WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JOANNA PEREZ, *Applicant*

vs.

COUNTY OF RIVERSIDE, *Defendant*

Adjudication Number: ADJ9060523
Marina del Rey District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Finding of Fact, Award and Order (F,A&O) issued on June 13, 2025 by the workers' compensation administrative law judge (WCJ) which found in pertinent part that applicant sustained injury arising out of and in the course of employment (AOE/COE) in the form of sleep disorder and psyche; and the injury caused temporary disability for the period beginning January 29, 2014 through August 25, 2022.

Defendant contends that the record lacks substantial medical evidence to support the findings of injury in the form of either sleep disorder or psyche; and that applicant is not entitled to any additional temporary disability indemnity because applicant reached maximum medical improvement (MMI) on January 29, 2014.

We have received an Answer from applicant. The WCJ filed a Report and Recommendation (Report) on the Petition for Reconsideration recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, and for the reasons discussed below, we will deny the Petition for Reconsideration.

I.

Preliminarily, we note that former Labor Code[1] 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.
>
> (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 July 23, 2025 and 60 days from the date of transmission is Sunday, September 21, 2025, a weekend. The next business day that is 60 days from the date of transmission is Monday, September 22, 2025. (See Cal. Code Regs., tit. 8 § 10600(b).)[2] This decision was issued by or on September 22, 2025, so that we have timely acted on the petition as required by section 5909(a).

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[1] All further references are to the Labor Code unless otherwise noted.

[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.

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 and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the WCJ, the WCJ delegated service of the Report to defendant's attorneys on July 23, 2025, and defendant served the Report on July 24, 2025. The case was transmitted to the Appeals Board on July 23, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, while the parties were provided with the notice of transmission required by section 5909(b)(1), because service of the Report was not in compliance with section 5909(b)(2), the parties were not provided with actual notice as to the commencement of the 60-day period on July 23, 2025.

II.

In addition to the analysis set forth in the WCJ's Report, we observe the following.

With respect to applicant's claim for injury in the form of sleep , applicant bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.) It is sufficient to show that work was a contributing cause of the injury. (See *Clark*, *supra*, 61 Cal.4th at p. 298; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) Applicant need only show that industrial causation was "not zero" to show sufficient contribution from work exposure for the claim to be compensable. (*Clark*, *supra*, 61 Cal.4th at p. 303.) The burden of proof "manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].) It has also long been established that "all reasonable doubts as to whether an injury is compensable are to be resolved in favor of the employee." (*Guerra v. Workers' Comp. Appeals Bd.* (2016) 246 Cal.App.4th 1301, 1310 [81 Cal.Comp.Cases 324], citing *Clemmons v. Workmen's Comp. Appeals Bd.* (1968) 261 Cal.App.2d 1, 8; see also *Garza*, *supra*, 3 Cal.3d at p. 317; Lab. Code, § 3202.)

Further, we have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Here, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id*.)

To find a sleep disorder and arousal disorder injury occurred, the WCJ relied upon applicant's credible testimony about her sleep disorder injury. (Opinion on Decision, at p. 4; Report, at p. 4.) Additionally, on October 30, 2014, applicant underwent an overnight polysomnogram which revealed she had difficulty initiating sleep, repositioning, arousals were observed and the ECG revealed an irregular sinus rhythm throughout the night with some artifact. (Exhibit J1, at p. 5.) As the WCJ noted, applicant reported that she has sleep difficulties to many doctors. (Report, at p. 4.) Finally, agreed medical evaluator (AME) Seymour Levine, M.D., determined that applicant's accepted and industrially related fibromyalgia caused applicant nonrestorative sleep. (Exhibit J5, at p. 29, MOH/SOE, at p. 2:12-13.)

The parties presumably chose Dr. Levine to serve as an AME because of his expertise and neutrality. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) We will follow the opinions of the AME unless good cause exists to find their opinion unpersuasive. (*Ibid.*)

Here, defendant has presented no evidence to rebut the reporting of Dr. Levine. Instead, defendant relies on *Peterson v. State of California Department of Mental Health* (2008) Cal Wrk, PD LEXIS 558, which can be distinguished from the case at hand based on applicant's credible testimony at trial and the medical evidence of applicant's overnight polysomnogram that Dr. Levine reviewed. (Exhibit J5, at p. 5.)

