

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

**IVAN MIRAMONTES, *Applicant***

**vs.**

**LOS ANGELES METROPOLITAN TRANSIT AUTHORITY, permissibly self-insured  
and self-administered, *Defendant***

**Adjudication Numbers: ADJ9549789, ADJ10928268  
San Bernadino District Office**

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

Applicant seeks reconsideration of the Joint Findings and Award (F&A) of January 27, 2025, wherein the workers' compensation judge (WCJ) found in relevant part that applicant sustained industrial injury to his psyche but not to his hips, chest, neck, wrist or shoulders, and that he sustained permanent disability of 16% in ADJ9549789; and sustained industrial injury to his lumbar spine, hypertension, and psyche but not his upper back and that he sustained permanent disability of 28% in ADJ10928268.

Applicant contends that he was not properly served the decision letter; that he did not testify that Dr. Dorsey was his primary orthopedic doctor; that his attorney failed to have certain body parts added to his claim in a timely manner; and that the medical reporting that the WCJ relied on was not substantial evidence.

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 allegations of the Petition for Reconsideration, and the contents of the Report 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 grant reconsideration solely to admit

applicant's exhibits 1-14 and 20-26 and defendant's exhibits A-X into evidence, and otherwise affirm the findings of the WCJ.

I.

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 March 4, 2025 and 60 days from the date of transmission is Saturday, May 3, 2025. The next business day that is 60 days from the date of transmission is Monday, May 5, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>1</sup> This decision is issued by or on Monday, May 5, 2025, so that 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

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<sup>1</sup> 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.

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 March 4, 2025, and the case was transmitted to the Appeals Board on March 4, 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 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 March 4, 2025.

## II.

We grant the Petition solely to correct an apparent clerical error by the WCJ.

During the trial on October 14, 2024, the WCJ stated that applicant's exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 20, 21, 22, 23, 24, 25, and 26, and defendant's exhibits B, C, D, G, H, J, K, L, M, N, O, P, Q, T, U, V and W were admitted into evidence without objection. (10/14/25 Minutes of Hearing and Order of Consolidation (MOH), pp. 7, 10.) Yet, applicant's exhibits 15, 16, 17, 18, and 19, and defendant's exhibits A, E, F, I, R, S, and X were only marked for identification (MOH, pp. 7, 10), and the WCJ did not make a finding that included the admission of these exhibits into evidence in the F&A.

With respect to the admission of the evidence, the WCJ stated the following in the Opinion on Decision (OOD):

### I. ADMISSIBILITY OF EXHIBITS

#### Defendant's Exhibit "A" – ADMITTED

Applicant objected to Defendant's Exhibit "A" on the grounds that his attorney passed away on May 28, 2022 and he was not represented at that time. Because AME, Dr. Berman was procured and utilized during a time when Applicant was represented by counsel, there is no basis to exclude the evidence because one report issued following the death of one of Applicant's attorneys. As such, Defendant's Exhibit "A" is admitted over Applicant's objection.

#### Defendant's Exhibit "E" – ADMITTED

Applicant objected to Defendant's Exhibit "E" on the grounds that the reporting does not accurately reflect what Applicant told to Dr. Faddoul at the time of the exam, that Dr. Faddoul allegedly sexually assaulted Applicant during the exam, and that Dr. Faddoul did not take a complete history. The accuracy and completeness of Dr. Faddoul's reporting goes to weight rather than admissibility. The unsubstantiated allegations of sexual assault

for which Applicant has pursued no remedy to date will also go to weight and not admissibility. As such, Defendant's Exhibit "E" is admitted over Applicant's objection.

