presented, the appeals board or workers' compensation judge finds the existence of cumulative injury or occupational disease, liability for the cumulative injury or occupational disease shall not be apportioned to prior or subsequent years; however, in determining the liability, evidence of disability due to specific injury, disability due to nonindustrial causes, or disability previously compensated for by way of a findings and award or order approving compromise and release, or a voluntary payment of disability, may be admissible for purposes of apportionment.

(Lab. Code § 5500.5(a).)

It is well established that in order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. (*McAllister v. Workmen's Comp. App. Bd.* (1968) 69 Cal.2d 408, 413, 416-417, 419 [33 Cal.Comp.Cases 660].) Also, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (*Granado v. Workmen's Comp. App. Bd.* (1968) 69 Cal.2d 399, 407 [33 Cal.Comp.Cases 647].) "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 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].)

On the other hand, there must be some solid basis in the medical report for the doctor's ultimate opinion; the Board may not blindly accept a medical opinion which lacks a solid underlying basis, and must carefully judge its weight and credibility. (*National Convenience Stores v. Workers' Comp. Appeals Bd. (Kesser)* (1981) 121 Cal.App.3d 420, 426 [46 Cal.Comp.Cases 783].) In other words, the Board must look to the underlying facts of a medical opinion to determine whether or not that opinion constitutes substantial evidence, and accordingly, the expert's opinion is no better than the facts on which it is based. (*Turner v. Workers' Comp. Appeals Bd.* (1974) 42 Cal.App.3d 1036, 1044 [39 Cal.Comp.Cases 780].)

Here, the reporting of Dr. Lonky offers only his conclusions regarding the existence of a cumulative injury to applicant's lungs and does not address the issue of whether there was one or two cumulative injuries. (See *E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687, 1691].) Further, Dr. Marino's six-page report regarding applicant's injury to her feet was conclusionary and did not set forth the reasoning behind his opinion that the injury to her feet was not industrial. (See *Granado v. Workmen's Comp. App. Bd., supra,* 69 Cal.2d at p. 407.) Therefore, there is a lack of substantial evidence on the issue of whether there was one or two cumulative injuries to the lungs as well as a lack of substantial evidence to support the finding that the injury to the feet was not industrial.

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on a threshold issue. (Lab. Code, §§ 5701, 5906; *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 392-394 [62 Cal.Comp.Cases 924]; *McDonald v. Workers' Comp. Appeals Bd., TLG Med. Prods*. (2005) 70 Cal. Comp. Cases 797 [2005 Cal. Wrk. Comp. LEXIS 182]; *Lopez v. Wps Fbo Garco Enters* (January 5, 2022, ADJ12017211) [2022 Cal. Wrk. Comp. P.D. LEXIS 2, *18-19].) The Appeals Board 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].)

Sections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141-143 [2002 Cal.Wrk.Comp. LEXIS 1218] (Appeals Bd. en banc).) The Appeals Board may not leave matters undeveloped where it is clear that additional

discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd.*, *supra*, 79 Cal.App.4th at p. 404.)

When the record requires further development, the preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. L.A. County Metro. Transit Auth.*, *supra*, 67 Cal.Comp.Cases at p. 142.) If the supplemental opinions of the previously reporting physicians do not or cannot cure the need for development of the medical record, the selection of an agreed medical evaluator (AME) by the parties should be considered, or alternatively, the WCJ may appoint a regular physician. (*Id.*)

Therefore, upon return to the WCJ, we recommend that the record be further developed on both the cumulative injury to the lungs as well as the injury to the feet.

II.

An employee's occupation is one of the component parts for rating permanent disability. The reason for this is that it serves to assist in determining the relative effects of disability on various parts of the body while taking into account the physical requirements of various occupations. (*Holt v. Workers' Comp. Appeals Bd.* (1986) 187 Cal.App.3d 1257, 1261 [51 Cal.Comp.Cases 576].) For injuries occurring on or after January 1, 2013, rating is completed through use of the 2005 Permanent Disability Rating Schedule (PDRS) which contains 45 occupational group numbers. (Lab. Code, § 4660.1; 2005 PDRS, pp. 1-8.) Which occupational group number is to be applied in each case is a question of fact to be determined by the trier of fact. (*Dalen v. Workmen's Comp. Appeals Bd.* (1972) 26 Cal.App.3d 497, 503 [37 Cal.Comp.Cases 393].) It is also well established that an "employee is entitled to be rated for the occupation which carries the highest factor in the computation of disability." (*Id.* at pp. 505-506.) However, there must be evidence that the employee in fact performed the duties required of the more arduous occupation. (*Holt*, *supra*, at p. 1262.) An employee may also be entitled to a higher occupational group number if the activity (or activities) which generates the higher occupational group is an integral part of the occupation. (*National Kinney v. Workers' Comp. Appeals Bd. (Casillas)* (1980) 113 Cal.App.3d 203, 215-216 [45 Cal.Comp.Cases 1266].)

Applicant contends that occupational group 490- Fire Inspector is the most accurate reflection of her duties as she was required to inspect sites in connection with investigation of alleged presence of toxic exposure, including sites where there was still smoke in the air from a

recent fire, and she was not given protective equipment that protected her from the toxic exposure during these inspections. (Petition, p. 4.)

Applicant testified that she helped set up a local assistance center for fire evacuations in Mendocino County and spent a few weeks there. (MOH/SOE, p. 5.) The fire had just started, and it was uncontained so there was a lot of smoke in the air. (MOH/SOE, p. 5.) Applicant cannot recall any protective gear then, other than possibly a disposable mask. (MOH/SOE, p. 5.) Applicant's position duty statement included lifting up to 20-50 pounds occasionally and/or 25-30 pounds frequently and carrying as essential functions less than 25% of her activities. (Ex. GG, p. 4.) It listed standing; balancing; climbing; pushing or pulling; and working outdoors as between 25-49% of her work activities. (Ex. GG, pp. 3-4.) It also listed emergency operations, such as providing emergency response and recovery activities, as part of her job. (Ex. GG, p. 1.)

Therefore, the WCJ's finding of occupational group 213 is not an accurate reflection of applicant's job duties. Based upon the current record however, there is insufficient evidence to determine whether applicant's occupational group should be 490 or some other group number.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787; *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350].)

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924] ["The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims."]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805]; *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].) The WCJ may engage a rater to provide assistance regarding applicant's correct occupational group number. (*Blackledge v. Bank of America* (2010) 75 Cal. Comp. Cases 613, 622-624 (Appeals Bd. en banc).)

The Appeals Board also 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].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Accordingly, since the record is currently insufficient to determine whether applicant sustained one cumulative injury; whether she sustained injury to her feet; and whether occupational group number 490 is appropriate, we must rescind the F&A and return this matter to the trial level for further proceedings. Upon return to the trial level, we recommend that the parties further develop the record on these issues.

Accordingly, we rescind the F&A and return this matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the May 1, 2024 Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the May 1, 2024 Findings and Award is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 22, 2024

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

DENISE GIBSON
EASON & TAMBORNINI
STATE COMPENSATION INSURANCE FUND, LEGAL
OFFICE OF THE DIRECTOR, LEGAL

JMR/mc

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