

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

ANTHONY MERCADO, *Applicant*

vs.

**CLARK PACIFIC PRECAST;
ARCH INSURANCE, administered by INNOVATIVE RISK MANAGEMENT,
*Defendants***

**Adjudication Number: ADJ16933451
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Amended Findings of Fact and Orders issued by the workers' compensation administrative law judge (WCJ) in this matter on August 4, 2025. In that decision, the WCJ found, in pertinent part, that applicant, while employed by defendant on July 19, 2022, as a welder specialist, sustained injury arising out of and in the course of employment (AOE/COE) to the left eye/vision. The WCJ further found applicant sustained a high-velocity eye injury within the meaning of Labor Code¹ section 4656(c)(3)(F) and is therefore entitled to payment of up to 240 weeks of compensable temporary disability with a period of five years from the date of injury. Defendant asserts the findings of the WCJ are illogical and not supported by substantial evidence.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of defendant's Petition for Reconsideration, the Answer, and the contents of the report of the WCJ with respect thereto. Based on our review of

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

the record, and for the reasons stated in both the WCJ's Report and opinion, which we adopt and incorporate, we will deny reconsideration.

I.

Former 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, 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 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 September 15, 2025, and 60 days from the date of transmission is November 14, 2025. This decision is issued by or on November 14, 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 September 15, 2025, and the

case was transmitted to the Appeals Board on September 15, 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 September 15, 2025.

II.

At the outset, we admonish both counsel for defendant, Jenny Chentsova of Llarena, Merdock, Lopez, & Azizad, APC, and Louis A. Larres of Bradford & Barthel, LLP, for filing a petition for reconsideration that is violative of section 5813 as well as WCAB Rules 10421 and 10945. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, §§ 10421, 10945.)

WCAB Rule 10945 requires every petition for reconsideration, removal or disqualification to fairly state all of the material evidence relative to the point or points at issue clearly, and separately stated, with specific references to the documentary evidence in the record, including exhibit numbers, the date of the document, as well as relevant page numbers and other details. (Cal. Code Regs., tit. 8 § 10945(a)&(b).)

Here, defendant claims it was impossible that applicant sustained a high velocity injury given the protective gear he was wearing without offering any evidence relating to the effectiveness of such gear. (Petition, pp. 6-8.)

We further admonish defendant for using offensive, inappropriate, and disrespectful language in their Petition. (See Lab. Code, § 5813; see also Cal. Code Regs., tit. 8, § 10421(b)(9)(B) [sanctionable conduct includes “using any language in any pleading or other document [...] [w]here the language or gesture impugns the integrity of the Workers’ Compensation Appeals Board or its commissioners, judges, or staff”].)

Defendant’s petition asserts that the WCJ made a “a series of illogical leaps in reasoning unsupported by the factual record and any logical or reasonable inferences”; that the WCJ “also creates an internally inconsistent and unsubstantiated narrative to fit a desired legal outcome”; and that the WCJ’s finding of high velocity eye injury was “speculative conclusion masquerading as a factual finding.” (Petition, pp. 4-5.) There are just a few examples of defendant’s attorneys’ intemperate language directed at the WCJ’s well-reasoned and well-supported Amended Findings and Orders and Opinion on Decision.

Finally, defendant appears to now be postulating that applicant's injury to his left eye was not industrial at all (Petition, p. 8) despite stipulating on the record to injury AOE/COE at the trial on December 26, 2024. The only contested issue at the trial with respect to applicant's left eye injury was whether he sustained a high velocity eye injury pursuant to section 4656(c)(3)(F). (12/26/24, Minutes of Hearing and Summary of Evidence, p. 2.)

“Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit.” (Cal. Code Regs., tit. 8, § 10421(b).) “Issues not raised in the trial court are generally forfeited for purposes of appeal.” (*Schultz v. Workers' Comp. Appeals Bd.* (2015) 232 Cal.App.4th 1126, 1134 [181 Cal.Rptr.3d 891], quoting *Natkin v. California Unemployment Ins. Appeals Bd.* (2013) 219 Cal.App.4th 997, 1011 [162 Cal. Rptr. 3d 367]; see also *Cuevas v. Workers' Comp. Appeals Bd.* (2005), 70 Cal.Comp.Cases 479, 483-484 (writ den.); *L.A. Unif. School Dist. v. Workers' Comp. Appeals Bd.* (2001) 66 Cal.Comp.Cases 1220 (writ den.).) As defendant previously stipulated that the injury was industrial and did not raise this issue at the trial, it cannot now be raised for the first time in their Petition.

