

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

**RUBEN VILLAVICENCIO RUBEN, *Applicant***

**vs.**

**ELECTROLINE WHOLESALE ELECTRONICS, INC.; THE HARTFORD, *Defendants***

**Adjudication Number: ADJ12870254  
Los Angeles District Office**

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

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of July 8, 2024, wherein it was found that while employed during a cumulative period ending April 23, 2019 as a warehouse worker, applicant sustained industrial injury to his low back and in the form of a hernia, but not to his cervical spine, shoulders, upper extremities, lower extremities and knees. The applicant has also alleged industrial injury to the psyche, but the WCJ deferred this issue pending further development of the medical record.

Applicant contends that the WCJ erred in not finding industrial injury to the knees and shoulders. We have received an answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

As explained below, we will grant reconsideration and amend the WCJ's decision to defer the issues of industrial injury to the knees and shoulders pending further development of the medical record and decision.

Preliminarily, we note that former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on August 12, 2024, and 60 days from the date of transmission is October 11, 2024. This decision is issued by or on October 11, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on August 12, 2024, and the case was transmitted to the Appeals Board on August 12, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 12, 2024.

Turning to the merits, applicant was evaluated for his claims of orthopedic injury by panel qualified medical evaluator orthopedist Rodney A. Gabriel, M.D. While applicant complained of symptoms in the cervical, thoracic, and lumbar spine, shoulders, elbows, hands and wrists, knees

and ankles and feet, in his initial June 11, 2020 report, Dr. Gabriel reported that the clinical examination and range of motion in all body parts other than the lumbar spine was normal. (June 11, 2020 report at pp. 6-11, 16.) In the June 11, 2020 report, Dr. Gabriel reported that “the patient has findings consistent with degenerative disease of his lumbar spine aggravated by his work-related activities. The patient does not have findings consistent with an industrial injury to his shoulders, wrists, hands fingers and knees.” (June 11, 2020 report at p. 16.) However, Dr. Gabriel did not review any imaging before coming to his conclusions in the June 11, 2020 report. (June 11, 2020 report at p. 11.) In the June 11, 2020 report, Dr. Gabriel opined that applicant had a 5% WPI impairment of the lumbar spine with “50% of the patient’s impairment [apportioned] to the his work-related activities and 50% to the normal course of aging in this patient.” (June 11, 2020 report at pp. 16-17.)

Dr. Gabriel issued a supplemental report on February 7, 2022 after reviewing several imaging studies of applicant’s various body parts. In the February 7, 2022 report, Dr. Gabriel wrote:

The patient was evaluated by myself in the capacity of PQME on 06/11/2020. At the time of his evaluation the patient complained of sharp pain, stiffness and weakness in his lower back. The patient complained of sharp pain in his neck, upper back, shoulder area, hands and wrists. The patient complained of left greater than right knee dull pain, grinding and locking. The patient complained of weakness of both feet and left foot swelling and pain in his plantar foot. On examination the patient complained of tenderness to palpation of his neck, back, bilateral wrist and knees. He complains of pain with flexion of his left elbow and range of motion of his hips. The patient had decreased flexion and extension of his lumbar spine and mild spasm of his paravertebral musculature. The remainder of his physical examination, except for his complaints of pain, was normal.

The patient was evaluated with x-rays and MRI studies beginning in April 2020 one year after he had stopped working. The patient's studies demonstrated chronic degenerative changes throughout his neck, back, shoulders, knees and left foot. Repeat MRI examinations of the patient's lumbar spine, shoulders, and left knee -demonstrated progression of his degenerative disease. The patient’s findings are consistent with a diagnosis of Cervical spine degenerative disease, Thoracic spine degenerative disease, Lumbar spine degenerative disease, Right shoulder acromioclavicular joint degenerative disease, supraspinatus tendinosis and bicipital tenosynovitis; Left shoulder acromioclavicular degenerative disease, supraspinatus tendinosis and bicipital tenosynovitis; Right knee degenerative medial meniscus tear and degenerative anterior cruciate ligament

tear; Left knee medial meniscus degeneration and anterior cruciate ligament degeneration, patellofemoral and tibial femoral joint articular cartilage thinning.

(February 7, 2022 report at pp. 7-8.)

While Dr. Gabriel found that the degenerative findings were non-industrial in origin, he found that they were aggravated by applicant's work. In the February 7, 2022 report, Dr. Gabriel increased applicant's lumbar impairment to 7% WPI, and opined that applicant had sustained 6% cervical spine impairment, 1% right knee impairment, 1% left knee impairment and "3% pain impairment in regard to his bilateral shoulders." (February 7, 2022 report at p. 8.) Dr. Gabriel opined that 50% of applicant's impairment was apportioned to his industrial activities. (February 7, 2022 report at p. 8.)

The WCJ rejected Dr. Gabriel's finding of industrial injury to the additional body parts in the February 7, 2022 report because he did not sufficiently explain how the findings on the diagnostic studies were related to applicant's work.

While we are mindful of the fact that "[t]he applicant for workers' compensation benefits has the burden of establishing the 'reasonable probability of industrial causation.'" (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.App.4th 644, 650 [63 Cal.Comp.Cases 253] citing *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660]), and it was his responsibility to produce substantial medical evidence of injury prior to trial, the WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) medical evidence on an issue. The WCAB has a constitutional mandate to ensure "substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) In accordance with that mandate, we will grant reconsideration and amend the WCJ's decision to defer the issue of industrial injury to the additional orthopedic body parts pending further development of the record. We note that the WCJ has already ordered further development of the record on the issue of psychiatric injury. Since the discovery is already open with regard to the psyche, any prejudice from allowing further discovery into the cause of applicant's orthopedic injuries is lessened.

We express no opinion on the ultimate resolution of this matter.

For the foregoing reasons,

**IT IS ORDERED** that Applicant's Petition for Reconsideration of the Findings and Order of July 8, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of July 8, 2024 is **AMENDED** as follows:

**FINDINGS OF FACT**

1. Applicant, Ruben Villavicencio Wong, age 54 on the date of injury, while employed for the period 7/15/2013 through 4/23/2019, as a warehouse worker, at Los Angeles, California by Electroline Wholesale Electronics, Inc., insured by The Hartford, and earning \$650 per week (resulting in a temporary disability rate of \$433.33 per week and permanent disability rate of \$290.00), sustained injury arising out of and in the scope of employment to the hernia and low back;
2. Applicant's amendments to add body parts later in the case is not barred by, nor subject to, the statute of limitations defense pursuant to LC Section 5400;
3. Applicant's psychiatric claim is not barred pursuant to Labor Code Sect. 3208.3 (good faith personnel actions);
4. The record needs development on the psychiatric claim, consistent with the attached Opinion on Decision;
5. Dr. Taylor, psychiatric PQME, is not insubstantial medical evidence pursuant to LC Section 4628, for not having reviewed the Infinity Insurance records (Defense Exhibit A);
6. Dr. Gabriel, orthopedic PQME, is not insubstantial medical evidence pursuant to LC Section 4628, for not having reviewed the Infinity Insurance records (Defense Exhibit A);
7. Applicant's injury claim, including any later-added body parts via subsequent amendment(s) to the Application for Adjudication of Claim, is not barred by the affirmative post-termination claim defense pursuant to Labor Code Section 3600(a)(10);
8. Applicant's job as a warehouse worker in this case best fits an Occupational Group 460, as set forth in the Opinion on Decision;

9. Defendant's Exhibit A can be admitted despite the fact it was not listed on the pretrial conference statement;

10. The PQMEs' lack of review of Exhibit A (Infinity Insurance records) does not render the reports insubstantial medical evidence or inadmissible pursuant to LC Section 4628.

11. The issue of industrial injury to the cervical spine, bilateral shoulders, bilateral upper extremities, bilateral lower extremities, and knees, is deferred, with jurisdiction reserved.

**AWARD/ORDER(s)**

**AWARD** is made in favor of **Applicant, Ruben Villavicencio Wong**, and against Defendant **The Hartford**, of:

A. Any and all benefits and medical treatment (pursuant to retroactive utilization review and bill review, where necessary) consistent with the Findings of Fact and Opinion on Decision, for the industrial injuries found to have been sustained herein.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**October 11, 2024**

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

**RUBEN VILLAVICENCIO WONG  
FIORE LEGAL  
LYDIA B. NEWCOMB**

**DW/oo**

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