Defendant's Exhibit "F" - ADMITTED

Applicant objected to Defendant's Exhibit "F" on the grounds that the reporting does not accurately reflect what Applicant told to Dr. Faddoul at the time of the exam, that Dr. Faddoul allegedly sexually assaulted Applicant during the exam, and that Dr. Faddoul did not take a complete history. The accuracy and completeness of Dr. Faddoul's reporting goes to weight rather than admissibility. The unsubstantiated allegations of sexual assault for which Applicant has pursued no remedy to date will also go to weight and not admissibility. As such, Defendant's Exhibit "F" is admitted over Applicant's objection.

Defendant's Exhibit "I" – ADMITTED

Applicant objected to Defendant's Exhibit "I" on the grounds that the reporting does not accurately reflect what Applicant told to Dr. Tirmizi at the time of the exam, and that the time stated was inaccurate as Applicant believes he was locked in the examination room for an extended period of time before the doctor examined him. These issues go to the persuasive weight of the evidence and not admissibility of evidence. Defendant's Exhibit "I" is admitted over Applicant's objection.

Defendant's Exhibit "R" – ADMITTED

Applicant objected to Defendant's Exhibit "R" on the grounds that Applicant believes the psyche was accepted. The issue raised by Applicant goes to the weight of the evidence and not its admissibility. Therefore, Exhibit "R" is admitted over Applicant's objection.

Defendant's Exhibit "S" - ADMITTED

Applicant objected to Defendant's Exhibit "S" on the grounds that the Accommodations meeting was premature, obsolete, and outdated. The issue raised by Applicant goes to the weight of the evidence and not its admissibility. Therefore, Exhibit "S" is admitted over Applicant's objection.

Defendant's Exhibit "X" - ADMITTED

Applicant objected to Defendant's Exhibit "X" on the grounds that his attorney passed away on May 28, 2022 and he was not represented at that time. Because AME, Dr. Berman was procured and utilized during a time when Applicant was represented by counsel, there is no basis to exclude the evidence because one report issued following the death of one of Applicant's attorneys. As such, Defendant's Exhibit "X" is admitted over Applicant's objection.

(OOD, pp. 2-3.)

Thus, it appears that the WCJ intended to admit the evidence, but did not make a finding admitting these exhibits into evidence in the F&A.

WCAB Rule 10803(a) explains that the "adjudication file" includes the "record of proceedings" as follows:

(a) The Workers' Compensation Appeals Board's **adjudication file** shall consist of:

(1) All documents filed by any party, attorney or other agent of record, and as provided in rule 10205.4; and

(2) The **record of proceedings**, which consists of: the pleadings, minutes of hearing, summaries of evidence, certified transcripts, proofs of service, admitted evidence, exhibits identified but not admitted as evidence, notices, petitions, briefs, findings, orders, decisions and awards, opinions on decision, reports and recommendations on petitions for reconsideration and/or removal, and the arbitrator's file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered as evidence are not part of the record of proceedings.

(Cal. Code Regs., tit. 8, § 10803(a) (emphasis added).)

WCAB Rule 10670 further clarifies that "The filing of a document does not signify its receipt in evidence and, except for the documents listed in rule 10803, only those documents that have been received in evidence shall be included in the record of proceedings on the case." (Cal. Code Regs., tit. 8, § 10670.)

A decision "must be based on admitted evidence in the record" (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) Thus, while identified evidence is still part of the record of proceedings, all evidence that is the basis for a decision must be admitted into the record.

We make the following observations. When parties enter into a stipulation on the record, the stipulation does not become legally enforceable until it is ordered approved by the WCJ or the Appeals Board. (Lab. Code, § 5702; Cal. Code Regs., tit. 8, § 10700(b).) Moreover, even if the WCJ thoroughly discusses an issue in the opinion on decision, statements in the opinion are not legally binding as only the findings, order, or award are legally enforceable. (See Lab. Code, §§ 5806, 5807 [setting forth the procedure for enforcement].)

Finally, as no party sought review on the issue of admission of evidence, any objection to admission of the evidence is waived. (Lab. Code, § 5904.)

Accordingly, we grant the Petition for Reconsideration solely to admit the identified evidence. We see no reason to disturb the WCJ's decision, and we otherwise affirm the F&A.

For the foregoing reasons,

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

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that applicant's exhibits 1-14 and 20-26 and defendant's exhibits A-X are **ADMITTED** into evidence.

**IT IS FURTHER ORDERED** that the January 27, 2025 Joint Findings and Award is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



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

**May 5, 2025**

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

**IVAN MIRAMONTES  
LEWIS BRISBOIS BISGAARD SMITH**

**JMR/abs**

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

**JOINT REPORT AND RECOMMENDATION  
ON APPLICANT’S PETITION FOR RECONSIDERATION**

**I.     INTRODUCTION**

Identity of Petitioner:	Applicant.
Timeliness:	The petition was filed timely.
Verification:	The petition was properly verified.
Date of Award:	January 27, 2025
Date of Transmission to WCAB	March 4, 2025

**II.    CONTENTIONS**

1.     The Board acted without or in excess of its powers;
2.     The order, decision, or award was procured by fraud;
3.     The evidence does not justify the findings of fact; and
4.     Petitioner has discovered new evidence material to him, which he could not with reasonable diligence have discovered and produced at the hearing.
5.     The findings of fact do not support the order, decision or award.

**III.   FACTS**

**ADJ9549789(MF)**

On July 24, 2014, an Application for Adjudication was filed alleging an injury during the period from September 9, 1991 to June 27, 2014 to the psych and chest and the matter was assigned case number ADJ9549789(MF). (EAMS Doc ID No. 53262561).

On September 9, 2020, an Amended Application for Adjudication was filed adding the left hips, left wrist, left shoulder, and neck as body parts to this case. (EAMS Doc ID No. 73233089).

This case originally resolved by Stipulations with Request for Award on April 11, 2016 for 15% permanent disability. (EAMS Doc ID Nos. 59828098 and 59828097). A Petition to Reopen for New and Further Disability was filed on January 28, 2019. (EAMS Doc ID No. 69203545).

**ADJ10928268**

On July 6, 2017, an Application for Adjudication was filed alleging an injury on February 24, 2017 to the back and the matter was assigned case number ADJ10928268. (EAMS Doc ID No. 64192298).

On September 9, 2020, an Amended Application for Adjudication was filed adding leg, abdomen, psyche, neck, left hip, left wrist, and the left shoulder. This Amended Application also changed the date of injury to a cumulative trauma from September 9, 1991 to February 24, 2017. (EAMS Doc ID No. 73233075).

On November 30, 2021, an Amended Application for Adjudication was filed adding circulatory system/hypertension. (EAMS Doc ID No. 74920386).

On February 28, 2022, an Amended Application for Adjudication was filed adding the groin. (EAMS Doc ID No. 75226007).

**Both Cases**

Both matters were eventually set for trial at a Mandatory Settlement Conference on February 7, 2024. (See MOH dated February 7, 2024 (EAMS Doc ID No. 77635896)). Trial was continued once due to Applicant's non-appearance and twice for further discovery (See MOH dated April 30, 2024 (EAMS Doc ID No. 77916301), June 11, 2024 (EAMS Doc ID No. 78049620), and August 15, 2024 (EAMS Doc ID No. 78269559)).

On October 14, 2024, the parties jointly executed a Pretrial Conference Statement (EAMS Doc ID No. 54422127) and the Stipulations and Issues were read into the record. (See MOH dated October 14, 2024 (EAMS Doc ID No. 78488131) and MOH (Reporter) dated October 14, 2024 (EAMS Doc ID No. 78538680)).

The last date of trial commenced on November 26, 2024. (See MOH dated November 26, 2024 (EAMS Doc ID No. 78622578)). Applicant testified and the matter was submitted. (See MOH/SOE dated November 26, 2024 (EAMS Doc ID No. 78633616)).

The undersigned issued a Joint Findings and Award (EAMS Doc ID No. 78803295) and Joint Opinion on Decision (EAMS Doc ID No. 78803196) on January 27, 2025.

On February 11, 2025, Applicant filed a letter to Presiding Judge Jody Eaton. (EAMS Doc ID No. 78861219). On February 12, 2025, Applicant filed a letter to the undersigned. (EAMS Doc



ID No. 78871515). On February 21, 2025, Applicant filed another letter to the WCAB. (EAMS Doc ID No. 78894726).

On February 21, 2025, Applicant filed a Petition for Reconsideration (“the Petition”). (EAMS Doc ID No. 78894725).

As of the date hereof, Defendant has not filed a response to the Petition.

## **V. DISCUSSION**

### **1. Alleged Defective Service**

Applicant first contends defective service of the Findings and Award and Opinion on Decision. Applicant references his letter dated February 12, 2025 (EAMS Doc ID No. 78871515) wherein he alleges he received an empty envelope. The Joint Findings and Award and Joint Opinion on Decision note service on Mr. Miramontes by mail on January 27, 2025. (EAMS Doc ID No. 78803295 at pg. 4 and EAMS Doc ID No. 78803196 at pg. 17). Notwithstanding the alleged state of service, Mr. Miramontes was not prejudiced as he filed a timely Petition for Reconsideration on February 21, 2025 (EAMS Doc ID No. 78894725). The merits of the Petition are discussed below.

### **2. Role of Dr. Dorsey**

Applicant’s next contention is that he never testified Dr. Dorsey was his primary orthopedic doctor. This is accurate. Neither the MOH/SOE nor the Joint Opinion on Decision characterize Dr. E. Richard Dorsey, M.D. as a “primary orthopedic doctor.” (See MOH/SOE EAMS Doc ID No. 78633616) and Joint Opinion on Decision (EAMS Doc ID No. 78803196)). Although both parties stipulated that E. Richard Dorsey, M.D. was the primary treating physician for case ADJ10928268 (See Pretrial Conference Statement dated October 14, 2024 at pg. 4 (EAMS Doc ID No. 54422127) and Joint Opinion on Decision at pg. 2 (EAMS Doc ID No. 78803196)), the Joint Opinion on Decision properly discusses Dr. E. Richard Dorsey’s medical reporting in his capacity as a psychiatrist. Additionally, as to the orthopedic injuries, the undersigned relied on the AME reports of Dr. Berman (See Joint Opinion on Decision (EAMS Doc ID No. 78803196)).

Based on the foregoing, Applicant’s contention regarding the role of Dr. E. Richard Dorsey is erroneous and the Petition should be denied.

### **3. Lack of Counsel**

Applicant's next contention is that "it is impossible to provide 'substantial medical evidence' regarding the upper back, left shoulder, and neck injuries since the body parts were added to W/C claim right before attorney (inept) Mr. Mann passed away! I did disclose injuries to every doctor I saw! It's well documented in varies[sic] medical reports." (Petition for Reconsideration pg. 3 (EAMS Doc ID No. 78894725)).

Applicant was first represented by Berkowitz and Cohen starting July 17, 2014 (See Application for Adjudication for ADJ9549789 EAMS Doc ID No. 53262561 and Application for Adjudication for ADJ10928268 dated June 28, 2017 (EAMS Doc ID No. 64192298)). Thereafter, Applicant was represented by Perona Langer in ADJ10928268 (See Substitution of Attorney dated September 14, 2018 (EAMS Doc ID No. 27350067)). Mr. Mann began representing Applicant in both cases on December 21, 2018 (See Substitution of Attorney dated December 21, 2018 (EAMS Doc ID No. 69001584)). On September 9, 2020, an Amended Application for Adjudication was filed adding the left hips, left wrist, left shoulder, and neck as body parts to this case. (EAMS Doc ID No. 73233089). Mr. Mann passed away on May 28, 2022 (See Correspondence from Custodian of Records for Mann & Mann dated September 2, 2022 (EAMS Doc ID No. 42932050)). At Status Conference on August 10, 2022, Applicant first sought counsel to replace Mr. Mann (MOH dated August 10, 2022 (EAMS Doc ID No. 75808160)). Applicant engaged the services of Sookasian Amirkhanian on November 4, 2022 (See Substitution of Attorney dated November 4, 2022 (EAMS Doc ID No. 43801809)) later dismissing this attorney on October 2, 2023 (See Dismissal of Attorney dated October 2, 2023 (EAMS Doc ID No. 48525676)).

