

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

**ELENITA JOVER, *Applicant***

**vs.**

**COUNTY OF SAN BERNARDINO DEPARTMENT OF PUBLIC HEALTH,  
permissibly self-insured and self-administered, *Defendant***

**Adjudication Number: ADJ18210611  
San Bernardino District Office**

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

Applicant seeks reconsideration of the February 19, 2025 Findings and Award (F&A) wherein the workers' compensation administrative law judge (WCJ) denied applicant's objection to the November 25, 2024 trial and applicant's request for additional Qualified Medical Evaluation (QME) panels, and found, in relevant part, that applicant, while employed as a licensed vocational nurse during the period from April 1, 2000 through January 29, 2022, sustained injury arising out of and in the course of employment (AOE/COE) to her cervical and lumbar spine, shoulders, and right thumb, with resulting permanent disability, and did not sustain injury AOE/COE to the additional body parts of stress, psyche, sleep, head (headaches), eyes (vision), ears (hearing), and internal body systems (diabetes, kidney, pulmonary).

Applicant contends that the WCJ's denial of her request for additional QME panels is a denial of applicant's due process rights. Applicant further contends that the denial contradicts *Pullman Kellogg v. Workers' Comp. Appeals Bd.* (1980) 26 Cal.3d 450, 454 and the express recommendations of QME, Dr. Elliott Schaffzin, who, in his January 18, 2024 report, recommended evaluations by "a pulmonologist, an internist for diabetes mellitus, ophthalmologist, ENT, and possibly a neurologist regarding chronic headaches." (Exhibit Q, p. 15.)

We have not received an Answer from defendant. 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 (Petition) and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition, rescind and substitute the F&A, and return the matter to the trial judge for further proceedings consistent with this decision.

## **FACTS**

Applicant, while employed by defendant as a licensed vocational nurse during the period from April 1, 2000 through January 29, 2022, claimed injury AOE/COE to her cervical and lumbar spine, shoulders, and right thumb.

Applicant also claimed injury AOE/COE to the additional body parts of stress, psyche, sleep, head (headaches), eyes (vision), ears (hearing), and internal body systems (diabetes, kidney, pulmonary).

The parties proceeded with discovery and retained Dr. Elliott Schaffzin as the orthopedic panel QME.

On December 19, 2023, Dr. Schaffzin completed an initial evaluation. His corresponding report was issued on January 18, 2024. (Exhibit Q.) A supplemental report, dated July 31, 2024, was also prepared and issued by Dr. Schaffzin. (Exhibit P.)

In his initial report, Dr. Schaffzin found injury AOE/COE and permanent disability to the cervical and lumbar spine, bilateral shoulders, and right thumb. (Exhibit Q, pp. 14, 16.) With respect to the alleged additional injuries to the head, eyes, ears, and internal body systems (diabetes, kidney, pulmonary), Dr. Schaffzin recommended evaluations by “a pulmonologist, an internist for diabetes mellitus, ophthalmologist, ENT, and possibly a neurologist regarding chronic headaches.” (Exhibit Q, p. 15.)

On October 3, 2024, defendant filed a declaration of readiness to proceed (DOR) to a mandatory settlement conference.

On October 16, 2024, applicant filed an objection to the DOR along with a petition requesting additional QME panels.

On October 23, 2024, a mandatory settlement conference was held wherein the WCJ set the matter for trial on all issues over applicant's objection. The issue of applicant's request for additional panels was deferred to the trial judge.

On November 25, 2024, the matter proceeded to trial. The trial was continued to a further date on December 23, 2024.

On December 23, 2024, applicant testified that she was diagnosed with diabetes in 2000 and ultimately placed on metformin despite following all the doctor's instructions. (Minutes of Hearing and Summary of Evidence (MOH & SOE), pp. 2-3.) Applicant also testified that she acquired "anxiety and stress from dealing with patients" and "depression due to working too much." (*Id.* at p. 3.) Applicant further testified that she was "diagnosed with a pulmonary embolism in 2019, which she believes was due to a COVID infection" and received treatment by a pulmonologist and blood thinners for two years. (*Ibid.*)

On February 19, 2025, the WCJ issued an F&A which denied applicant's objection to the November 25, 2024 trial as well as applicant's request for additional QME panels, and found, in relevant part, that applicant sustained injury AOE/COE to her cervical and lumbar spine, shoulders, and right thumb, with resulting permanent disability, and did not sustain injury AOE/COE to the additional body parts of stress, psyche, sleep, head (headaches), eyes (vision), ears (hearing), and internal body systems (diabetes, kidney, pulmonary).

## **DISCUSSION**

### **I.**

Preliminarily, former Labor Code<sup>1</sup> 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.

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<sup>1</sup> All further statutory references will be to the Labor Code unless otherwise indicated.

- (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 under the Events tab 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 March 10, 2025, and 60 days from the date of transmission is May 9, 2025. This decision was issued by or on May 9, 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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on March 10, 2025, and the case was transmitted to the Appeals Board on March 10, 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 March 10, 2025.

## II.

Turning now to the merits of the Petition, WCAB Rule 31.7 states that when a new medical dispute arises after the Agreed Medical Evaluator (AME), agreed panel QME, or panel QME has issued a comprehensive medical-legal report, the parties are to obtain a follow-up evaluation or supplemental report from the same evaluator. (Cal. Code Regs., tit. 8, § 31.7(a).) If a panel QME

in a different specialty is needed, pursuant to subsection (b), the Medical Director shall issue an additional panel upon a showing of good cause. For purposes of subsection (b), good cause includes:

- (1) A written agreement by the parties in a represented case that there is a need for an additional comprehensive medical-legal report by an evaluator in a different specialty and the specialty that the parties have agreed upon for the additional evaluation; or
- (2) Where an acupuncturist has referred the parties to the Medical Unit to receive an additional panel because disability is in dispute in the matter; or
- (3) An order by a Workers' Compensation Administrative Law Judge for a panel of QME physicians that also either designates a party to select the specialty or states the specialty to be selected and the residential or employment-based zip code from which to randomly select evaluators; or
- (4) In an unrepresented case, that the parties have conferred with an Information and Assistance Officer, have explained the need for an additional QME evaluator in another specialty to address disputed issues and, as noted by the Information and Assistance Officer on the panel request form, the parties have reached agreement in the presence of and with the assistance of the Officer on the specialty requested for the additional QME panel. The parties may confer with the Information and Assistance Officer in person or by conference call.

(Cal. Code Regs., tit. 8, § 31.7(b).)

In the instant matter, there was no written agreement between the represented parties regarding additional QME panels and the WCJ refused to order the additional panels as there was “no evidence ... that any physician ... [found the] additional body parts ... [to be] related to Applicant’s employment.” The WCJ also noted that there was “no diligence” by applicant in pursuing the additional panels for “an entire year” after Dr. Schaffzin’s initial evaluation. (Opinion on Decision (OOD), pp. 4-5.)

We note, however, that applicant need not establish causation to disputed body parts in order to request QME panels for those body parts. Further, in our en banc decision in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), we concluded that a decision “must be based on admitted evidence in the record” (*Id.* at p. 478) and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals*

*Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) This "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) Further, the WCAB has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where additional discovery may be necessary. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) The above cases and statutes underscore the importance of development of the evidentiary record in furtherance of the substantial justice required in workers' compensation proceedings.

Based upon the foregoing, and Dr. Shaffzin's recommendation in his report of December 19, 2023 for further evaluations by "a pulmonologist, an internist for diabetes mellitus, ophthalmologist, ENT, and possibly a neurologist regarding chronic headaches[,]” we believe good cause for the additional QME panels has been established. (Exhibit Q, p. 15.)

Accordingly, we grant applicant's Petition and rescind and substitute the February 19, 2025 F&A to defer the issues of injury AOE/COE to the additional body parts, permanent disability, apportionment, and attorney fees, and to find that there is good cause for additional panels in pulmonology, internal medicine for diabetes (endocrinology), ophthalmology, ENT (otolaryngology), and neurology, and return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the February 19, 2025 Findings and Award is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the February 19, 2025 Findings and Award is **RESCINDED** and **SUBSTITUTED** with a new Findings of Fact, as provided below.

### **FINDINGS OF FACT**

1. Elenita Jover, born [], while employed during the period from April 1, 2000 to January 29, 2022, as a Licensed Vocational Nurse, occupational group number 311, at San Bernardino, California, by the County of San Bernardino, sustained injury arising out of and in the course of employment to her shoulders, right thumb, cervical spine, and lumbar spine.

2. At the time of injury, the employer was permissibly self-insured and self-administered.
3. Issues of injury AOE/COE to the additional body parts of stress, psyche, sleep, head (headaches), eyes (vision), ears (hearing), and internal body systems (diabetes, kidney, pulmonary) are deferred.
4. Permanent disability is deferred.
5. Apportionment is deferred.
6. Attorney's fees relative to permanent disability are deferred.
7. There is good cause for additional panels in pulmonology, internal medicine for diabetes (endocrinology), ophthalmology, ENT (otolaryngology), and neurology.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**MAY 8, 2025**

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

**ELENITA JOVER  
THE LAW OFFICES OF ROBERT OZERAN  
MICHAEL SULLIVAN & ASSOCIATES**

**RL/cs**

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