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

**JOSIMAR AGUIRRE, *Applicant***

**vs.**

**PAPA CANTELLAS; SENTRY INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ11757093**
**Van Nuys District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant has petitioned for reconsideration of the Findings of Fact and Order issued by the workers' compensation administrative law judge (WCJ) in this matter on February 8, 2024. In that decision, the WCJ found that applicant did not sustain industrial injury arising out of and in the course of employment to his lower back on November 10, 2018.

Petitioner contends that Labor Code[1] section 5402 is applicable and may preclude the Panel Qualified Medical Evaluator (PQME) reports and deposition as admissible evidence. Petitioner further contends that the failure of the defendant to file an Answer to the Application for Adjudication would preclude defendant's evidence and affirmative defenses per WCAB rule 10465 (Cal. Code Regs. §10465).

Finally, petitioner contends that the PQME's opinion is not substantial medical evidence, and that the workers compensation administrative law judge's (WCJ) finding that applicant is not credible is not supported by fact or opinion.

Petitioner requests that if the PQME reports and deposition are allowed into evidence then the medical record should be further developed by a replacement PQME.

Defendant did not file an Answer to the petition.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending the petition be denied.

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

We have considered the allegations of the Petition for Reconsideration and the contents of the reports 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 Applicant's Petition for Reconsideration, rescind the WCJ's February 8, 2024 Findings and Order, and return this matter to the WCJ for further proceedings consistent with this opinion.

## BACKGROUND

Applicant sustained industrial injury to his right index finger and claims to have sustained industrial injury to his low back while employed as a packer by defendant on November 10, 2018.

Defendants accepted injury to the right index finger, and disputed injury to the low back. The parties selected Jerrold Sherman, M.D. as the Panel Qualified Medical Evaluator (PQME) in orthopedic medicine. Dr. Sherman issued medical reports dated October 17, 2021, December 15, 2022, and May 17, 2023, and was deposed on July 27, 2023.

With respect to the issue of applicant's low back claim, under the history of the injury, Dr. Sherman stated in his medical reporting of October 17, 2021 as follows:

> Mr. Aguirre presents today for evaluation of two separate work injuries that occurred on November I0, 2018 with the first injury consisting of a crush injury to the tip of the right index finger and the second injury occurring approximately one hour later when he developed low back pain after pushing an 800-pound rack of hot food into a cooling area. The right index finger injury is an accepted claim; however, the low back injury is not accepted.
>
> ….
>
> Mr. Aguirre states that his initial injury on November 10, 2018 consisted of a crush injury to the lip of the right index finger and right middle finger when his fingertips were caught in a piston/press. Mr. Aguirre states that his fingers were entrapped for "five minutes" while he was taken out of the machine. He had a small bleeding wound on ihe right index finger and, additionally, had a subungual hematoma under the right index fingernail, which required drainage. Plain x-rays were obtained and he was told that he had suffered a fracture at the distal interphalangeal joint of the index finger. An aluminum and foam immobilizing splint was applied and the wound was cleansed. No sutures were placed. The index finger was treated by Dr. Florman and was immobilized for approximately three weeks. The finger drainage occurred the day after the finger entrapment injury that occurred on November 10, 2018. No surgery was required.

> He informed his supervisor of the finger injury and continued working, whereupon one hour later he was pushing an estimated "800-pound" rack of food into a cooling region when he noted sudden onset of pain in his low back which he reported to his supervisor. He was treated for his low back pain by Dr. Drakshani, a chiropractor. He was placed on limited duty because of the low back pain. He was diagnosed as having suffered lumbar radiculopathy due to low back injury.
>
> ….
>
> He states that [the] during the course of his six months of work he had approximately three mild back injuries as a result of heavy lifting or pushing activities, all of which responded to a short course of rest and physical therapy. There have been no injections, medications, surgery or bracing directed or prescribed for his back.
>
> (Ex. C, report of Jerrold Sherman, M.D., dated October 17, 2018, pp. 1-2).

Dr. Sherman does not review any radiological studies or MRI of the lumber spine, and does not recommend any be obtained if not readily available. He diagnoses status post crush injury to the right index finger, and complaints of low back pain without neurologic or mechanical deficit. He states that the applicant should be "awarded 0% Whole Person Impairment" regarding his claimed lumbar spine injury of November 10, 2018.

