

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

**ANGELICA RAMIREZ DE ZARATE, *Applicant***

**vs.**

**RIVERSIDE HEALTHCARE AND WELLNESS CENTRE, LLC  
dba ALTA VISTA HEALTHCARE AND WELLNESS CENTRE;  
XL SPECIALTY INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ18434613  
Riverside District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, we will deny reconsideration.

**I.**

Former Labor Code section 5909<sup>1</sup> 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, 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.

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<sup>1</sup> All section references are to the Labor Code, unless otherwise indicated.

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 May 29, 2025, and 60 days from the date of transmission is Monday, July 28, 2025. This decision is issued by or on Monday, July 28, 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 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 May 29, 2025, and the case was transmitted to the Appeals Board on May 29, 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 May 29, 2025.

## II.

As to the merits of the Petition, based upon our review of the record and for the reasons stated in the Opinion on Decision and the Report, we concur with the WCJ’s findings on credibility. We have given the WCJ’s credibility determination(s) great weight because the WCJ had the opportunity to observe the demeanor of the witness(es). (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) When a WCJ’s findings are supported by solid, credible evidence, they are to be accorded great weight by the Board and rejected only on the basis of contrary evidence of considerable substantiality. (*Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza, supra*, at p. 318.)

Here, the WCJ notes in the Report that panel qualified medical evaluator (PQME) Dr. Mark Mikhael deferred the issue of industrial causation of the left knee to the trier of fact. (Report, at p. 3.) The WCJ determined the applicant “testified credibly that she experienced pain in the left knee when she turned around while participating in the folkloric dance in support of her subjective narrative.” (*Id.*) We conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ’s credibility determination(s). (*Garza, supra*, at pp. 318-319.)

### III.

We now address applicant counsel’s request for sanctions under section 5813 and attorney’s fees and costs under section 5814.

The Appeals Board is authorized to impose sanctions, costs and attorney’s fees under section 5813, against a person who engages in “bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.” (Lab. Code, § 5813.) WCAB Rule 10421, subdivision (b) (Cal. Code Regs., tit. 8, § 10421(b)) provides a comprehensive but non-exclusive list of actions that could be subject to sanctions. Sanctions under section 5813 are designed to punish litigation abuses and to provide the court with a tool for curbing improper legal tactics and controlling their calendars. (*Duncan v. Workers’ Comp. Appeals Bd.* (2008) 166 Cal.App.4th 294, 302.) Accordingly, sanctions are similar to penalties under section 5814, in that they are designed to have both remedial and penal aspects. (See *Ramirez v. Drive Financial Services* (2008) 73 Cal.Comp.Cases 1324 (Appeals Board En Banc).)

Here, applicant’s counsel requests we “impose sanctions under section 5813 and award attorney’s fees and costs under section 5814 to deter bad-faith litigation tactics and compensate for the needless burden imposed.” (Answer, May 29, 2025, at p. 5.) Applicant’s counsel contends defendant has “misrepresented the record, ignored controlling law, and reargued factual and credibility determinations already resolved by the WCJ-none of which constitute valid grounds for reconsideration.” (*Id.* at pp. 5-6.)

While some of the arguments by defendant in its Petition appear to be specious and without merit, at this time we decline to impose sanctions under section 5813.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**July 25, 2025**

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

**ANGELICA RAMIREZ DE ZARATE  
IGLOW, BACHRACH & HERRERA  
THE LAW OFFICES OF HIRSCHL MULLEN**

**JL/abs**

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

**REPORT AND RECOMMENDATION  
ON PETITION FOR RECONSIDERATION**

**I**

**INTRODUCTION**

**Applicant's Occupation:** Certified Nursing Assistant (CNA)

**Applicant's DOB (Age):** [...] (53 at time of alleged injury)

**Injury:** Applicant claims to have sustained injury arising out of and in the course of employment to the left knee on September 15, 2023.

**Identity of Petitioner:** Defendant, XL Specialty Insurance Company

**Timeliness:** The petition was filed timely.

**Verification:** The petition was properly verified.

**Date of Issuance of Order/Award:** April 24, 2025

**Date Transmitted to the Appeals Board:** May 29, 2025

**II**

**PETITIONER'S CONTENTIONS**

1. By Order, Decision or Award, the Board acted without or in excess of its powers.
2. The evidence does not justify the finding of fact.
3. The findings of fact do not support the Order, Decision, or Award.

**III**

**FACTS**

Applicant, Angelica Ramirez de Zarate, born July 17, 1970, while employed as a Certified Nursing Assistant (CNA), at Riverside, California, by Riverside Healthcare and Wellness Centre, LLC, dba Alta Vista Healthcare and Wellness Centre claims to have sustained injury arising out of and in the course of employment to the left knee as a result of a specific incident on September 15, 2023 when she participated in a folkloric dance at her place of employment.

The claim was denied and the matter was set for trial before the undersigned WCALJ on December 19, 2024 on the issue of AOE/COE and whether the claim is barred by Labor Code

Section 5400. The trial proceeded, exhibits were offered and either admitted or marked for identification, and testimony was taken. The matter initially continued for further testimony but submitted at the subsequent trial date of February 24, 2025 after the parties advised there would be no further testimony offered.

The undersigned issued a Findings and Award with Opinion on Decision on April 24, 2025. An Award was made of injury arising out of and in the course of employment to the left knee and a finding that the Applicant's claim is not barred under Labor Code Section 5400.

Defendant, by and through their attorneys, filed a Petition for Reconsideration on May 15, 2025.

#### IV

#### **DISCUSSION**

Petitioner seeks Reconsideration of the Findings and Award, wherein they contend that the undersigned WCALJ erred in finding that the Applicant sustained injury arising out of and in the course of employment and that the Applicant's claim is not barred by Labor Code Section 5400.

##### **1. WHETHER THE APPLICANT SUSTAINED INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT**

Petitioner contends that the WCALJ erred in finding that the Applicant's injury arose out of and occurred in the course of her employment. The undersigned maintains that the facts, medical evidence and law supports a finding of AOE/COE on the following grounds:

Defendant contends, in their Petition for Reconsideration, that the undersigned erred in finding that the QME reporting from Dr. Mark Mikhael supported a finding of industrial causation to the Applicant's left knee. The undersigned disagrees. As noted in the Opinion on Decision, the court recognizes that Dr. Mikhael, in his supplemental report of 10/17/2024, indicated that further information and review is necessary to determine the exact extent of the pathology of the left knee and what additional conditions, if any, other than a left knee strain/bursitis were caused by the acute injury. However, these are questions of nature and extent, not of AOE/COE.

As noted above, the undersigned took into consideration the discrepancy, noted by Dr. Mikhail, between the diagnosis/MRI interpretation of Drs. Jimenez and Luchs concerning the existence of a medical meniscus rupture. The court disagrees that the medical evidence currently supports the contention that Dr. Jimenez's MRI reading is "misleading and erroneous" as stated by Defendant in their Petition for Reconsideration. Dr. Mikhail defers further comment on a "definitive opinion regarding the structural pathology of the applicant's left knee condition" (QME, Dr. Mark Mikhael, supplemental report of 10/17/2024 page 10, Joint Exhibit 2). This, again, is a question of nature and extent not AOE/COE. As noted by the QME, "the review by Dr. Luchs does not rule out industrial causation of the applicant's left knee injury as there was evidence that could be reasonably consistent with a recent strain and medical knee pain in the form of pes-anserine bursitis.." instead "it would potentially have an impact on the necessity and appropriateness of the March 15, 2024 left knee arthroscopy" (Joint Exhibit 2, *supra* page 10 *emphasis added*) which is an issue of nature and extent.

Ultimately and appropriately, Dr. Mikhail defers the issue of industrial causation for the left knee to the trier of fact, noting that “the issue of industrial causation for the left knee condition primarily rests upon the applicant’s subjective narrative.” (Joint Exhibit 2, *supra*) The undersigned determined that the Applicant testified credibly that she experienced pain in the left knee when she turned around while participating in the folkloric dance in support of her subjective narrative.

For the forgoing reasons, it is believed that it should be determined that the Applicant sustained injury arise out of and occurring in the course of her employment on September 15, 2023, with the issue of nature and extent of said injury deferred.

## **2. WHETHER THE APPLICANT’S CLAIM IS BARR BY LABOR CODE 5400**

Petitioner contends that the WCJ erred in finding that the Applicant’s injury was not barred by Labor Code 5400. The undersigned maintains that the facts and law do not support a finding that the claim is barred by Labor Code 5400 on the following grounds:

Defendant contends that Applicant’s claim should be barred because Applicant failed to report her claim within 30 days of the injury. Defendant relies upon Labor Code 5400, which states:

“Except as provided by sections 5402 and 5403, no claim to recover compensation under this division shall be maintained unless within thirty days after the occurrence of the injury which is claimed to have caused the disability or death, there is served upon the employer notice in writing, signed by the person injured or someone in his behalf, or in case of the death of the person injured, by a dependent or someone in the dependent’s behalf.” Cal Lab Code § 5400

The application of Labor Code 5400 is limited by Labor Code 5403, which states the following:

“The failure to give notice under Section 5400, or any defect or inaccuracy in a notice is not a bar to recovery under this division if it is found as a fact in the proceedings for the collection of the claim that the employer was not in fact misled or prejudiced by such failure.” Cal Lab Code §5403

In workers’ compensation matters, the burden of proof rests on the party “holding the affirmative of the issue.” (Lab, Code, § 5705) Defendant bears the burden of proving prejudice.

Defendant contends that the undersigned erred in finding that they failed to carry their burden of proving that the lack of notice prejudiced them. The undersigned maintains that Defendant provided insufficient evidence to support that they were prejudiced in their ability to defend this claim due to the alleged late reporting by the Applicant. In their Petition for Reconsideration, Defendant points to the trial testimony of the employer witness, Rizza Villafania, that “[w]hen the applicant called, the witness was again surprised and wondered why the applicant had reported the injury so late. The witness indicates that this did affect her determination because the applicant reported the injury late.” (MOH and summary of Evidence, page 10 lines 16.5-18.5) This testimony is insufficient to prove actual prejudice.

Defendant's petition goes on to outline several potential hypothetical consequences when an injury is not immediately reported, however there was no evidence submitted to support actual prejudice in this case, ie there was no testimony/evidence that potential witnesses were no longer available. If the legislature had intended the court to infer prejudice in all cases where notice of injury is not given within 30 days, then they would not of enacted Labor Code §5403.

Based on the evidence presented at trial, the undersigned finds that the employer was not prejudiced by the lack of notice prior to Applicant reporting the injury on 10/18/2023.

For the forgoing reasons, it is believed that it should be determined that the defendant has not met their burden in proving that the claim should be barred by Labor Code Section 5400.

#### **IV.**

#### **RECOMMENDATION**

For all the forgoing reasons, it is respectfully requested that the Petition for Reconsideration be denied.

This Report and Recommendation on Reconsideration was transmitted to the Appeals Board on May 29, 2025.

DATE: 5/29/2025

**Joseph Yalon**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE