

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

**JAIME VILLANUEVA, *Applicant***

**vs.**

**DALEY'S DRYWALL & TAPING, INC.; and  
ARCH INSURANCE, Administered by SEDGWICK CMS, INC., *Defendants***

**Adjudication Number: ADJ14216452  
Oakland District Office**

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

Applicant filed a Petition for Reconsideration (Petition) of the Findings and Award (F&A) issued June 16, 2025, wherein the workers' compensation administrative law judge (WCJ) found in part that applicant sustained an injury to his lumbar spine; that Panel Qualified Medical Examiner (PQME) Dr. Huffer's reporting is substantial evidence; and that applicant sustained 0% permanent disability.

In the Petition, applicant contends that PQME Dr. Bruce Huffer's reporting is not substantial evidence and that applicant has verifiable radiculopathy warranting a higher permanent disability percentage.

Defendant filed an Answer.

The WCJ's Report and Recommendation (Report) recommends the Petition be denied.

We have considered the allegations of the Petition, the Answer and the contents of the Report of the WCJ with respect thereto.

Based on our review of the record and for the reasons discussed below, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

## I.

Former Labor Code section 5909<sup>1</sup> 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. (Former 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.

(Lab. Code, § 5909.)

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 July 14, 2025, and 60 days from the date of transmission is Sunday, September 12, 2025. This decision issued by or on September 12, 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 be notice of transmission.

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

According to the proof of service, the Report was served on July 14, 2025, and the case was transmitted to the Appeals Board on July 14, 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 25, 2025.

## II.

A review of the record reveals there is a March 8, 2021, Kaiser Occupational Medicine permanent and stationary report, by Charlene Niizawa, M.D., following her examination of applicant, with a diagnosis of lumbar disc degeneration. (Joint Exhibit 102, Charlene Niizawa, M.D., PDF page 3.) The doctor finds “[b]ased on Table 15-3 on page 384, the patient meets the criteria for DRE Lumbar Category II. Since his activities of daily living are impacted, he has an 8% impairment of the whole person.” (Joint Exhibit 102, Charlene Niizawa, M.D., PDF page 4.)

On May 24, 2021, Vikram Talwar, M.D., issued an orthopedic consultation and report with a diagnosis including “[l]umbago and lumbar radiculopathy coming from an L4-L5 central herniated nucleus pulposus and bilateral lateral recess stenosis.” (Joint Exhibit 103, Vikram Talwar, M.D., page 2.)

On August 5, 2022, PQME Dr. Bruce Huffer issued an initial evaluation report following his evaluation of applicant on July 7, 2022. “An interpreter was necessary to translate for both the examiner and the applicant, which made the evaluation more complex and increased the time necessary to conduct the examination.” (Exhibit F, PQME Dr. Bruce Huffer, page 3.) The report includes a blank Activities of Daily Living (ADLs) chart. (Exhibit F, PQME Dr. Bruce Huffer, page 11-12.) For activity level the doctor records “[h]e is sedentary.” (Exhibit F, PQME Dr. Bruce Huffer, page 14.) “There was no sensation loss into the lower extremities, although he then told me that, at times, he will get a feeling of numbness and tingling into the toes, but again no shooting, traveling pain, sciatic symptoms down the lower extremities.” (Exhibit F, PQME Dr. Bruce Huffer, page 14.) The diagnosis was chronic low back pain syndrome and degenerative disc disease with an element of minor spinal stenosis into the lower lumbar spine area. The doctor found applicant “would be placed in DRE Lumbar Category I with a 0% impairment of the whole person.” (Exhibit F, PQME Dr. Bruce Huffer, page 15.)

