

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

DAVID MOUDGIL, *Applicant*

vs.

**UC SAN FRANCISCO, permissibly self-insured,
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ13114148
San Francisco District Office**

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

Applicant David Moudgil seeks reconsideration of the May 28, 2025 Findings of Fact and Order, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant sustained injury arising out of and in the course of employment to the respiratory system in the form of aggravation of pre-existing asthma and did not sustain injury arising out of and the in the course of employment to the nose and sinuses. The WCJ deferred all other issues with jurisdiction reserved.

Applicant contends that he suffered an injury by being exposed to toxins in the Hunter Point's area of San Francisco, specifically high levels of manganese and vanadium, and requests a finding that he is in need of medical monitoring and a neurologic consult should neurologic symptoms arise.

We received an answer from defendant UC San Francisco. 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 grant reconsideration, affirm the May 28, 2025 decision, except that we amend it to state that the issues of injury and medical monitoring are deferred.

FACTS

As stated in the WCJ's Report:

David Moudgil filed an application for adjudication of claim alleging a specific injury of February 13, 2020 while employed by UC San Francisco to "unclassified" body parts as a result of claimed exposure to dust, vapor, radiation and other hazards at Hunters Point Naval Shipyard.

Applicant was evaluated by Omar Tirmizi as the panel Qualified Medical Evaluator. In his August 15, 2020 report, Dr. Tirmizi opined that the applicant was a long standing asthmatic that worsened since childhood, coinciding with the applicant's employment at UCSF working at the Hunters Point Naval Shipyard, and provided a level of impairment for the asthma. He also noted that the applicant by history underwent testing that showed elevated levels of manganese and vanadium, but noted the applicant had a normal exam and that there was no ratable condition.

The PQME recommended diagnostic studies, including a urine test to evaluate for vanadium and manganese, and a pulmonary function test. He opined that the urine test was normal with no evidence of minerals or chemicals. Dr. Tirmizi, at deposition, testified that he did not believe that the applicant had an industrial injury related to elevated levels of manganese and vanadium. He also testified that it would be highly unlikely for someone to develop symptoms in the absence of ongoing exposure as the body tends to eliminate manganese and vanadium fairly rapidly if there was normal kidneys and liver.

In an October 17, 2024 report Dr. Tirmizi reviewed a urine test performed on February 4, 2020. He stated that the applicant had an anomalous urine level and that it was appropriate for the applicant to undergo medical monitoring and follow up for abnormalities in his urine for substances such as manganese and possible vanadium, and that a neurological consultation would be appropriate. This matter proceeded to trial on April 16, 2025. The only issues submitted were injury arising out of and in the course of employment, with applicant claiming injury to the respiratory system, and the correct occupational group number. The parties stipulated that there was no injury to the nose and sinuses. On May 23, 2025, I issued by Findings of Fact and Opinion on Decision in which I found that the applicant sustained an injury arising out of and in the course of employment to the respiratory system in the form of aggravation of pre-existing asthma, and the occupational group number for applicant's job at the time of injury is 311. It is from this Finding that applicant seeks reconsideration. (Report, pp. 2-3.)

DISCUSSION

I.

Former Labor Code section 5909¹ 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 June 18, 2025 and 60 days from the date of transmission is Sunday, August 17, 2025. The next business day that is 60 days from the date of transmission is Monday, August 18, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, August 18, 2025, so that we have timely acted on the petition as required by Labor Code 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

¹ All subsequent statutory references are to the Labor Code unless otherwise indicated.

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 June 18, 2025, and the case was transmitted to the Appeals Board on June 18, 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 June 18, 2025.

II.