We therefore reiterate and remind defense counsel that all parties appearing before the WCAB are required to follow the WCAB's Rules in all future proceedings, and that the failure to do so may subject the offending party to sanctions. (Lab. Code § 5813; Cal. Code Regs., tit. 8 § 10421.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 14, 2025

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

**ANTHONY MERCADO
LAW FIRM OF ROWEN GURVEY & WIN
LAW OFFICE OF BRADFORD & BARTHEL
LLARENA MURDOCK LOPEZ & AZIZAD**

JMR/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

- | | |
|------------------------------------|--|
| 1. Applicant's Occupation: | Welder Specialist |
| Applicant's Age on Date of Injury: | 37 |
| Date of injury: | 7/19/2022 |
| Parts of Body Injured: | left eye/vision |
| Manner in Which Injury Occurred: | welding spark |
| 2. Identity of Petitioner: | Defendant filed the petition |
| Timeliness: | The petition is timely filed |
| Verification: | The petition is properly verified |
| 3. Date of issuance of Findings: | 8/4/205 |
| 4. Petitioner's Contentions: | |
| a. | That by the order, decision or award, made and filed by the workers' compensation judge, the appeals board acted without or in excess of its powers; |
| b. | That the evidence does not justify the findings of fact; |
| c. | That the findings of fact do not support the order, decision or award |

II FACTS

Applicant sustained injury to his left eye when one or more welding sparks entered his left eye on July 19, 2022. According to applicant's credible and un rebutted testimony (12/26/2024 MOH; pages 3-4):

He was welding and felt discomfort under his hood. He felt stinging, burning and a scratching sensation. He was wearing both safety glasses and a shield and didn't know if something had gone over or under. He did not know how the injury occurred. His right eye was burning, and his left eye was more scratchy.

Applicant's left eye was examined at Arrowhead Regional Medical Center on 7/25/2022 which record indicates: "Patient with flash burn injury with blurring of vision and chemosis in the eye. Appears to have foreign body on exam. Will refer urgently to ER or urgent care for slit lamp exam and evaluation for foreign body (exh.10; bates stamp 0334).

Applicant was seen in the emergency room on 7/27/2022 with the following history recorded:

37 M without significant past medical history presenting here for left eye flash burn on Friday. Reports that he was wearing glasses at the time but the flash went under his glasses and hit him in the eye (exh. 10 bates stamp 0295).

The metallic foreign body was identified by fluorescein examination and removed by Ophthalmology on 7/27/2022 (exh. 10 bates stamp 0283). Applicant was seen again 8/1/2022 with history indicating: "Patient went to the ED on the 25th and foreign body removed. Now with active corneal ulcer. (exh. 10 bates stamp 0256).

Applicant was evaluated by AME Ophthalmologist Dr. Sami pursuant to his 12/6/2024 report indicating at page 2:

Applicant...suffered a reported flash burn and metallic foreign body injury to the left cornea on 7/19/2022. He was subsequently evaluated, and the metallic foreign body was removed. However, the post traumatic course was complicated by development of a fungal corneal ulcer with associated intraocular inflammation. Eventually the fungal ulcer resolved following treatment with voriconazole drops; however, there is persistent loss of corrected acuity due to residual superficial corneal scar and reported halos and glare with associated light sensitivity.

The sole issue submitted for decision is whether applicant sustained a high-velocity eye injury within the meaning of Labor Code §4656 (c) (3) (F). The undersigned found that he had pursuant to Findings and Order dated 1/27/2025.

The 1/27/2025 Findings and Order was rescinded following the filing of defendant's first Petition for Reconsideration dated 2/18/2025 as the 12/6/2024 AME report of Dr. Sami became available only after the 12/26/2024 trial. The case was again submitted for decision on 5/13/2025 following development of the medical record and the undersigned again found that applicant has sustained injury due to a high-velocity eye injury withing the meaning of Labor Code §4656 (c) (3) (F).

III DISCUSSION

Petitioner argues that the "high-velocity eye injury" provision of section 4656(c)(3)(F) must be narrowly construed and found to apply only upon proof of a specific, evidenced mechanism of force-underscoring that such a finding cannot rest on speculation or assumption.

However, defendant's argument fails to acknowledge and appreciate the plain meaning of the words used by the legislature in enacting Labor Code §4656(c)(3)(F) which states:

(3) Notwithstanding paragraphs (1) and (2), for an employee who suffer[]s from the following injuries or conditions, aggregate disability payments for a single injury occurring on or aft[]er April 19, 2004, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury:

(F) High - velocity eye injuries

The court in Glick (supra) addressed defendant's assertion in that case that the legislature intended to require an "impact" of a high velocity object with the eye and referenced the plain meaning of the words of the statute noting:

" ... velocity is defined in the Merriam-Webster dictionary as 'quickness of motion, rapidity of movement or the speed imparted to something' or 'the rate of occurrence or

action, (b) rate of turnover'. The requirement of a concomitant impact is neither integral nor even contemplated in the definition of velocity. We also note that neither the terms 'impact' nor 'object' are found in the statute".

There is no doubt that a welding spark moves with a "quickness of motion and rapidity of movement". While the force of impact has been cited as a possible means of gauging velocity in the absence of definitive evidence as to velocity, impact is neither integral to nor contemplated in the definition of velocity and not relevant in a case such as this where the mass of the object is apparently negligible.

A fluorescein examination was necessary in order to locate and remove the metallic foreign body from applicant's left eye. Medline Plus, a U.S. Government website, notes the following regarding a Fluorescein eye stain: "This is a test that uses orange dye (fluorescein) and a blue light to detect foreign bodies in the eye ... "

Based thereon, it is reasonable to infer that the two metallic foreign bodies identified on fluorescein examination were visible to the physician only with that examination and which provides some measure of insight as to their mass.

Petitioner asserts that the most glaring logical flaw in the decision is the conclusion the injury was caused by a high velocity object despite the claimant's admission of wearing a welding shield and safety\glasses.

Petitioner speculates both that the spark could not have reached applicant's left eye with any degree of velocity as the spark was necessarily stopped in its straight line trajectory by applicant's safety gear and that, having been stopped in that manner, the spark must have dropped into his eye from above.

Petitioner provides no evidence, authority or foundation for its assertions that a welding spark traveling at high velocity travels in a straight line and that the protective gear must necessarily have stopped the spark before entering applicant's eye.

Applicant, a welding specialist, testified credibly that he believed that the spark must have either gone over or under his hood. Based thereon, it is reasonable to infer that applicant had observed that welding sparks do not necessarily travel in a straight line.

Petitioner contends that applicant's inability to either anticipate or see the spark diminished applicant's ability to gauge it[]s speed and somehow obviates the court's proper application of Labor Code §4656(c)(3)(F) in this case.

Whereas, the Board has indicated the opposite noting that whether or not the applicant was able to see it coming might be relevant and should be addressed because the applicant's failure to anticipate the object striking his eye could be an indicator of high velocity. Gutierrez v. Social Framing, 2012 Cal. Wrk. Comp. P.D. LEXIS 25.

The object at issue in Gutierrez was a piece of wood. The court noted the following:

... there must be some degree of force of impact. This is so because according to the general laws of physics, the more force which is "imparted to something" of the same mass, the higher its speed or velocity.

Based upon the foregoing, there exists a relationship between an objects mass and both its velocity and force of impact. It does, therefore, logically follow that if the degree of [] force is not

obvious, as in this case involving an object of negligible mass, the amount of initial damage to the eye is not likely a reliable indicator of the velocity at impact.

Finally, Petitioner now at 1d for the first time argues that "Not a single medical opinion in evidence affirms that this fragment entered the applicant's left eye on the date of the injury."

The undersigned finds that there is ample evidence that this admitted injury to the left eye occurred as described by applicant's testimony at trial at 1d throughout the medical record.

The undersigned finds that applicant has met his burden of proof with respect to the applicability of Labor Code §4656(c)(3)(F) for the reasons set forth herein above.

IV RECOMMENDATION

It is respectfully recommended that the defendant's Petition for Reconsideration dated August 28, 2025 be denied.

This case was transmitted to the Board on September 15, 2025.

DATE: September 15, 2025

RUSSELL SHUBEN
WORKERS' COMPENSATION JUDGE

AMENDED
OPINION ON DECISION

Applicant sustained injury to the left eye while performing his duties as a welder on 7/19/2022. The sole issue is whether applicant sustained injury to the left eye due to a high velocity eye injury within the meaning of Labor Code §4656 (c)(3) (F).

A Findings and Order and Opinion on Decision initially issued on 1/25/2025. The Findings and Award and Opinion on Decision were rescinded to develop the record following the timely filing by defendant of its Petition for Reconsideration. Defendant argued in its Petition for Reconsideration that issues remained as to whether the corneal scarring in applicant's left eye was caused by the industrial injury and the undersigned Ordered development of the record to address that and other issues raised by defendant. Additional exhibits were received in evidence and the case resubmitted at trial on 5/13/2025.

Applicant's credible m1d un rebutted testimony at trial (MOH 12/26/2024; pages 3 - 4) is summarized in relevant part as follows:

- He was welding and felt discomfort under his hood
- He felt stinging, burning, scratching sensation
- He was wearing both safety glasses m1d a shield at the time of injury
- He did not notice how the injury had occurred
- He didn't know if something had gone over or under
- He said to a coworker that he thought he had suffered a flash burn
- He recalled that his right eye was burning and his left eye was more scratchy
- He did not know that there was a foreign body
- He was told that there was metal in his eye when he saw the doctor on either 7/25/2022 or 7/27/2022
- The doctor performed a procedure to remove two pieces of metal
- He was left with scar tissue over the cornea after removal of the metal

Applicant was evaluated at Arrowhead Regional Medical Center (ARMC) on 7/25/2022 (Exhibit 4) at which time the following history was noted:

Patient works as a welder and was exposed to flame with unprotected eye leading to flash injury 3 days ago. Patient has been using OTC eye drops over the weekend and has had increasing redness and dry feeling in his eye. In addition, he complains of pain and blurry vision as well as foreign body sensation. **(BATES STAMP 0336)**

Applicant was again seen at ARMC on 7/27/2022:

Fluorescein exam showed uptake with metallic foreign body noted at the 6 o'clock position in the left eye. The foreign body was removed by ophthalmology. **(BATES STAMP 0280)**

The records of Loma Linda University Health (Exhibit 5) contain the 4/2/2023 report of Michael Sheety, D.O. which includes the following history:

The injury occurred when a flash spark went into the left eye while wearing a protective hood while performing his usual and customary duties at work ... there is loss of vision in the left eye. Identified on examination is a visually significant corneal scar and cataract in the left eye.

Applicant testified credibly on both direct and cross examination that he wore safety glasses and a shield at the time of injury. He testified that he did not know whether something had gone "over or under". Based thereon, it is found that the mechanism and manner in which the injury occurred is as set forth by Dr. Sheety in his 4/2/2023 report as set forth above.

The Board has extended the benefit of Labor Code § 4656(c)(3)(F) when the impact of a high-velocity object was to the person rather than the eye. Glick (Andrew) v. Knight-Swift Transportation Holdings, 2022 Cal. Wrk. Comp. P.D. LEXIS 306.

The Board has extended the benefit of section §4656(c)(3)(F) when there was no definitive evidence showing the velocity of the object and found that applicant's testimony as to what occurred was sufficient. The Board found that a reasonable inference can be drawn from the facts to which applicant testified, that he was struck in the eye at high velocity after a portion of the nail he hit with his hammer splintered off. Gonzales v. Barrett Bus. Servs, 2018 Cal. Wrk. Comp. P.D. LEXIS 478.

The Board has indicated that whether the applicant was able to see it coming might be relevant and should be addressed because the applicant's failure to anticipate the object striking his eye could be an indicator of high velocity. Gutierrez v. Socal Framing, 2012 Cal. Wrk. Comp. P.D. LEXIS 25.

The facts and circumstances of the cases providing insight as to when the benefit of Labor Code§ 4656(c)(3)(F) is to be extended vary greatly. The objects traveling at high velocity have included a rock, automobile, piece of wood and nail head. The object in the instant case is a spark containing what can be fairly described as a tiny metal fragment.

The object at issue in Gutierrez (Supra) was a piece of wood. That court noted the following:

... there must be some degree of force of impact. This is so because according to the general laws of physics, the more force which is "imparted to something" of the same mass, the higher its speed or velocity. It also follows that if the degree of force is not obvious, as in this case, the amount of damage to the eye may be an indicator of the velocity at impact.

A Fluorescein examination was needed to locate the metallic foreign body removed from applicant's left eye on 7/27/2022. Applicant testified that he did not know either how the injury had occurred or whether something went over or under his protective gear.

It is apparent based upon the totality of the circumstances herein that: 1) the metallic foreign body contained in the spark that struck applicant's eye was very small; 2) the metallic foreign body that struck applicant's left eye traveled at high velocity as it flew either over or under his protective gear and he did not see it coming; and 3) given it's small mass, not much force of impact can be expected to have occurred even in light of it's high velocity.

Labor Code § 4656(c)(3)(F) is plainly stated:

(3) Notwithstanding paragraphs (1) and (2), for an employee who suffers from the following injuries or conditions, aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury:

(F) High-velocity eye injuries

As the court noted in Glick (Supra):

"... we note that "velocity" is defined in the Merriam-Webster dictionary as "quickness of motion, rapidity of movement or the speed imparted to something" or "the rate of occurrence or action, (b) rate of turnover." The requirement of a concomitant impact is neither integral nor even contemplated in the definition of velocity. We also note that neither the terms "impact" nor "object" are found in the statute"

There is no doubt that a welding spark moves with a "quickness of motion and rapidity of movement". While the force of impact has been cited as a possible means of gauging velocity in the absence of definitive evidence as to velocity, impact is neither integral to nor contemplated in the definition of velocity and not relevant in a case such as this where the mass of the object is apparently negligible.

Among the exhibits received in evidence on 5/13/2025 was the deposition of AME Dr. David Sarni dated 4/10/2025 (exhibit x 1). Dr. Sarni testified as to whether the corneal scarring in applicant's left eye was caused by the industrial injury at pages 7 and 8:

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Q ... my understanding of what you said is that the applicant had a metallic foreign body that lodged in his left cornea; is that correct?

A Suffered a metallic corneal foreign body injury. That's correct.

Q And then he underwent a removal procedure to remove that metallic foreign body from his left cornea; correct?

A That's my understanding, yes.

Q ... and then post that surgery, he developed a fungal infection or corneal ulcer with intraocular inflammation?

A That's what the record indicates, yes.

Q ... And then the fungal ulcer then caused a corneal scarring which then causes halos and glare and light sensitivity and a loss of acuity in the left eye; is that correct?

A That's correct

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Q ... the fungal ulcer resulted from the surgery to remove the metallic foreign body; is that correct?

A I don't know the answer to that question. The removal of the foreign body did not cause the fungal ulcer. The disruption of the epithelium allowed a second opportunistic infection to happen.

Q Okay. But had it not been for the removal of the foreign body, he would not have developed that fungal ulcer, is that correct?

A The disruption -the injury to the epithelium from the foreign body allowed a fungal species to invade, yes. I would also qualify that by saying that, and we see them in the setting of preexisting conditions such as poorly controlled diabetes, which is not applicable in this case; contact lens wear, which is not applicable in this case; and immune suppression which is applicable in this case.

It is clear, based upon the foregoing, that the corneal scar would not have occurred absent the need to remove the metallic foreign body on an industrial basis. In light of all of the foregoing and as LC §3202 provides for liberal construction of statutes within the division for the purpose of extending benefits for the protection of injured workers, it is hereby found that Applicant sustained a high-velocity eye injury within the meaning of Labor Code§ 4656(c)(3)(F) and is therefore entitled to payment of up to 240 weeks of compensable temporary disability within a period of five years from the date of injury.

Date: August 4, 2025

Russell Shuben
Workers' Compensation Judge