PQME Dr. Huffer issued five subsequent supplemental reports without changing his opinions: October 17, 2022, “Having reviewed those medical records, ultimately, I have no change in the comments that I had made in the discussion part of the previous QME.” (Exhibit E, PQME Dr. Bruce Huffer, page 31); September 17, 2023, “[a]s to answer the question whether or not any new findings such as a tear on a recent MRI in April of this year would have anything to do with an injury that occurred three years ago in September of 2020; the answer is that new finding would not have anything to do with the original date of injury.” (Exhibit C, PQME Dr. Bruce Huffer, page 1); October 28, 2024, “there may be some confusion on what was torn. The tear evidently involves his knee and not the lumbar spine.” (Exhibit B, PQME Dr. Bruce Huffer, page 1); and December 10, 2024, “I have no changes in terms of the comments I had made in the discussion part of my previous QME.” (Exhibit A, PQME Dr. Bruce Huffer, page 1).

In a Feb 20, 2024 report from treating physician Darien Behravan, D.O., records are digested under the heading of Interval Care which includes “s/p MRI which revealed L4-L5 central disc herniation and moderate bilateral lateral recess stenosis causing foraminal stenosis” and “Dr. David Chow M.D. 8/10/2021 consult & F/U 9/24/2021: Dx: Subacute L5 radiculopathy, central disc protrusion with central and bilateral L5/L5 recess stenosis that would give bilateral L5 nerve root irritation.” (First Joint Exhibit 101, pages 2-7.)

The parties proceeded to trial on April 21, 2025, on issues including permanent disability and the substantial nature of PQME Dr. Bruce Huffer’s reporting. Exhibits admitted included Exhibit G which was described as “Not Listed.” (Minutes of Hearing and Summary of Evidence (MOH), April 21, 2025, pages 2-4.) Applicant testified in part that “[h]e is still having issues with his back, as it has gotten worse over the intervening years. He feels like he has a needle in his back, and he has numbness in his back and down both legs, as well as tingling. He has weakness in his legs (including in his calves).” (Minutes of Hearing (MOH), April 21, 2025, page 4, lines 43-47.)

On June 16, 2025, the F&A issued which is the subject of the Petition for Reconsideration.

### **III.**

As found by the WCJ in the F&A, applicant while employed by defendant on September 8, 2020, as a carpenter, sustained injury arising out of and in the course of employment to the lumbar spine resulting in 0% disability.

Section 4660.1 applies to injuries occurring on or after January 1, 2013, and states as relevant here:

(a) In determining the percentages of permanent partial or permanent total disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and the employee's age at the time of injury.

(b) For purposes of this section, the “nature of the physical injury or disfigurement” shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition) with the employee's whole person impairment, as provided in the Guides, multiplied by an adjustment factor of 1.4.

(Lab. Code, § 4660.1(a) and (b), emphasis added.)

The American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (AMA Guides), provides diagnosis-related estimated (DRE) categories for lumbar injuries at page 384, Table 15-3, which sets out five descriptive categories with associated whole person impairment (WPI) percentages. The descriptive differences as relevant here are “no documentable neurologic impairment” for Category I with 0% WPI, “nonverifiable radicular complaints” for Category II with a range of 5% to 8% WPI, and “[s]ignificant signs of radiculopathy” for Category III with a range of 10% to 13% WPI.

In his original report of August 5, 2022, PQME Dr. Bruce Huffer found applicant fit “in DRE Lumbar Category I with a 0% impairment of the whole person.” (Exhibit F, PQME Dr. Bruce Huffer, page 15.) PQME Dr. Huffer does not provide a discussion of radiculopathy, nor does he refer to or discuss the medical records digested in his report.

For example, the medical digest by PQME Dr. Bruce Huffer includes a March 21, 2022, visit note from Darien Behravan, D.O., with diagnosis including “[r]adiculopathy, lumbar region” and referral for “[b]ilateral L4/L5 transforaminal ESI for subacute radiculopathy.” (Exhibit F, PQME Dr. Bruce Huffer, as digested at page 7.) There is also an April 20, 2022, medical necessity record from William Barreto, M.D., which includes complaints of “[l]ower back and bilateral leg pain that radiates into the legs into the feet. He feels numbness in his toes bilaterally” with diagnosis including “[r]adiculopathy, lumbar region.” (Exhibit F, PQME Dr. Bruce Huffer, as digested at page 8.)

We are unable to determine if PQME Dr. Bruce Huffer considered these records because he does not discuss them when providing his opinions.

Given additional records to review, in his October 17, 2022, supplemental report PQME Dr. Bruce Huffer again fails to discuss any of the medical records in reaching his opinions. He instead provides the conclusory statement “I have no change in the comments that I had made in the discussion part of the previous QME.” (Exhibit E, PQME Dr. Bruce Huffer, page 31.) Although digested, PQME Dr. Bruce Huffer does not discuss the March 8, 2021, report by Charlene Niizawa, M.D., in which the doctor finds applicant “meets the criteria for DRE Lumbar Category II. Since his activities of daily living are impacted, he has an 8% impairment of the whole person.” (Exhibit E, PQME Dr. Bruce Huffer, as digested at pages 24-26.) Further, PQME Dr. Bruce Huffer does not discuss the digested May 24, 2021, orthopedic consultation and report from Vikram Talwar, M.D., with diagnosis of “[l]umbago and lumbar radiculopathy coming from an L4-L5 central herniated nucleus pulposus and bilateral lateral recess stenosis,” (Exhibit E, PQME Dr. Bruce Huffer, as digested at pages 26-27.)

PQME Dr. Bruce Huffer’s additional supplemental reports provide no new analysis of why a DRE I with 0% WPI is appropriate. (Exhibits A, B and C, PQME Dr. Bruce Huffer.) It also appears PQME Dr. Bruce Huffer did not digest the Feb 20, 2024 report from treating physician Darien Behravan, D.O., which reviews multiple records documenting bilateral lumbar radiculopathy involving the L5 nerve root. (First Joint Exhibit 101.)

PQME Dr. Bruce Huffer finds applicant’s activity level is sedentary. (Exhibit F, PQME Dr. Bruce Huffer, page 14.) The Activities of Daily Living (ADLs) chart provided by PQME Dr. Huffer, however, is blank. It is unclear how or to what extent PQME Dr. Bruce Huffer considered ADLs when rendering his opinions. (Exhibit F, PQME Dr. Bruce Huffer, page 11-12.) Consideration of applicant’s ADLs is important as each DRE category, except category I, includes a range to account for symptoms and their impact on the ability to perform ADLs. (AMA Guides, page 384.)

“Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board’s findings if it is based on surmise, speculation, conjecture or guess.” (*Hegglin v. Workmen’s Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

A medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely their conclusions. (*Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, 407 [33 Cal.Comp.Cases 647] [a mere legal conclusion does not furnish a basis for a finding]; *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 799 [33 Cal.Comp.Cases 358] [an opinion that fails to disclose its underlying basis and gives a bare legal conclusion does not constitute substantial evidence]; see also *People v. Bassett* (1968) 69 Cal.2d 122, 141 [443 P.2d 777, 70 Cal. Rptr. 193] [the chief value of an expert's testimony rests upon the material from which their opinion is fashioned and the reasoning by which they progress from the material to the conclusion, and it does not lie in the mere expression of the conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based].)

Here, PQME Dr. Bruce Huffer fails to meet even a rudimentary level of review and analysis sufficient to be considered substantial evidence. His opinions are based on an evaluation now more than three years old. It also appears he has not reviewed some of the relevant medical reporting. The failure to discuss the medical record and how it does or does not affect his opinions renders his reporting unsubstantial. This conclusory reporting has been consistent over six reports. It is clear returning to PQME Dr. Huffer at this time would result only in further delay without meaningful result.

Although the March 8, 2021, report from Charlene Niizawa, M.D., found applicant "has an 8% impairment of the whole person," (Joint Exhibit 102, Charlene Niizawa, M.D., PDF page 4), that opinion is now over four years old, and is not informed by the subsequent treatment nor applicant's testimony that "[h]e is still having issues with his back, *as it has gotten worse over the intervening years.*" (MOH, April 21, 2025, page 4, lines 43-45, emphasis added.) Consequently, Dr. Niizawa's assessment of impairment may no longer be appropriate. Further development of the record is necessary to obtain a medical opinion regarding the significance, if any, of the reference to radiculopathy in the record and applicant's testimony of getting worse.

The parties stipulated that the applicant sustained a specific injury on September 8, 2020. (MOH, April 21, 2025, page 2, lines 13-17.) For injury PQME Dr. Huffer again limits his analysis to a single sentence: "As to the issue of AOE/COE, it is felt that the back symptoms are related to his job duties doing drywall, doing the cement work, and the taping that he was doing." (Exhibit F, PQME Dr. Bruce Huffer, page 15.) It is unclear from PQME Dr. Huffer if applicant sustained a specific injury as stipulated or a cumulative injury.

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924] ["principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims (citations)"]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261]; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board, en banc).) The Appeals Board, “. . . may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence.” (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 404 [65 Cal.Comp.Cases 264].)

We observe that the preferred procedure to develop the medical record is to allow supplementation by the physician who has already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) Hence the proper method to develop the record normally is for the parties to return to PQME Dr. Bruce Huffer and, per *McDuffie, supra*, if the need for development of the record still cannot be met, the parties should then consider selection of an agreed medical evaluator (AME). Here, however, PQME Dr. Bruce Huffer has demonstrated an inability to provide substantial opinions such that it is clear returning to PQME Dr. Bruce Huffer is not practicable. If the parties cannot agree to an AME, then the WCJ can appoint a regular physician to evaluate the issue of permanent disability pursuant to section 5701.

#### IV.

“It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Board en banc).) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at 475.) WCAB Rule 10759, states, in pertinent part: “Each exhibit listed must be clearly identified by author/provider, date, and title or type (e.g., “the July 1, 2008 medical

report of John Doe, M.D. (3 pages)"). Each medical report, medical-legal report, medical record, or other paper or record having a different author/provider and/or a different date is a separate "document" and must be listed as a separate exhibit." (Cal. Code Regs., tit. 8, § 10759(c), emphasis added.)

Although sufficient for review, the trial record contained anomalies that interfered with the review process. For example, the record contains two exhibits identified as Joint Exhibit 101 while the MOH only lists one Exhibit 101 described as "Darien Behravan, D.O., reports dated 12/6/24 through 5/5/23, and 2/20/24." Further, the MOH lists defendant's Exhibit G described as "Not Listed" along with a corresponding order that "Defendant's exhibits are deemed admitted." (MOH, April 21, 2025, page 4.)

It appears that Joint Exhibit 101 may have been broken into two exhibits when admitted with both bearing the identifier Exhibit 101. From the totality of the record, it also appears there is no defendant's Exhibit G. It remains possible, however, there is an unidentified Exhibit G missing from the record but that was nevertheless ordered admitted into evidence.

Further complicating review is that the second Joint Exhibit 101 contains 119 pages PDF of treatment reports from Darien Behravan, D.O., lumped together as one exhibit. (Report dates December 6, 2024, October 9, 2024, August 14, 2024, March 18, 2024, January 22, 2024, December 18, 2023, November 27, 2023, October 24, 2023, March 6, 2023, and May 5, 2023.) *And there is a further* 140 pages PDF of treatment records from Kaiser Permanente with various service dates and providers, again lumped into one exhibit. (Exhibit H, Kaiser Records.)

In any further proceeding the WCJ and the parties should reference WCAB Rule 10759, as discussed above, to individually identify *each separate exhibit*. (Cal. Code Regs., tit. 8, § 10759(c).)

In sum, following our independent review of the entire record occasioned by applicant's Petition, we are persuaded that the reporting of PQME Dr. Bruce Huffer is not substantial, and that further proceedings are necessary to develop the record.

Accordingly, we grant applicant's Petition for Reconsideration, rescind the June 16, 2025 decision and return the matter to the trial level for further proceedings consistent with this opinion. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the decision of June 16, 2025, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of June 16, 2025, is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**SEPTEMBER 12, 2025**

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

**JAIME VILLANUEVA  
FETTNER LEMON  
RTGR LAW**

**PS/oo**

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