As for causation of the lumbar spine, Dr. Sherman does not make a determination. Instead he states under causation:

> The lumbar spine yields no permanent impairment, given his normal examination today. An MR1 of the lumbar spine was obtained and the results were not made available to this examiner. If the MRI can be located, it should be sent for my review; however, no new MRI of the lumbar spine should be obtained.
>
> (Ibid, pg. 7).

No future medical treatment was recommended for either the lumbar spine or the right hand and fingers.

In his supplemental reporting dated December 15, 2022, Dr. Sherman reviews the MRI report of the lumbar spine, and states the following with respect to the claimed low back injury:

> As a result of my October 13, 2021 Qualified Medical Evaluation, it was my opinion that Mr. Aguirre should be awarded 0% Whole Person Impairment for the lumbar spine and that he was able to return to doing full work without restrictions or special accommodations. It was also my opinion that no further medical treatment or further diagnostic studies were necessary. I did request that a lumbar spine MRI, which had been previously performed, be forwarded for my review.
>
> ….
>
> The report for the MRI of the lumbar spine is forwarded and refers to a lumbar spine MRI scan performed on April 10, 2019 which demonstrated an annular tear at the L5-S1 level and mild bilateral facet arthropathy involving the L4-L5 and L5-S1 levels.
>
> After reviewing the lumbar spine MRI scan, I see no reason to change my opinions as expressed regarding Mr. Aguirre as stated in my Initial Qualified Medical Evaluation performed on October 13, 2021.
>
> The MRI of the lumbar spine is entirely consistent with a normal functioning lumbar spine and no further treatment or diagnostic studies are necessary regarding the lumbar spine. Mr. Aguirre has achieved Maximum Medical Improvement regarding the claimed work-related injuries secondary to his claim regarding the November 10, 2018 incident.
> (Ex. B, report of Jerrold Sherman, dated December 15, 2022, pg. 2).

There is no further analysis relative to causation of the lumbar spine claim, even though he states he sees no reason to change his opinions as previously expressed.

The matter was thereafter set for trial, and at the trial of March 30, 2023, the WCJ issued an Order stating, in pertinent part:

> **IT APPEARING THAT, the medical-legal reporting in the case is in need of development, and**
>
> GOOD CAUSE APPEARING:
>
> **IT IS ORDERED** that Dr. Sherman is to issue a supplemental report answering the following question: Did Josimar Aguirre suffer an injury to his lumbar spine on November 10, 2018, that arose out of and/or occurred in the course of his employment?

There was no objection filed to this Order, and on May 17, 2023, Dr. Sherman issued his final medical report in which he stated:

> I am specifically asked as to whether Mr. Aguirre suffered an injury to his lumbar spine on November 10, 2018 that arose out of the course of his employment.
>
> It is this examiner's opinion that Mr. Aguirre did suffer an injury to his lumbar spine on November 10, 2018 during the course of his work activities.
>
> I formulated this opinion after reviewing the medical records which did demonstrate his initial treatment for the crush injury to the index finger, which would reasonably be expected to have absorbed the treating doctors' opinions, in that he had a crush injury with a subungual hematoma. Attention was directed toward his lumbar spine, as noted when he was seen by a chiropractor in March 2019, who obtained an MRI scan of the lumbar spine and then eventually electrical studies of the lumbar spine, all of which are substantiated in his medical report.
> Absent any evidence to the contrary, it is reasonable to expect that Mr. Aguirre's statement that he suffered a low back injury on November 10, 2018 is supported by the medical records that were forwarded.

(Ex. A, report of Jerrold Sherman, dated May 17, 2023, pg. 1-2)

Dr. Sherman was thereafter deposed by defendant on July 27, 2023 with respect to his opinions. At that time, he was asked to review his prior medical reporting, and was questioned as to his opinion regarding applicant's prior deposition testimony and other physicians reporting, which he stated he reviewed in his review of records attached to the October 17, 2021 report.

He stated that he had no independent recollection of the applicant, and was read page 17 of applicant's deposition regarding how he was injured, which was as follows:

> "QUESTION: Tell me about how you were injured.
>
> "ANSWER: The way I got answered was putting away a rack that was between 1200 and 1300 pounds. When I was putting that away, there was ice on the floor, so when I put it on the rack with the food, the wheels didn't move when I noticed that the tires were not moving, I strained myself a lot.
>
> "QUESTION: Then what happened?

"ANSWER: When I strained myself a lot, the rack moved and I crashed against another rack.

