

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

AMANDA WARD, *Applicant*

vs.

**SAFEWAY INC.,
permissibly self-insured, *Defendants***

**Adjudication Number: ADJ16726116
Santa Ana District Office**

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

Applicant filed a Petition for Reconsideration (Petition) of the Findings and Order (F&O) issued March 13, 2025, wherein the workers' compensation administrative law judge (WCJ) found applicant did not sustain injury arising out of and in the course of employment to her back.

Applicant asserts that the F&O is not based on substantial evidence because the record and the Panel Qualified Medical Examiner (PQME) report supports injury.

The WCJ's Report and Recommendation (Report) recommends the Petition be denied.

We have considered the allegations of the Petition, and the contents of the Report of the WCJ with respect thereto. Based on our review of the record we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision.

FACTS

As found by the WCJ in the Findings and Order, applicant, while employed on August 8, 2022, by defendant as a chef, claims injury to the back.

Before the claimed injury on July 11, 2022, Hla Win, M.D., completed a work status report with diagnosis of hyperprolactinemia with reason off work of “Uncontrolled Symptoms.” (Defendant Exhibit B, Kaiser Permanente, July 11, 2022.)¹

On August 2, 2022, an incomplete physical therapy note has history of “left hip pain started 7 months ago” and “[h]istory of left calf muscle tear.” (Defendant Exhibit C, Kaiser Permanente, August 2, 2022, page 1 (copy service stamp (stamp) page 386).)²

The day after the claimed injury, on August 9, 2022, at 4:12 PM, there is an incomplete call history by Tamara McCauley, R.N., “since yesterday am had 7/10 chest/abd pain that radiated to her back - resolved, yesterday afternoon noted L lower extremity numb/tingly/pins and needle sensation and cold, one 3 in diameter area on front of thigh that is warm to touch and feels tight w/walking, denies shortness of breath” that also includes “LMP 3w ago, Chef - on her feet all day, calf exploded.” Leg/calf problems/swelling/edema were noted. (Defendant Exhibit C, Kaiser Permanente, August 9, 2022, page 2, (stamp page 391).)

Later that day there is an incomplete emergency department entry with arrival time of 5:35 PM and diagnosis of “left side sciatica.” History is “36 Y female who presents with concerns of new LLE paresthesias since yesterday morning. States that her entire left leg has a ‘numb’ feeling to it, can still feel touch but feels like it is asleep sensation and heavy. No injury or trauma. Patient has had months of lower back pain, left sided, radiates into the left buttock and thigh, has been doing PT and chiropractor but persists.” (Defendant Exhibit C, Kaiser Permanente, pages 4 to 7, (stamp pages 727, 729, and 732).)

In an August 11, 2022, a call history from advice nurse, Emelinda Ruiz, R.N., reflects that symptoms are noted as “back pain pain level 6/10 took Tylenol 600mg helps this am, pain left leg with mild numbness limping, able to go to work unable to control urine peed on her pants,” with history of “seen ED on Tuesday, Dx sciatica” and “picking up heavy boxes Monday currently parked in the WCR facility now.” “Referred to closest KP ED - Walnut Creek Medical Center.” (Applicant Exhibit 1, Kaiser Permanente, pages 2 to 3, (stamp pages 396 to 397).)

¹ The exhibits from Kaiser Permanente are all in the name of Amanda Craig. These records were admitted by the parties without objection. We therefore proceed with the Kaiser Permanente records as being those of applicant.

² Where an exhibit appears to be partial, *i.e.* only one page of multiple pages for a service date, it is referred to as “incomplete.” We indicate no deficiency in the exhibits by use of this appellation.

On August 14, 2022, there is an incomplete spine MRI with impression of “Lower lumbar DJD, including facet arthropathy which is most pronounced on the right at L5/S1, associated with mild LS anterolisthesis. Mild lower lumbar spinal canal narrowing. Mild L4/5 and mild to moderate L5/S1 foraminal narrowing. (Defendant Exhibit C, Kaiser Permanente, August 14, 2022, page 7 (stamp page 793).)

A video visit with Anatoliy Fortenko, M.D., occurred on August 19, 2022. “She reports acute worsening of the pain after lifting injury at work 8/7. Seen in ER on 8/7 for low back/left sciatica pain with N motor exam.” (Applicant Exhibit 2, Kaiser Permanente, August 19, 2022, page 3, (stamp pages 411 to 421).) On a separate incomplete page regarding prednisone: “Is this a worker's compensation medication?” answer “No”. (Defendant Exhibit E, Kaiser Permanente, August 19, 2022, page 1, (stamp page 415))³ Also on August 19, 2022, there is an incomplete note from Anatoliy Fortenko, M.D., with a diagnosis of “acute low back pain < 3 months,” “lumbar radiculopathy,” and “weakness of bilateral legs.” (Defendant Exhibit G, Kaiser Permanente, August 19, 2022, page 3, (stamp page 409).)

On September 2, 2022, Sharon Gandhi, D.O., of Kaiser Permanente neurology recommended “further evaluation for demyelinating disease although symptoms are a bit atypical.” (Applicant Exhibit 3, Kaiser Permanente, pages 2 to 16, (stamp pages 457 to 471).)

On December 15, 2022, chiropractor Hungchiao Lisa Wu, diagnosed unspecified low back pain and found that “[b]ased upon reasonable medical probability, it is my opinions that the injuries were considered as industrial related [*sic*].” (Applicant Exhibit 4, Hungchiao Lisa Wu, D.C., December 15, 2022, pages 6 and 7.)

On May 4, 2023, PQME Dr. Ilkhchoui reported after the evaluation of applicant on February 3, 2023. The PQME reviewed and summarized treatment records from Kaiser covering the period before the alleged injury beginning June 25, 2020, to August 2, 2022, and after the alleged injury from August 9, 2022, to October 24, 2022. (Joint Exhibit 1, PQME Dr. Ilkhchoui, report of May 4, 2023, pages 7 to 18, pages 19 to 26.) Applicant was not at maximum medical improvement (MMI). He stated that: “I rate the applicant’s credibility as moderate because she gave forth good effort during physical exam testing and was moderately accurate historian.” He

³ Applicant Exhibit 2, page 6, and defendant Exhibit E, page 1, are both from Anatoliy Fortenko, MD, for service date of August 19, 2022. Both exhibits bear a stamp page of 415 and both bear the Kaiser notation “generated on November 3, 2022, at 2:38 PM.” It is unclear why these documents are different.

concluded that: “It is my opinion, to a degree of reasonable medical probability, that the patient's need for medical care stems from the industrial injury of August 8, 2022.” (Id. page 51.)

During deposition, the PQME did not recall seeing “a note at Page 386 through 389 of the Kaiser records” and stated it would be important for the PQME to look at them. (Joint Exhibit 2, Deposition of PQME Dr. Ilkhchoui, MD, October 24, 2024, page 7, lines 9 to 25, page 8, lines 1 to 4.) The following exchange between counsel also occurred:

MS. MATOVICH: Let’s go back on the record.

A brief off-the-record discussion was held by the parties. I am going to forward Dr. Ilkhchoui the various pages that I've discussed. Since the doctor has no recollection of the actual Kaiser records or the details of all of these hundreds and hundreds of pages, I think it makes sense to excerpt these pages and direct them to the doctor for review and comment at the time of the next evaluation.
So agreed, Anthony?

MR. KIM: Yeah, that’s fine.

(Joint Exhibit 2, Deposition of PQME Dr. Ilkhchoui, page 13, lines 6 to 16.)

Trial was conducted electronically over four days. Applicant, employer witnesses Samone Halicon and Mark Tranate testified.

Thereafter, the WCJ found the applicant did not sustain injury arising out of and in the course of employment to her back. The WCJ ordered “[a]pplicant is to take nothing on her claim.” In support, the WCJ stated in the Opinion on Decision, that “[a]pplicant was not credible. Her contradicting statements and her demeanor demonstrated to the Court that she was less than truthful during trial.” (F&O, page 7.)

DISCUSSION

I.

Former Labor Code section 5909⁴ 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. (Former Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

⁴ Unless otherwise stated, all further statutory references are to the Labor Code.

- (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.

(Lab. Code, § 5909.)

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

Here, according to Events the case was transmitted to the Appeals Board on April 14, 2025, and 60 days from the date of transmission is Friday, June 13, 2025, which by operation of law means this decision is due by Friday, June 13, 2025. (Cal. Code Regs., tit. 8, § 10600.) This decision issued by or on June 13, 2025, so that we have timely acted on the Petition as required by section 5909(a).

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

According to the proof of service, the Report was served on April 14, 2025, and the case was transmitted to the Appeals Board on April 14, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 14, 2025.

II.

To be compensable, an injury must arise out of and occur in the course of employment. (Lab. Code, § 3600.) The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5, 5705.) Medical evidence that industrial causation was reasonably probable, although not certain, constitutes substantial evidence for a finding of injury AOE/COE. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 417 [33 Cal.Comp.Cases 660].) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Worker's Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].)

The issue of industrial causation "may run a gamut from the blatantly obvious to the scientifically obscure." (*Peter Kiewit Sons v. Ind. Acc. Comm. (McLaughlin)* (1965) 234 Cal.App.2d 831, 839 [30 Cal.Comp.Cases 188].) "[T]he medical cause of an ailment is usually a scientific question, requiring a judgment based upon scientific knowledge and inaccessible to the unguided rudimentary capacities of lay arbiters." (*Id.*; see *City & County of San Francisco v. Industrial Acc. Com. (Murdock)* (1953) 117 Cal.App.2d 455, 459 [18 Cal.Comp.Cases 103].) Generally medical causation cannot be established without corroborating expert medical opinion. (*McLaughlin, supra*, at 838-839.)

Here, we give the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500].) It has long been recognized, however, that evidence from a lay witness on an issue requiring expert opinion is not substantial evidence, and medical proof is required when issues of diagnosis, prognosis, and treatment are beyond the bounds of ordinary knowledge. (*Murdock, supra*, at 459.) The WCJ's determination that "[a]pplicant was not credible" is not dispositive.

The WCJ also found the PQME opinions of Dr. Ilkchoui not substantial as they were based on a false and inaccurate history. The WCJ states the PQME's "history of injury indicates the Applicant was lifting 'heavy boxes' instead of a heavy box," and that "the PQME did not really address the issue of the Kaiser Records showing inconsistencies because there was an issue as to whether the PQME reviewed the records." (Opinion on Decision, page 14.)

Although the PQME, Dr. Ilkhchoui, found industrial injury, it is unclear the extent to which that finding was based on applicant's credibility. The PQME did not find applicant completely credible, instead assessing "applicant's credibility as moderate." It is necessary to return to the PQME for an opinion on how, or if at all, the WCJ's credibility determination may affect the PQME's opinion on injury.

Further, medical records reflect applicant's conditions include *inter alia* hyperprolactinemia, left hip pain, left calf muscle tear as well as possible demyelinating disease. An alleged back injury in an individual with this background cannot be resolved by lay opinion but instead requires a substantial medical opinion on causation. This is especially true where the PQME has no recollection of the actual Kaiser records, and the parties agreed to send the records to the PQME for consideration but have not done so.

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]; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141 (Appeals Bd. en banc); *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924].) The Appeals Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 404 [65 Cal.Comp.Cases 264].)

Before further proceedings, it is necessary that the PQME be provided with the WCJ's credibility determination of the applicant, which includes the complete trial Minutes of Hearings and Summaries of Evidence, the WCJ's Findings and Order, applicant's medical records and this decision so that an updated and substantial medical opinion on causation may be provided.

This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of March 13, 2025, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of March 13, 2025, is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 13, 2025

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

**AMANDA WARD
KLK LAW GROUP
PRINDLE, GOETZ & BARNES**

PS/oo

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