The medical opinion of Syed O. Tirmizi, M.D., shifts throughout the eight reports he issued. In the beginning, he opined that “based on a normal exam and lack of historical findings, I find no reason to believe that Mr. Moudgil has a ratable condition, due to history of elevated manganese” and vanadium levels. (Applicant Exhibit 1, Dr. Tirmizi’s medical report dated August 15, 2020, pp. 9-10.) He continued to maintain this opinion in his report dated September 21, 2022:

Based on the urine testing provided, there is no medical evidence currently of these harmful agents being present in Mr. Moudgil's bodily systems. As discussed previously as well, I find no medical evidence of injury to alleged exposure to manganese and vanadium. Vanadium is rapidly eliminated from the human body. Experimental tests with intravenous vanadium show that there is a decrease in concentrations within 24 hours; however, half-life is seen up to 10 days. Vanadium is created by the kidneys and about half the dose is recovered in the urine for 12 days. Based on this data, it is my opinion that vanadium is eliminated fairly quickly from the body, and it is unlikely that there would be significant amounts of vanadium left in the body with normal kidney functioning in more than a month or so.

Manganese is eliminated from the body through bile. Manganese toxicity can occur through repeated exposure and the effects are predominantly neurotoxic in nature. It is environmentally abundant in essential metal. Most commonly, manganese toxicity would include individuals receiving manganese through TPN, contaminated water or through work such as welding, smelting and mining. With a normal biliary system, manganese is rapidly eliminated from the bile and with normal GI systems, it would not be expected to be measurable after a while, such as weeks and months. Again, toxicity of manganese is neurotoxic and not respiratory.

I am asked to discuss specifically if there is evidence of injury or exposure to manganese and vanadium between 1989 to 1995. In my opinion, Mr. Moudgil has reported exposure, but there has been no evidence of any injury to his body due to this exposure. (Applicant Exhibit 4, Dr. Tirmizi's medical report dated September 21, 2022.)

Then on September 4, 2024, after reviewing documentation from Ahimsa Sumchai, M.D., the founder of the Hunters Point Community Biomonitoring Program, as well as data findings and medical reviews, Dr. Tirmizi opined:

With respect to medically monitoring, if he truly was exposed to manganese at elevated levels, it would be appropriate for him to be monitored for neurological complications by neurologists, and also for screening for the other health effects listed by Dr. Sumchai, which include chronic sinus issues, respiratory issues and other potential target organ screening, as discussed by Dr. Sumchai. (Applicant Exhibit 7, Dr. Tirmizi's medical report dated September 4, 2024, p. 4.)

On October 17, 2024, Dr. Tirmizi's last report, he stated:

After review of these urine tests, it is accurate to say that Mr. Moudgil has been found to have an anomalous urine manganese level. It is medically probable that his work location contributed to this anomalous urine level. It is appropriate that he undergo medical monitoring and follow up for abnormalities in his urine for substances such as manganese and possibly vanadium. A neurological consultation would also be appropriate and follow-up should be deferred to neurology. (Applicant Exhibit 8, Dr. Tirmizi's medical report dated October 17, 2024.)

In her Opinion on Decision, the WCJ opined that “[a]bsent a diagnosis of an injury, there is no obligation for medical monitoring for a potential injury from exposure to manganese and vanadium. Also absent a diagnosis of injury, any claim for injury from exposure to manganese and vanadium is premature.” (Opinion on Decision, p. 11.) But these opinions were not findings in the May 28, 2025 Findings of Fact and Order. Indeed the WCJ admitted, “neither issue [injury and medical monitoring] was submitted at the time of the trial, so I made no findings on those issues, but I did discuss in the opinion that there was no medical evidence that the applicant had sustained an industrial injury as a result of exposure to manganese and vanadium so there was no basis for an award of medical monitoring.” (Report, p. 4.) We note that the WCJ deferred all other issues in Findings of Fact and Order, which would include the issue of injury to exposure to manganese and vanadium, and medical monitoring. In any event, we grant reconsideration to specifically include a finding that the issues of injury and medical monitoring are deferred.

For the foregoing reasons,

IT IS ORDERED that applicant David Moudgil's Petition for Reconsideration of the May 28, 2025 Findings of Fact and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the May 28, 2025 Findings of Fact and Order is **AFFIRMED EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

...

5. All other issues, including the issues of injury as a result of exposure to manganese and vanadium, and medical monitoring, are deferred, with jurisdiction reserved.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 15, 2025

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

**DAVID MOUDGIL
LAW OFFICES OF DAVID LOWE
LAUGHLIN, FALBO, LEVY & MORESI**

LSM/pm

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