"QUESTION: You crushed your finger; right?

"ANSWER: Yes. At that moment is when I crushed my finger, and because of the way I strained myself, I injured my back."

(Ex. E, Deposition of Jerrold Sherman, M.D., July 27, 2023, pg. 10, lines 15-22).

Dr. Sherman agreed that this mechanism of injury and scenario was different than the one he was provided by applicant or as was stated in the medical reports he reviewed and summarized in his record review on October 17, 2021. He further believed that he accurately took down the information given to him by applicant at that time.

Dr. Sherman was then posed the following question:

**Q When you say try to explain the inexplicable, you can't explain the vast difference in the history that's the patient gave to the industrial clinic, that he gave in his deposition and that he gave in his history to you. Nothing matches, does it?**

A Correct.

**Q If these histories don't match, if they're completely different, you cannot state within reasonable medical probability that he injured his back at work on November 10, 2018, can you? You can't make that statement within reasonable medical probability?**

A Correct. I am only listing what the patient told me.

(Ex. E, pg. 14-15, lines 17-25, 1-5).

….

Dr. Sherman went on to speculate that the applicant's back complaints may have been ignored by the industrial clinic due to his having walked in with a bloody fingertip, but again confirmed he could not, with reasonable medical probability state applicant injured his low back on November 18, 2020.

Upon cross-examination by applicant's counsel, Dr. Sherman confirmed that the MRI of applicant's low back showed some degenerative changes and defect in the casing around the intervertebral disc at the lowest level of the lumbar spine, as well as an annular tear.

He could not recall how big the annular tear was, and was advised it was a 5 millimeter protrusion at the L5-S1 level. Dr. Sherman responded to questioning as follows:

**Q Okay. Is an annular tear indicative of degeneration or a sudden injury or is it something you just can't tell?**

A It's indicative of degeneration. The annular tears that we see are not normally the result of specific trauma to the annular disc, but rather is the result of the continuous wear and tear suffered by people who have assumed the upright position.

**Q So this guy's relatively young. I think when you saw him, he was 23, 24.**

A Yes. He was somewhat obese.

(Ex. E, pg. 20, lines 6-16)

Further, with respect to the MRI, the doctor opined as follows:

**Q Okay. When you saw him, was he complaining of back pain?**

A Yes.

**Q Okay. Are you able to clinically correlate the back pain he reported to you to his MRIs or you're not able to correlate that?**

A Oh, the MRI gives some information about it. It's describing the individual that there's some degenerative changes at the L5-S1 level, and given that, his obesity, he's entitled to some back pain.

I guess you might say his back might be more sensitive to injury -- not certain of that, but it's a supposition.

With regard to the issue of causation, Dr. Sherman was asked about whether some of the pathology found on the MRI could have been contributed to by the mechanics of the injury.

The exchange was as follows:

**Q Could some of that annular tearing and some of that degeneration -- because the MRI was taken, I believe, within a year of the injury.**

**Can you say one way or the other whether part of that pathology could have been contributed to by the mechanics of the injury?**

A I don't think that anybody can reliably date things on the MRI quite like you would like.

**Q Well, yeah . It would make it easier for everybody, wouldn't it?**

A It would, but I don't believe that it's a reliable method. I can say most probably that from a reasonable medical probability that the degenerative changes at the facets were really very much preinjury there. They predated the claimed injury. As far as the tear in the annulus, I would say most probably it was, but I can't be as definitive because --

**Q Okay.**

A-- because two findings are very frequently seen together and represent the earliest changes that one might notice in a spine as he enters into his middle years.

**Q So you say he's in the early stages.**

**How long are we talking about, less than a year?**

A I would tell you those things occur over at least five years.

(Ex. A, Deposition of Jerrold Sherman, M.D., dated August 15, 2023, pg. 29, lines 4-19).

## DISCUSSION

The employee bears the burden of proving the injury arose out of and in the course of employment 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.) Whether an employee's injury arose out of and in the course of employment is generally a question of fact to be determined in light of the particular circumstances of the case. (*Wright v. Beverly Fabrics* (2002) 95 Cal.App.4th 346, 353 [67 Cal.Comp.Cases 51].)

In addition, a WCJ's decision must be supported by substantial evidence in light of the entire record. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted).

Medical evidence is required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c)(d), 4061(i), 4062.3(l).) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. 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 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].) [I]t has been long established that, in order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. (*McAllister v. Workmen's Comp. Appeals Bd. (1968)*

*69 Cal.2d 408, 413, 416-417, 419 [445 P.2d 313, 71 Cal. Rptr. 697] [33 Cal.Comp.Cases 660]; Travelers Ins. Co. v. Industrial Acc. Com. (Odello) (1949) 33 Cal.2d 685, 687-688 [203 P.2d 747] [14 Cal.Comp.Cases 54]; Rosas v. Workers' Comp. Appeals Bd. (1993) 16 Cal.App.4th 1692, 1700-1702, 1705 [20 Cal. Rptr. 2d 778] [58 Cal.Comp.Cases 313].*

Further, 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. Workers' Comp. Appeals Bd. (1970) 69 Cal.2d 399, 407 [445 P.2d 294, 71 Cal. Rptr. 678]* (a mere legal conclusion does not furnish a basis for a finding); *Zemke v. Workmen's Comp. Appeals Bd., supra, 68 Cal.2d at pp. 799, 800-801* (an opinion that fails to disclose its underlying basis and gives a bare legal conclusion does not constitute substantial evidence); see also *People v. Bassett (1968) 69 Cal.2d 122, 141, 144 [443 P.2d 777, 70 Cal. Rptr. 193]* (the chief value of an expert's testimony rests upon the material from which his or her opinion is fashioned and the reasoning by which he or she progresses from the material to the conclusion, and it does not lie in the mere expression of the conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based).) (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. en banc).).

Here, applicant claimed a lower back injury occurring on November 10, 2021, but the WCJ found that based upon the medical reporting and deposition of PMQE Dr. Sherman upon which he relied, applicant did not meet his burden of proof to support industrial causation. In his Report, the WCJ stated that he found that the medical reporting and deposition testimony of PQME Jerrold Sherman, M.D. "bears all the hallmarks of substantial medical evidence" and that this was "particularly true given that the live testimony of the applicant was found not to be credible and therefore is found to likely not have been an accurate historian to the PQME".

The WCJ goes on to state that "[b]ecause the medical evidence is clear and based upon substantial medical probability, there is no need to develop the record as the applicant urges.

We disagree.

While the WCJ stated in his report that he made a finding the applicant was not credible based upon his observations at trial and after reflecting on the record as a whole, the credibility of the applicant alone without a medical opinion constituting substantial evidence on the issue of injury, is insufficient upon which a decision may lie. The WCJ found applicant did not sustain industrial injury based upon applicant's "non-credible testimony and the medical evidence admitted into the record by Applicant and Defendant…" (Opinion on Decision, February 8, 2024)..

In this case, Dr. Sherman's speculation and contradictory opinions as set forth in his medical reporting and deposition testimony fails to rise to the level of substantiality.

It is not only inconsistent, but fails to demonstrate sufficient knowledge of the facts relating to the incident or incidents giving rise to this claim. He further fails to demonstrate sufficient expertise upon which to opine as to the causation of the applicant's back pain and injury. Further, he initially assigns permanent disability to 0% to applicant's back injury but does not opine as to causation of the injury at all until his medical reporting of May 17, 2023, which was ordered by the WCJ when the parties first appeared at trial on March 30, 2023.

Additionally, the sum total of his analysis as to causation in that report is that he felt that applicant's crush injury to his index finger "would reasonably be expected to have absorbed the treating doctors' opinions", and that based upon the MRI obtained when he was seen by a chiropractor in March 2019, absent any evidence to the contrary, "it is reasonable to expect that [applicant's] statement that he suffered a low back injury on November 10, 2018 is supported by the medical records that were forwarded." (Ex. D, report of Jerrold Sherman, M.D. May 17, 2023, pg. 2).

At his subsequent deposition taken on July 27, 2023, however, he is then asked whether, based upon the inconsistent statements made by applicant to the physicians versus in his deposition, he can state with reasonable medical probability that applicant injured his back as he was now claiming. In response, he initially opines that perhaps the doctors at the industrial clinic may have been dismissive of his back condition given the finger injury. When asked if that was speculation on his part, he admitted that it was. (Deposition, pg. 16-17, lines 4-25, 7-11)

When asked to opine if he was able to clinically correlate applicant's back pain to this MRI, as previously stated herein, he opined that applicant's degenerative changes and obesity may make his back more sensitive to injury, but it stated this was just a supposition.

He then states that the applicant's condition as documented by the MRI was due to degenerative changes that predated the claimed injury. And, as far as the tear in the annulus, it "most probably was, but he cannot be definitive because two findings are very frequently seen together and represent the earliest changes that one might notice in a spine as he enters into his middle years." (Deposition, pg. 29, lines 3-14).

He fails to explain how a young man of applicant's age would have such changes solely related to the continued aging process. Nor does the PQME explain why, as stated in his medical

report of December 15, 2022, an annual tear at the L5-S1 level and mild bilateral facet arthropathy involving the L4-L5 and L5-S1 levels are "entirely consistent with a normal functioning lumbar spine" (Ex. B, pg. 2)

No explanation is given as to why the physician changed his opinion from industrial causation to non-industrial at his July 2023 deposition other than it was pointed out to him that the facts relating to the mechanism of injury as given by applicant at his deposition and as omitted in the clinic records were not the same as what was presented to him at his examination.

He then changed his mind from industrial to non-industrial causation and blamed applicant's back symptoms on degenerative changes as well as attributed the annular tear as seen on the MRI to degeneration, and "the result of the continuous wear and tear suffered by people who have assumed the upright position". However, when asked if the facts as described to him of "pushing the rack" would be something that could cause an acute injury to the low back, he stated:

> A Well, it can cause an acute injury to the low back, but what's apparent here is there are degenerative changes at the facets and a degenerative tear at the annulus both at the same level of L5-S1.
> And given that they're both evident at L5-S1, I would -- and then he's somewhat an obese man, I would say that what we have here is to be early beginning of a degenerative condition involving the L5-S1 intervertebral disc space, and that with the passage of years this would worsen.
> (Ex. E, pg. 20-21, lines 20-25, 1-4).

There was no discussion as to either apportionment issues or whether there is an aggravation of any pre-existing conditions given the opinion regarding degeneration.

In order to be considered industrial, work need only be a contributing cause of a physical injury. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 299 [80 Cal. Comp. Cases 489].) "Further, 'the acceleration, aggravation or "lighting up" of a preexisting disease is an injury in the occupation causing the same.' [Citations.]" (*Clark*, 61 Cal.4th at p. 301.)

Finally, with respect to the petitioner's argument as to whether Labor Code section 5402 bars admission into the record the medical reporting and deposition of Dr. Sherman, we agree with

the WCJ that the filing of an amended application for adjudication does not, as asserted by petitioner, recommence the start of the day period for presumed compensability set forth in section 5402(b).

The presumption of compensability in section 5402, subdivision (b) applies to circumstances where an employer has knowledge of "an injury" and does not timely reject liability for "the injury." Contrary to applicant's contention, it is not a new claim or a new injury when defendant has already accepted the injury and the claim is subsequently *amended* to include other body parts. (*Clark v. Workers' Comp. Appeals Bd*. (2001) 66 Cal.Comp.Cases 269 (writ den.).) In other words, section 5402 applies to a claim of injury and not to parts of body. *Garcia v. White Apron, Inc*., 2012 Cal. Wrk. Comp. P.D. LEXIS 575, *2-3.

Nor do we find merit in the contention that the failure to file an Answer to the Application bars defendant from presenting any evidence in their defense. Labor Code section 5505 advises that a defendant "may" file an answer, and that evidence upon matters not pleaded by answer shall be allowed only upon the terms and conditions of the appeals board or referee. (Cal. Lab. Code § 5505).

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; *Nunes (Grace) v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741, 752; *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, 802.) 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.)

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 (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.)

"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 [72 Cal. Rptr.

2d 898, 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].)

Accordingly, we grant applicant's Petition for Reconsideration, rescind the findings and order by the WCJ, and return this matter to the trial court for further proceedings, to include the appointment of either a regular physician, an agreed medical evaluator, or a new panel qualified medical evaluator in order to obtain a medical opinion that constitutes substantial medical evidence upon which the WCJ may rely in forming his opinion in this matter.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings of Fact and Order issued on February 8, 2024 by a workers' compensation administrative law judge is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration that the Findings of Fact and Order issued on February 8 2024 by a workers' compensation administrative law judge is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**May 2, 2024**

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

**JOSIMAR AGUIRRE**
**EQUITABLE LAW GROUP**
**GOLDMAN, MAGDALIN & KRIKES**

**LAS/abs**

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