It is also well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza*, *supra*; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48

Cal.Comp.Cases 566], emphasis removed and citations omitted.) To constitute substantial evidence ". . . a medical opinion must be framed in terms of reasonable medical probability, must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Based on the reasons stated by the WCJ in the F,A&O and Report, we are persuaded that applicant met her burden of proving injury in the form of sleep disorder by a preponderance of the evidence.

III.

Defendant further contends the reporting of Nelson Flores, Ph.D., does not contain a predominant causation analysis necessary to establish an industrial psychiatric injury and is therefore not substantial medical evidence.

Section 3208.3 provides, in relevant part:

> In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.

(Lab. Code, § 3208.3(b)(1).)

"Predominant as to all causes" means that "the work-related cause has greater than a 50 percent share of the entire set of causal factors." (*Dept. of Corrections v. Workers' Comp. Appeals Bd.* (*Garcia*) (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356, 1360]; *Watts v. Workers' Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 684, 688 (writ den.).) Here, Dr. Flores discusses predominant causation as follows: "Based on the evidence available to me, it is my opinion that more than 51% of all combined factors contributing to the patient's aforementioned mental disorders and her current levels of psychiatric disability are directly related to the cumulative orthopedic trauma injuries (CT July 1, 2008 - August 7, 2013) she sustained while at work for County of Riverside, and her exposure to stress and harassment while at work for this employer…" (Exhibit 1, at p. 10.) Hence, the reporting of Dr. Flores does contain a predominant causation analysis.

Next, defendant argues that Dr. Flores' reporting is not substantial medical evidence because it lacks a *Rolda* analysis pursuant to *Rolda v. Pitney Bowes, Inc.* (2001) 66

Cal.Comp.Cases 241 (Appeals Board en banc). Defendant is referring to the affirmative defense which provides that if the threshold for a compensable psychiatric injury has been met under section 3208.3(b), and the employer has asserted that some of the actual events of employment were good faith personnel actions, the WCJ must determine whether section 3208.3(h) bars applicant's claim. Section 3208.3(h) provides as follows:

> No compensation under this division shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue.

(Lab. Code, § 3208.3(h).)

For a defendant seeking to prevail on the protection afforded to it by section 3208.3(h), defendant must first assert the issue of the applicability of the section. In addition, section 5705 provides in relevant part that "[t]he burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.)

This matter proceeded to trial on May 7, 2025. The only issues framed for trial were parts of body injured, temporary disability, permanent and stationary date, permanent disability including apportionment, and attorney fees. (MOH/SOE at p. 4:5-16.) The affirmative defense of lawful, nondiscriminatory, good faith personnel action was not raised as an issue at either the mandatory settlement conference (MSC) or at trial. Issues not raised on the record at the first opportunity that they may properly be raised are waived. (Lab. Code, § 5502(e)(3), see also *Gould v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1059 [57 Cal.Comp.Cases 157], *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260 [54 Cal.Comp.Cases 145].)

IV.

Defendant also contends that based on the medical reporting of primary treating physician Brett Pratley, M.D., applicant reached MMI status on January 29, 2014 for her orthopedic injuries and her entitlement to temporary disability would thus end on that date. The WCJ relied on the reporting of panel qualified medical evaluator, Donald Kim, M.D., to find applicant was temporarily disabled for an additional period of January 29, 2014 through August 25, 2022. As the WCJ explained, Dr. Kim reviewed the entire medical record, including treatment reports and the reporting of AME Levine whereas Dr. Pratley's review ended on January 29, 2014. (Report, at p.

4.) Thus, the reporting of Dr. Kim constitutes substantial medical evidence to support the WCJ's conclusion as to the period when applicant was temporarily disabled.

It is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].) Here, the WCJ explained why she chose to rely on Dr. Kim's reporting and found such reporting to be substantial medical evidence on the issue of MMI and temporary disability status. We find no basis to overturn those findings.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 22, 2025

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

JOANNA PEREZ
HINDEN & BRESLAVSKY
FLOYD SKEREN MANUKIAN LANGEVIN

SL/abs

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION
NOTICE OF TRANSMITTAL TO THE WCAB

I

INTRODUCTION

1.Applicant's Occupation:	Case worker
2.Applicant's Age:	29
3.Date of Injury:	CT 07/01/2008 to 08/07/2013
4.Parts of Body Injured:	Bilateral wrists, cervical and lumbar spine, fibromyalgia, psyche and sleep
5.Manner in which Injury Occurred:	Cumulative Trauma
6.Identity of Petitioner:	Defendant
7.Timeliness:	The petition was timely filed.
8.Verification:	A verification was attached.
9.Date of Findings and Award:	06/13/2025

10.Petitioner's Contentions:

a. There was no substantial medical legal evidence in support of industrial causation of a psychiatric injury.

b. There was no substantial medical legal evidence in support of industrial causation of a sleep disorder.

c. The applicant is not entitled to an additional period of temporary disability.

II.

JURISDICTIONAL HISTORY

Applicant, Joanna Perez, born on [], while employed during 7/1/2008 to 8/7/2013, as a case worker, sustained injury arising out of and in the course of employment to her bilateral wrists, cervical and lumbar spine, and fibromyalgia. Additionally, while employed during the period 07/01/2008 to 08/07/2013, the applicant claims to have sustained injuries arising out of and in the course of employment to her psyche and sleep disorder.

The application of adjudication of claim was initially filed on 08/13/2013. Defendant filed a Declaration of Readiness to Proceed (DOR) dated 12/10/2024 for a Mandatory Settlement

Conference (MSC) on the issue of permanent disability. The case was for an MSC on 02/26/2025. Per a joint request, the case was continued to trial on 03/27/2025 before the undersigned.

The 03/27/2025 trial was continued ultimately to 05/07/2025 when the matter proceeded on the record. At trial, the parties stipulated to:

1. Whether the applicant sustained injuries of sleep disorder and psyche.
2. Temporary disability.
3. Permanent disability date.
4. Permanent disability and apportionment.
5. Attorney fees.
6. All other issues were deferred.

On 05/19/2025, trial briefs were due, and the case was submitted for a decision.

On 06/13/2025, the WCJ issued a Findings of Fact, Award, and Order finding injury arising out of and in the course of employment in the form of sleep disorder and to her psyche and that the applicant was temporarily disabled from 01/29/2014 through 08/25/2022 and attorney fees. The issue of permanent disability and apportionment were removed from submission. An Order Developing the Record was issued on permanent disability and apportionment.

Defendant filed a timely and verified Petition for Reconsideration on 07/08/2025, only on the issues of injury to psyche and sleep disorder and entitlement to additional temporary disability. The applicant was not served with the Petition for Reconsideration. Applicant filed a verified and timely Answer to Petition for Reconsideration on 07/14/2025.

For the following reasons, the Petition for Reconsideration should be denied.

III

DISCUSSION

1. DEFENDANT CLAIMS THERE IS NO SUBSTANTIAL MEDICAL EVIDENCE IN SUPPORT OF INDUSTRIAL CAUSATION OF A PSYCHIATRIC INJURY

Labor Code § 3208.3 requires a higher threshold of compensability for psychiatric injuries arising out of and the course of employment. An employee needs to demonstrate by a preponderance of the evidence that the actual events of employment were predominant to all causes combined of the psychiatric injury.

Defendant claims secondary treating physician, Nelson Flores, Ph.D. does not discuss predominant causes. This is incorrect. Dr. Flores, in his initial report dated 10/28/2014, indicated that more than 51% of all combined factors contributed to the applicant's mental disorder and current level of psychiatric disability were directly related to cumulative trauma injuries (CT

July 1, 2008 to August 7, 2013.) while she worked at the county of Riverside. (Exhibit 1, page 10) Dr. Flores addressed the predominant cause of the applicant's psyche injury in his initial report.

At trial, the applicant testified she experienced anxiety and depression. (Summary of Evidence, 05/07/2025 Trial, 1:30 pm session, at 7:15 and 7:22-7:24) Dr. Flores' reports are consistent with the applicant's unrebutted and credible testimony.

Although, Dr. Flores does not mention the terms "actual events," he does describe the work events and injuries in his reports. The work events and injuries were actual events of employment and predominant cause as to all causes combined. Predominant cause means that the actual events of employment account for greater than 50%, of a psychiatric disability/injury. *Department of Corrections v. W.C.A.B*. (1999) 76 Cal.App.4th 810, 816 [90 Cal. Rptr. 2d 716] 64 Cal. Comp. Cases 1356.

Defendant did not raise a Good Faith Personnel Action defense in the pre-trial conference statement or in trial. Thus, a full *Rolda* analysis of the Good Faith Personnel Action was not warranted. *Rolda v. Pitney Bowes (2001) 66 Cal. Comp. Cases 241* [en banc]. The Good Faith Personnel Action defense is an affirmative defense, and if not raised, it is waived.

2. DEFENDANT CLAIMS THERE IS NO SUBSTANTIAL MEDICAL EVIDENCE IN SUPPORT OF INDUSTRIAL CAUSATION OF A SLEEP DISORDER

Defendant claims the applicant did not meet her burden to prove she has a sleep disorder because there is no substantial medical report on point.

In this case, the applicant testified she experienced an inability to sleep. (Summary of Evidence, 05/07/2025 Trial, at 7:14-7:15) She further explained she could not sleep and woke up at all hours of the night. (Summary of Evidence, 5/7/2025 Trial, at 7:21-7:22) She testified she wakes up 4-5 times a night. (Summary of Evidence, 5/7/2025 Trial, at 7:2-7:4)

Dr. Kenneth Nudleman's nocturnal polysomnogram report dated 10/30/2014 noted there was evidence of difficulty initiating sleep, repositioning and arousals. (Exhibit J1, page 5) While the report did not find the applicant had significant obstructive sleep apnea or periodic leg movements, it did document the applicant had trouble falling asleep and staying asleep, consistent with her unrebutted and credible testimony.

Many of the medical reports noted the applicant had trouble sleeping. The orthopedic PQME, Dr. Donald Kim, in his report dated 07/28/2015, noted the applicant had sleep disturbance. (Exhibit #J2, page 9) He his 05/29/2018 report, he noted an increase in symptoms and sleep disturbance. (Exhibit #J4, page 2)

The AME in rheumatology, Dr. Seymour Levine issued a report dated 05/20/2022. Dr. Levine noted in his conclusion that the applicant's sleep and arousal disorder was entirely generated by her chronic pain syndrome with the pain of her orthopedic involvement disturbing her sleep. (Exhibit #J5, page 32) The defendant admitted the applicant's fibromyalgia injury. The sleep disorder is part and parcel of the fibromyalgia per AME Dr. Levine.

3. DEFENDANT CLAIMS THE APPLICANT IS NOT ENTITLED TO AN ADDITIONAL PERIOD OF TEMPORARY DISABILITY.

The orthopedic QME, Dr. Donald Kim in his report dated 10/04/2022, declared the applicant MMI on 08/25/2022, the date of her last evaluation. (Exhibit #8, page 11) Dr. Kim provided this date after he reviewed records and evaluated the applicant numerous times. Dr. Kim's report was more substantial medical evidence than PTP, Dr. Brent Prately's report dated 01/29/2014. (Exhibit #A) Dr. Kim reviewed several reports, including the rheumatology and psychology reports. Dr. Prately did not appear to review any report after 01/29/2014, the date of his last report. Dr. Pratley did not address the applicant's increased symptoms as documented in QME, Dr. Kim's reports, dated 05/29/2018 and dated 08/29/2022. (Exhibits J4, page 1-2 and #J6, page 1-2). Her orthopedic injuries were complicated by her fibromyalgia. Dr. Kim's report was found to be substantial medical evidence and more persuasive on the issue of MMI status.

IV

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied for the above reasons.

Respectfully submitted,

DATE: 07/23/2025

GUADALUPE BARRAGAN

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE