WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ALFREDO SERRANO, *Applicant*

vs.

BIG IDEA HOLDINGS, LLC;
OLD REPUBLIC INSURANCE COMPANY, administered by
CANNON COCHRAN MANAGEMENT SERVICES, INC., *Defendants*

Adjudication Number: ADJ10986659
Salinas District Office

OPINION AND DECISION AFTER RECONSIDERATION

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

Applicant seeks reconsideration of the January 27, 2022 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a laborer on September 15, 2015, sustained industrial injury to his right shoulder. The WCJ made no findings of fact with respect to applicant's claimed cumulative injury.

Applicant contends that the medical-legal opinions of the Qualified Medical Evaluator (QME) are flawed, that defendants had constructive notice of a cumulative injury claim, that the WCJ failed to apply the presumptions of Labor Code[1] section 3202, and that the record requires development pursuant to section 5701.

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 rescind the F&A, substitute new Findings of Fact that the QME reporting does not constitute

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

substantial evidence and return this matter to the WCJ for development of the record pursuant to section 5701.

FACTS

Applicant has filed an application for adjudication arising out of a claimed injury to his right shoulder while employed as a laborer by defendant Big Idea Holdings on September 15, 2015. Applicant also alleges a cumulative injury with the same employer from April 1, 2006 to October 15, 2015. Defendant admits specific injury to the right shoulder on September 15, 2015, but disputes the existence of a cumulative injury.

The parties have selected Bruce Huffer, M.D., as the QME in orthopedic surgery. Dr. Huffer evaluated applicant on October 17, 2018, and issued a report on November 27, 2018. Therein, applicant reported working as a laborer for defendant for 10 or 11 years performing "various activities outside of their agricultural warehouse including washing bins, lifting, pushing and pulling activities." (Ex. J-3, Report of Bruce Huffer, M.D., dated November 27, 2018, at p. 4.) Dr. Huffer noted that applicant's specific injury occurred when applicant reached for a falling pallet resulting in pain and discomfort to the right shoulder area. (*Ibid*.) Subsequent diagnostic studies confirmed arthritis in the shoulder area. In June, 2016, applicant underwent a hemiarthroplasty to the right shoulder. (*Id.* at p. 5.) Applicant experienced continuing shoulder problems, and in March, 2017, underwent a total shoulder replacement surgery. (*Ibid*.) Thereafter, a third surgery was recommended, which applicant declined. Applicant denied problems in the right shoulder prior to the 2015 specific injury. (*Id.* at p. 6.) Following a review of the submitted medical record, Dr. Huffer opined that applicant sustained a specific injury on September 15, 2015 superimposed on longstanding right shoulder arthritis. (*Id.* at p. 70.) Dr. Huffer identified whole person impairment based on applicant's measured range of motion, and further identified nonindustrial apportionment as follows:

> Although the claimant sustained a workmen's (sic) comp injury to his shoulder, the need for surgery ultimately and the decision making to go with arthroplasty procedures is because of the arthritis noted on the MRI and as already stated earlier, the arthritis precluded (sic) the September 2015 injury. The claimant had never had shoulder pain previously and I would apportion approximately 20% of the need for the surgery to the workmen's comp injury and 80% to the fact that he had developed arthritis to the shoulder over a many year period.

(*Id.* at p. 76.)

On February 1, 2019, Dr. Huffer issued a supplemental report which addressed, inter alia, the physician's rationale for apportionment as follows:

> As to the question regarding apportionment, the reason I apportioned 80% of the applicant's need for surgery to preexisting arthritis is the fact that the surgery chosen was a shoulder replacement surgery initially a hemiarthroplasty which was then converted to a total shoulder replacement. Both surgeries of which were unsuccessful for the claimant, but again the arthritis in his shoulder had developed over many years and the apportionment would be different if a different procedure was performed to the shoulder, not a shoulder replacement, but again the decision making on the surgery is in relationship to the arthritis to the shoulder, that is the reasoning for the apportionment.

(Ex. J-2, Report of Bruce Huffer, M.D., dated February 1, 2019, at p. 3.)

On September 10, 2020, the parties deposed Dr. Huffer. Applicant's counsel raised the issue of the nature and number of injuries sustained by applicant in the following exchange:

> Q. Okay. And so your rating was based on a specific injury as opposed to a cumulative trauma; am I correct?
> A. Yes. There's no cumulative trauma.
> Q. Okay. Would performing general labor over a period of time -- could performing general labor over a period of time cause the kind of wear and tear and arthritic changes that showed up on the -- on the records that you examined?
> A. Yes. It's possible.
>
> …
>
> Q. Doing labor work for 10 or 12 years, could that have caused an arthritic -- the type of arthritic condition that you observed or that you found in the records you reviewed?
> A. Again, it's a possibility, with the kind of work that he does, that it could lead to arthritis in the shoulder. But you cannot prove that.

(Ex. J-1, Transcript of the Deposition of Bruce Huffer, M.D., dated September 10, 2020, at p. 14:2.) Dr. Huffer reiterated his opinion that the nature of applicant's two shoulder surgeries reflected applicant's underlying arthritis in the joint, and that applicant's arthritis was a pre-existing condition. (*Id.* at p. 16:9.)

On November 24, 2020, the parties proceeded to trial. The issues framed for decision included, in relevant part, the nature and number of injuries sustained by applicant, and specifically, whether applicant sustained a cumulative injury from April 1, 2006 to October 15,

2015, in addition to the admitted specific injury of September 15, 2015. (Minutes of Hearing, dated November 24, 2020, at p. 2:20.) The parties also placed in issue permanent disability, and various credits claimed by defendant.

On March 25, 2021, the WCJ issued an Order Vacating Submission and Order to Develop the Record, in which the WCJ framed several questions for the parties to submit to the QME, as follows:

1. In Dr. Huffer's opinion, what is necessary to prove a CT?
2. What standard is he using when he says that a CT cannot be proven? Only a preponderance of the evidence (greater than 50%) is required.
3. What causes arthritis?
4. Are any of the causes of arthritis related to his employment?
5. Is he able to say, within reasonable medical probability, that Applicant's employment did not contribute at least 1% to the pre-existing arthritis?
6. Dr. Huffer is to address the arthroplasty method in the AMA Guides and compare it with the ROM method he used and explain, within reasonable medical probability, which rating is the most accurate.

(Opinion on Decision, dated March 25, 2021, at p. 1.)

On July 15, 2021, Dr. Huffer issued a supplemental report in which the QME responded to the WCJ's questions. In response to the WCJ's initial question regarding causation of a cumulative injury, the QME responded:

> The judge first wanted to know what is necessary to prove a cumulative trauma, there is no way of absolutely proving that a cumulative trauma exists. However, the history taken from a claimant, but more specifically the type of work involved may then suggest that there is a cumulative trauma. For example, if a teaching tennis pro develops lateral epicondylitis, tennis elbow. It is felt that this would in fact represent a cumulative trauma. In the case of Alfredo Serrano, it simply cannot be proven that any shoulder problems necessarily are related to the type of work that he does. The arthritis that he developed in his shoulder is not an uncommon diagnosis in individuals that do not do his type of work and there are certainly many individuals who do his type of work that have no problems whatsoever to the shoulder girdle area over the years.
>
> As to the question of what causes arthritis, the majority of individuals that develop arthritis, whether it is to the shoulder, the hup, or the knee, it is simply from wear and tear, from the aging process, getting older. If there are multiple injuries to a joint, that also can factor in to causing damage to a joint, and finally,

> there are systemic diseases such as rheumatoid arthritis, psoriatic arthritis, where it is the actual disease that causes the joint damage.
>
> As to the question whether the causes of the claimant's arthritis is related to his employment, again, that is simply (sic) cannot be proven one way or the other. Again, it cannot be stated that even 1% of his arthritic findings on the MRI are necessarily related to his work duties.

(Ex. J-11, Report of Bruce Huffer, M.D., dated July 15, 2021, at pp. 3-4.)

On October 7, 2021, Dr. Huffer issued another supplemental report responding to interrogatories submitted by defendant. The QME opined:

> Again, the first question that you had is, what is necessary to prove a cumulative trauma. And the answer to that question, there is no absolute way of proving a cumulative trauma. Typically, it is from the history taken from the claimant and the type of work activities that the claimant does, and then with that, an opinion can be made whether cumulative trauma is applicable or not.
>
> As to the standard use as to whether a cumulative trauma cannot be proven, again, this has to do with both the history and the work activities. And again, as already stated, this would require a preponderance of the evidence greater than 50% to the required (sic).
>
> As to what caused the arthritis in the applicant's shoulder, this is wear and tear that occurs over the years to the shoulder area similar to the hip and knee. As to whether arthritis is related to the claimant's employment, that cannot be stated with certainty whether there is a relationship or not. It simply cannot be stated, absolutely that the employment factored in to the development of the arthritis, and for that reason it cannot be stated that at least 1% of the arthritis is from his work situation.

(Ex. J-12, Report of Bruce Huffer, M.D., dated October 7, 2021, at p. 5.)

On January 27, 2022, the WCJ issued the F&A, determining in relevant part that applicant sustained a specific injury to his right shoulder on September 15, 2015. (Findings of Fact No. 1.) The WCJ awarded 6 percent permanent partial disability and medical treatment necessary to cure or relieve from the effects of the industrial injury. (Findings of Fact Nos. 12 & 13.) The WCJ entered no findings of fact with respect to the claimed cumulative injury. The WCJ's Opinion on Decision observes:

> Dr. Huffer has opined, at length, that he does not believe that Applicant sustained a second injury on a cumulative trauma basis. Dr. Huffer states that Applicant's arthritis was not caused by his job.

> The only finding made in this case is that there was a specific injury. The undersigned does not make a finding that there is no cumulative trauma, because that issue is not presented. No second application has been filed, which would allow the court to make a finding as to a second injury.

(Opinion on Decision, at p. 1.)

Applicant's Petition contends the WCJ erred in relying on the reporting of the QME, because "Dr. Huffer's steadfast refusal to recognize that Applicant's 10 years of performing manual labor contributed greater than 20% to his industrial injury defies ordinary logic." (Petition, at p. 3:23.)

Defendant's Answer endorses the WCJ's analysis as set forth in the F&A and Opinion on Decision.

DISCUSSION

The California workers' compensation system is a no-fault system, which provides generally for liability "without regard to negligence…against an employer for any injury sustained by his or her employees arising out of and in the course of the employment." (Lab. Code, § 3600.) A corollary of the no-fault principles of workers' compensation is that an employer takes the employee as he finds him at the time of the employment. Thus, "an employee may not be denied compensation merely because his physical condition was such that he sustained a disability which a person of stronger constitution or in better health would not have suffered." (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 300 [80 Cal.Comp.Cases 489] (internal citations omitted) (*Clark*).) Additionally, it is well-settled that "the acceleration, aggravation or 'lighting up' of a preexisting disease is an injury in the occupation causing the same." (*Tanenbaum v. Industrial Acc. Com.* (1935) 4 Cal.2d 615, 617 [1935 Cal. LEXIS 590]; see *Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1326 [72 Cal.Comp.Cases 565].)

Applicant bears the initial burden of proving industrial causation by showing his employment was a contributing cause. (*Clark, supra,* 61 Cal.4th 291, 297.) Applicant must establish by a preponderance of the evidence that an injury occurred arising out of and in the course of employment (AOE/COE). (§§ 3202.5; 3600(a).) It is sufficient to show that work was a contributing cause of the injury. Applicant meets this burden by demonstrating that industrial causation was "not zero." (*Id.* at p. 299; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69

Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) Accordingly, medical evidence that industrial injury was reasonably probable, although not certain, constitutes substantial evidence for a finding of industrial injury. (*Ibid*.; see also *Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313] ["[t]hat burden manifestly does not require the applicant to prove causation by scientific certainty"].)

To be substantial evidence, a medical opinion must be based on pertinent facts, on an adequate examination, and it must set forth the basis and the reasoning in support of the conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) However, not all expert medical opinion constitutes substantial evidence. (*Hegglin v. Workmen's Comp. Appeals Bd*. (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93, 97]*; Place v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].) To constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. (*Escobedo, supra,* at p. *611; McAllister, supra*, at pp. 413, 416-417; *Rosas, supra*, at pp. 1700-1702, 1705.) "A medical report predicated upon an incorrect legal theory and devoid of relevant factual basis, as well as a medical opinion extended beyond the range of the physician's expertise, cannot rise to a higher level than its own inadequate premises." (*Zemke v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358, 363].) "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, supra*, 4 Cal.3d 162.) Whether a physician's opinion constitutes substantial evidence "must be determined by the material facts upon which his opinion was based and by the reasons given for his opinion." (*Ibid*.)

Here, applicant sustained an admitted specific injury to the right shoulder on September 15, 2015. (Minutes, at p. 2:3.) The parties have raised and submitted the issue of the nature and number of injuries sustained, including both the admitted September 15, 2015 injury as well as the claimed cumulative injury from April 1, 2006 to October 15, 2015. (Minutes, at p. 2:3.) The F&A relies on the reporting of QME Dr. Huffer to find that applicant sustained the admitted specific injury. However, the F&A makes no determination with respect to the claimed cumulative injury. Rather, the non-binding Opinion on Decision observes that because applicant has not filed an application alleging a cumulative injury, the WCJ is unable to decide the issue. The Opinion on

Decision nonetheless observes that the QME found that applicant did not sustain a cumulative injury and the WCJ's subsequent Report notes that the QME reporting is substantial medical evidence. (Report, at p. 5.)

Applicant's Petition contends the reporting of QME Dr. Huffer is not substantial evidence because it applies an incorrect legal standard to both the issues of causation of injury and apportionment. (Petition, at p. 2:24.)

The QME has determined that applicant's shoulder injury arose out of the September 15, 2015 specific injury as superimposed on a longstanding arthritic condition in the right shoulder. (Ex. J-3, Report of Bruce Huffer, M.D., dated November 27, 2018, at p. 71.) In deposition testimony, the QME agreed that it was "absolutely a possibility" that the wear and tear and arthritic conditions identified as causing the majority of applicant's disability could arise from the "kind of work" performed by applicant for 10 or more years. However, the QME concluded that because "you cannot prove that," that applicant did not sustain a cumulative injury. (Ex. J-1, Transcript of the Deposition of Bruce Huffer, M.D., dated September 10, 2020, at p. 15:13; 16:3-18:11.) It is unclear from the QME's testimony what metric was employed to determine that a cumulative injury could not be proven.

Following the WCJ's specific and pointed inquiries as to the correct legal standard for establishing the existence of a cumulative injury, the QME responded that "it simply cannot be proven that any shoulder problems necessarily are related to the type of work that he does." (Ex. J-11, Report of Bruce Huffer, M.D., dated July 15, 2021, at p. 3.) In follow-up reporting, the QME amplified on his opinions by stating that "[a]s to whether arthritis is related to the claimant's employment, that cannot be stated with certainty whether there is a relationship or not. It simply cannot be stated, absolutely that the employment factored into the development of the arthritis, and for that reason it cannot be stated that at least 1% of the arthritis is from his work situation." (Ex. J-12, Report of Bruce Huffer, M.D., dated October 7, 2021, at p. 5.)

However, from our review of the record, it does not appear that the QME ever provides a cogent reason for *why* he is unable to determine whether applicant's work activities over 10 years or more of employment contributed to his shoulder injury. Rather, the QME repeatedly asserts that the causation analysis requested by both the parties and the WCJ is not possible, without attempting to explain the reasons underlying the conclusion. Moreover, the QME's insistence that such an assessment is not possible is inconsistent with the requirement of section 4663(c) that the physician

determine "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).)

It further appears that the QME is at various points interposing an incorrect legal standard of medical certainty into his analysis of causation. The QME repeatedly asserts that it cannot be stated with "certainty" or "absolutely" that applicant's employment factored into the development of the right shoulder arthritis. (Ex. J-12, Report of Bruce Huffer, M.D., dated October 7, 2021, at p. 5.) However, as our Supreme Court has repeatedly stated, medical certainty is not the appropriate standard of causation. Rather, "we require applicants to establish no more than that industrial causation is reasonably probable." (*Clark, supra*, at p. 306; *LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644, 651 [63 Cal.Comp.Cases 253]; *McAllister, supra*, 69 Cal.2d 408].) The QME's reluctance to explain *why* he has determined that applicant's job duties are unrelated to his right shoulder arthritis materially impairs the substantiality of the QME reporting.

In addition, the apportionment analysis described by the QME is both analytically and legally deficient. In *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 [2005 Cal. Wrk. Comp. LEXIS 71] (*Escobedo*) (Appeals Bd. en banc), we held:

> [T]o be substantial evidence on the issue of the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors, a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions.
>
> For example, if a physician opines that approximately 50% of an employee's back disability is directly caused by the industrial injury, the physician must explain how and why the disability is causally related to the industrial injury (e.g., the industrial injury resulted in surgery which caused vulnerability that necessitates certain restrictions) and how and why the injury is responsible for approximately 50% of the disability. And, if a physician opines that 50% of an employee's back disability is caused by degenerative disc disease, the physician must explain the nature of the degenerative disc disease, how and why it is causing permanent disability at the time of the evaluation, and how and why it is responsible for approximately 50% of the disability.

(*Id.* at p. 621.)

Thus, the apportionment opinion of the evaluating physician must address *how* and *why* nonindustrial and prior industrial factors are presently causing permanent disability. Here, the QME ascribes 80 percent of "the need for surgery" to applicant's preexisting arthritic condition, and 20 percent to the specific injury of September 15, 2015. (Ex. J-3, Report of Bruce Huffer, M.D., dated November 27, 2018, at p. 71.) It is unclear whether the QME is equating applicant's need for surgical intervention with his residual permanent disability, but legally valid apportionment requires an analysis of the approximate percentages of *permanent disability* rather than need for medical treatment. (*Escobedo, supra*, at p. 621.) Nor does the QME adequately explain why he settled on the specific percentages identified. Nowhere in the QME reporting and deposition testimony does the QME explain how and why the specific injury is presently manifesting as 20 percent of applicant's permanent disability.

In short, the opinions expressed by the QME with respect to both causation and apportionment are deficient, and multiple supplemental reports and deposition testimony have not rehabilitated the QME's reporting. We therefore conclude that the medical-legal reporting of Dr. Huffer is both legally insufficient and analytically incomplete.

In *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal.Wrk.Comp. LEXIS 4947] (Appeals Bd. en banc) *(Hamilton)* we explained that, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton, supra*, at 475.) The purpose of this requirement is to enable "the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]" (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Additionally, it is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los Angeles County*

Metropolitan Transit Authority (2002) 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." (*Id.* at p. 141.) 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. (*Tyler v. Workers Compensation Appeals Bd., supra,* at 928.)

Here, in the absence of substantial medical-legal reporting addressing the issue of the nature and number of injuries sustained by applicant, we conclude that development of the medical-legal record is required. While the procedures set forth by *McDuffie, supra,* would normally involve the parties returning to the existing evaluating physicians to amplify the record, we are persuaded that further reporting from the existing QME will not assist the parties in obtaining substantial medical-legal reporting.

Accordingly, as our decision after reconsideration, we will rescind the F&A and return this matter to the WCJ for development of the record pursuant to section 5701. Pursuant to *McDuffie*, *supra*, the parties should consider the selection of an Agreed Medical Evaluator. However, if the parties report they are unable to reach an AME agreement, the WCJ should thereafter consider the appointment of a regular physician. (*McDuffie, supra,* 67 Cal.Comp.Cases at p. 141.)

Following the return of this matter to the trial level, we offer the following nonbinding guidance to the WCJ and to the parties. Section 5702 provides that the appeals board may enter findings on stipulated facts, but notwithstanding the stipulation of the parties, the appeals board may also set the matter for hearing, take further testimony, or make further investigation as is necessary to determine the matter. (Lab. Code § 5702.) Additionally, Board Rule 10517 states that "pleadings may be amended by the Workers' Compensation Appeals Board to conform to proof." (Cal. Code Regs., Title 8, § 10517.) Thus, where the pleadings are incompatible with the evidence, the WCJ has the discretion to make inquiry into the basis of the stipulation, and to conform the pleadings to proof. (*Memorex Corp. v. Workers' Comp. Appeals Bd. (Kraten)* (1977) 42 Cal.Comp.Cases 458 [1977 Cal.Wrk.Comp.LEXIS 2713], writ denied [WCAB properly found cumulative trauma based on evidence, despite pleaded specific injury] (writ denied); *Salvation*

Army v. Workers' Comp. Appeals Bd. (Noel) (1996) 61 Cal.Comp.Cases 732 [1996 Cal.Wrk.Comp.LEXIS 3240] [same]; *cf. Crawford v. Workers' Comp. Appeals Bd.* (1989) 54 Cal.Comp.Cases 411 [1989 Cal.Wrk.Comp.LEXIS 2532] (writ denied) [No abuse of discretion where WCJ declined to allow amendment to pleadings more than 16 months after notice of change in medical opinion].)

Moreover, the number and nature of the injuries suffered are questions of fact for the WCJ or the WCAB. (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 234-235 [58 Cal.Comp.Cases 323].)

Accordingly, and upon return of the matter to trial level, and following development of the record, the WCJ should determine whether any amendment to the pleadings is appropriate and warranted based on the developed medical record.

In addition, and notwithstanding our return of this matter to the trial level for development of the record, we observe that pursuant to WCAB Rule 10945 (Cal. Code Regs., tit. 8, § 10945(c)), "[c]opies of documents that have already been received in evidence or that have already been made part of the adjudication file shall not be attached or filed as exhibits to petitions for reconsideration, removal, or disqualification or answers." Here, applicant has attached several documents to his Petition in contravention of Rule 10945(c). Pursuant to our Rules, we have not considered these attachments. We expect all parties to comply with our Rules in future pleadings.

In summary, following our independent review of the entire evidentiary record occasioned by applicant's Petition, we conclude that the reporting of QME Dr. Huffer does not constitute substantial medical evidence upon which the WCJ or the Appeals Board may rest a decision. We further conclude that additional supplemental reporting from the QME will not remedy the deficiencies in the record. Accordingly, we will rescind the F&A and return this matter to the trial level for development of the record pursuant to section 5701. Following development of the record, the WCJ may issue a new decision from which any person aggrieved thereby may seek reconsideration.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 27, 2022 Findings and Award is **RESCINDED** and that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 30, 2025

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

ALFREDO SERRANO
LAW OFFICES OF MILTON KATZ
WINTERSTEEN CASAREZ

SAR/abs

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