Applicant was represented by an attorney from July 17, 2014 to May 28, 2022 and then again from November 4, 2022 to October 2, 2023. The argument that a lack of representation rendered it impossible to obtain substantial medical evidence on the upper back/neck and the left shoulder is unpersuasive.

For the reasons noted above, I recommend Applicant's Petition for Reconsideration be denied.

#### **4. QME Dr. Faddoul's Reporting**

Applicant's next contention is a challenge to Dr. Faddoul's reporting based on unsubstantiated allegations of sexual assault against Dr. Faddoul and a claim that Dr. Faddoul provided a disability rating prior to his physical examination.

There is simply no evidence apart from Applicant's statements that Dr. Faddoul engaged in any wrongdoing. Dr. Faddoul was not present to answer the allegations and Applicant presented no proof of what may have occurred. Applicant has confirmed he has not pursued any remedies in civil or criminal court, has filed no police reports, and has not consulted an attorney as to his rights (if any) related to these allegations. Weighing the evidence as is relevant to the present case, I found Applicant's argument on this matter to be unpersuasive as to the substantiality of Dr. Faddoul's reporting. This court made no comment as to Applicant's credibility with respect to whether the allegations are true, only that Dr. Faddoul's reporting was not rendered non-substantial based on the evidence presented at trial.

Additionally, Applicant provided no evidence that Dr. Faddoul issued a disability rating prior to his physical examination. Dr. Faddoul reviewed extensive records and presented a reasonable explanation as to the etiology of Applicant's issues with fecal incontinence and genitals/groin. I found the reporting to be well reasoned and persuasive. As such, based on Dr. Faddoul's reporting, I found Applicant is suffering symptoms of fecal incontinence and of the groin and genitals as a result of his back issues. The nature and extent of Applicant's injury to the lumbar spine therefore extended to fecal incontinence, groin, testicles, and penis. The back was industrial, and Applicant suffered 7% permanent disability from fecal incontinence.

For the reasons discussed above, I recommend the Board deny the Petition for Reconsideration.

#### **5. Inadequate Medical Assessments**

Applicant's final contention is that he has not received adequate medical assessments under workers' compensation law. Applicant was examined by Orthopedic AME, Dr. Berman (Exhibits "A," "B," "C," and "D") (EAMS Doc ID Nos. 43783811, 36468047, 27574571, and 51666874), Psychiatric QME, Dr. Cohen (Exhibits "G" and "W") (EAMS Doc ID Nos. 45680021 and 51666875), Urological QME, Dr. Faddoul (Exhibits "E" and "F") (EAMS Doc ID Nos. 41141501 and 53358657), and Internal AME, Dr. Tirmizi (Exhibit "I") (EAMS Doc ID No. 41784749). Each

of these physicians provided extensive record review, thorough discussion, and provided opinions based on a reasonable medical probability. As a result, I determined these medical reports constituted substantial medical evidence. Applicant's argument is unpersuasive.

#### **IV. RECOMMENDATION**

The undersigned respectfully recommends Applicant's Petition for Reconsideration be denied.

**THE MATTER WAS TRANSMITTED TO RECONSIDERATION UNIT ON  
MARCH 4, 2025.**

DATE: March 3, 2025

**Brandon Powell**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE