

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

**CELIA CLARA BAUTISTA, *Applicant***

**vs.**

**CAL CENTRAL HARVESTING, INC., Permissibly Self-Insured, *Defendant***

**Adjudication Numbers: ADJ12906916  
Bakersfield District Office**

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

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Ruling Admitting Evidence, Orders, Findings of Fact, and Opinion on Decision of November 26, 2024, wherein it was found that while employed during a cumulative period from September 5, 2015 to September 5, 2019, applicant sustained industrial injury in the form of uterine cancer and to the right foot. In finding industrial injury, the WCJ relied on the opinions of panel qualified medical evaluator internist Stewart Lonky, M.D.

Defendant contends that the WCJ erred in finding industrial injury, arguing that Dr. Lonky's opinions do not constitute substantial medical evidence because his specialty is pulmonology and arguing that Dr. Lonky did not adequately consider applicant's period of exposure with defendant and the latency period in finding industrial injury. We have not received an answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will grant reconsideration and amend the WCJ's decision to defer the issues of industrial injury to the right foot and in the form of uterine cancer pending further development of the medical record.

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

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

(b)

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

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

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

Here, according to Events, the case was transmitted to the Appeals Board on December 27, 2024, and 60 days from the date of transmission is February 25, 2025. This decision is issued by or on February 25, 2025, so we have timely acted on the petition as required by Labor Code section 5909(a).

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

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on December 27, 2024, and the case was transmitted to the Appeals Board on December 27, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on December 27, 2024.

Turning to the merits, after our review of the record, Dr. Lonky's scope of expertise with regard to this case is not clear. In his initial comprehensive report dated March 26, 2021, Dr. Lonky writes that he "had the opportunity to evaluate Ms. Clara Bautista in my role as a Panel Qualified Medical Evaluator in internal medicine and pulmonary disease." (March 26, 2021 report at p. 118.) He writes, "[Applicant] has developed, over the last five to seven years, a uterine cancer which is an adenocarcinoma which is widely metastatic, and is considered to be, a grade 2 tumor, which is perhaps mislabeling and may require further modification. I will defer any further comments regarding this to a specialist in the field of oncology and pathology." (March 26, 2021 report at p. 118.) It appears that any pulmonary and right foot problems are secondary to the cancer, as the cancer metastasized to the bone and lung. (March 26, 2021 report at p. 117; April 22, 2022 deposition at p. 21 ["She has a bony abnormality [in the right foot] from the tumor"].) Although defendant now objects to Dr. Lonky's expertise, at Dr. Lonky's deposition, applicant's hearing representative objected to the relevance of Dr. Lonky's testimony regarding causation of applicant's cancer and defense counsel responded "Well, he's a toxicologist. I feel like he's our expert to answer these questions." (April 22, 2022 deposition at p. 22.) Dr. Lonky testified that he has extensive experience in toxic exposure to agricultural workers, but generally when it causes direct pulmonary symptoms rather than cancer. "I don't see many of these field worker cancer cases." (April 22, 2022 deposition at p. 46.)

Nevertheless, we note that at a July 19, 2022 hearing the WCJ issued an order that the "parties are to obtain eval[uation]s with QMEs/AMEs in gastro[enterology] and oncology." It appears that this order was not complied with, and it is unclear from the record why this case went to trial despite this prior order. While Dr. Lonky did not consider further medical-legal evaluations to be necessary (April 22, 2022 deposition at p. 48), in order for this case to be decided upon a complete evidentiary record, we believe that it would be helpful for the parties to obtain discovery from an oncologist as well as any other relevant specialists such as gastroenterology and orthopedics. The parties may also obtain further reporting or testimony from Dr. Lonky regarding applicant's period of exposure and how that relates to any latency period.

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) evidence on an issue. The WCAB has a constitutional

mandate to ensure “substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) In accordance with that mandate, we will grant reconsideration and amend the WCJ’s decision to defer the issues of industrial injury to the right foot and in the form of uterine cancer pending further development of the medical record in the form of reporting from additional specialists and supplemental reporting or testimony from Dr. Lonky. We express no opinion on the ultimate resolution of any matter in this case.

For the foregoing reasons,

**IT IS ORDERED** that Defendant’s Petition for Reconsideration of the Ruling Admitting Evidence, Orders, Findings of Fact, and Opinion on Decision of November 26, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the Ruling Admitting Evidence, Orders, Findings of Fact, and Opinion on Decision of November 26, 2024 is **AMENDED** as follows:

#### **RULING ADMITTING EVIDENCE**

Defendant’s Exhibit B, daily time sheets dated January 21, 2022 is admitted into evidence.

#### **ORDERS**

1. The testimony of Defendant’s witness, Anthony Oddo, is admitted into the record.
2. The following issues are deferred pending further development of the record:
  - a. Whether the claimed injury in the form of uterine cancer, to the right foot or to the gastrointestinal and pulmonary systems arose out of and occurred in the course of employment by Defendant Cal Central Harvesting;

b. All other issues.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

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



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

**February 25, 2025**

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

**CELIA CLARA BAUTISTA  
MISHRA X TRIAL LAWYERS  
JANE WOODCOCK  
YRULEGUI & ROBERTS**

**DW/oo**

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