WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JUNG KIM, *Applicant*

vs.

COUNTY OF LOS ANGELES;
permissibly self-insured, *Defendants*

Adjudication Number: ADJ16432899; ADJ16015921; ADJ12380250; ADJ17195897
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the June 13, 2025 Findings of Facts and Orders issued by the workers' compensation administrative law judge (WCJ) in Case No. ADJ16432899. Therein, the WCJ found that applicant did not sustain a specific injury arising out of or in the course of her employment to her psyche while employed as a psychologist on April 12, 2022. Based on these findings, the WCJ order that applicant take nothing.

Applicant contends that the WCJ should have relied on panel qualified medical evaluator (PQME) Dian Weiss, Ph.D., to find that she sustained a specific psyche injury.

Defendant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant applicant's Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

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 June 24, 2025 and 60 days from the date of transmission is Saturday, August 23, 2025. The next business day that is 60 days from the date of transmission is Monday, August 25, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, August 25, 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

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[1] All further statutory 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.

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 24, 2025, and the case was transmitted to the Appeals Board on June 24, 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 24, 2025.

II.

The WCJ provided the following discussion in the Report:

> **II. STATEMENT OF FACTS**
>
> The Applicant is a psychologist working for the County of Los Angeles from 2006 through approximately February 2023. This claim is exclusively a claim for a specific psychiatric injury on or about 4/12/2022.
>
> The only issue at trial is the issue of psychiatric injury.
>
> The Applicant has also filed a claim for cumulative psychiatric injury in ADJ12380250 for the period 2006 through 3/14/2019 against the County. She has filed a claim for a specific injury on 3/2/2022 which involves a head injury in ADJ16015921. She has filed a claim for COVID in or around 12/6/2022 in ADJ17195897. There is no other claim for cumulative trauma to date.
>
> None of the other claims noted above were on trial in this matter. The trial conducted on 6/4/2025 was only this one claim for a specific injury in psychiatry.
>
> For all these claims the parties selected Dr. Diane Weiss Ph.D. as the QME in psychiatry. So, Dr. Weiss's voluminous reports apply not only to the present claim but to the concurrent claim in ADJ12380250 as well.
>
> As of the date of this hearing, ADJ12380250 was not resolved and is pending. As pled the testimony in this case was confined to the employment from March 2022 through April 2022 when Applicant stopped working.
>
> **Events of 2022**

The Applicant describes a stressful work environment stemming from her relationship with her supervisors, Dr. Staufenberg and Dr. Seetal. Due to a helicopter crash in March 2022 involving a county vehicle Applicant responded to the hospital in her role as a psychologist. As a result of multiple interviews with patients she prepared a report. What followed was a month-long conflict between Applicant and her supervisors over these reports. The Applicant felt that the supervisor Staufenberg was trying to "push her out" of her job. She felt that she was being micro-managed. After further interviews and confrontations, she ultimately left work on or about 4/12/2022.

Dr. Weiss perceived these circumstances as injurious. The undersigned viewed the circumstances as constituting the actual events of employment. The testimony from the employer confirmed the events. Dr. Weiss characterized these events as a specific injury.

Dr. Weiss' depo was taken on 8/21/2024 (Ex. Z). She expresses confusion as to dates of injury. She notes that 4 claims are pled. She is only aware of 3. She testifies that the events of employment were the predominant cause of a specific injury of 4/12/2022 (p.10). But under defense questioning she admits that the "injury" is the result of "an accumulation of everything." She admits that what occurred on or about 4/12/2022 was described as the relationship with Dr. Staufenberg, but as to what happened on that very day she states, "I'm not sure what incident that was." On p.15 Dr. Weiss agrees that simply some days are more stressful than others. Dr. Weiss agrees that eventually as of 4/12/2022 Applicant hit the "straw that breaks the back."

ADJ12380250

It is important to keep in mind that Dr. Weiss acted as QME in this case as well, but that only ADJ16432899 was on trial.

The evidence in ADJ12380250 is solely summarized in Dr. Weiss' initial report erroneously dated in EAMS as 10/10/2023, but the report is dated 11/9/2023 (Ex. W).

From pp. 7 to 19 Dr. Weiss details the history of injury in ADJ12380250. Briefly it outlines claims of discrimination and employer bias. The employer is accused of ongoing harassment over a period of time causing six months of psychiatric temporary disability and treatment from 3/19 to 9/19. She returned to work, but the hostile work environment continued, most of which involved conflict over paperwork (p.16). She indicated that the County was trying to get her to quit. She was in ongoing psychiatric care with constant psychotropic medication and regular therapy. Treatment did not stop. She indicates at p.19 that Applicant was exposed to ongoing constant stress from 2020 to 2022.

To reiterate, the claim for cumulative trauma through 2019 in ADJ12380250 is ongoing. No issues have been resolved.

After the trial on 6/4/2025 the undersigned determined that there was no specific injury on 4/12/2023. As to the events of March and April 2022, the undersigned declared that resolution of any legal issues pertaining thereto belonged to litigation in the other case or cases.

III. DISCUSSION

A specific injury is defined in Cal. Lab. Code sec. 3208.1 "as occurring as the result of one incident or exposure which causes disability or need for medical treatment…." (emphasis added).

A cumulative trauma is defined in that section as "occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment." (emphasis added).

In cases of psychiatric injury, under *Rolda v. Pitney Bowes, Inc*. (2001) 66 CCC 241, en banc, it is up to the WCJ to determine the actual events of employment. The physician must determine the predominant cause of injury.

Most importantly it is not the role of the physician to determine if an injury is legally a specific injury or a cumulative injury. Under *Rolda* that finding is the sole purview of the WCJ.

Cal. Lab. Code Sec. 3208.1 defines a specific injury as cited above as "one incident or exposure…" Even Dr. Weiss in deposition as cited above could not delineate a specific event.

On the other hand, the Applicant perceived as stressful all the events that followed this helicopter crash in March 2022 as ongoing efforts by the employer to get rid of her, or, as she put it, "push me out." The undersigned determined that these events were a mere continuation of all her complaints in her work environment which are described as starting in 2018 and continuing right up to 4/12/2022.

Hence the events are clearly cumulative in nature as described in sec. 3208.1.

It is understood that confusion may occur since this Applicant was off work for six months in 2019 due to the first claim in ADJ12380250. But she returned to work despite continuing to treat.

Also, this fact situation may lead to a conflict as to whether there are two cumulative injuries or only one. As was pointed out in the Opinion on Decision,

this case (or cases) may involve the classic confrontation between *Aetna Casualty & Surety v. WCAB (Coltharp)* (1973) 35 Cal. App. 3d 329, 38 CCC 720 and *Western Growers v. WCAB (Austin)* (1993) 16 Cal. App. 4th 227, 58 CCC 323.

However, those issues are left to the pending litigation in other cases, but not this one. The undersigned will not comment on the issues raised or how they should proceed.

The only issue before the Court at this time is whether a specific injury as defined by sec. 3208.1 occurred on 4/12/2022. There was no such evidence at all.

The question is not one upon which Dr. Weiss can opine. The undersigned determined under *Rolda* that there was no specific injury. If there was continuation of cumulative injury or a separate new cumulative injury is not the purview of this opinion.

The Petitioner's sole position is that Dr. Weiss found a specific injury, and hence that should be the finding of facts herein.

As stated above, the actual events of employment are the WCJ's issue to determine, not the doctors. But more importantly, by reviewing her reports, it seems that she was only given the fact that a specific injury was being pled. No one told the doctor that an issue of cumulative injury may exist in 2022, and hence she never approached that question.

But the fact remains that the actual events of employment do not produce any evidence of a "single incident or exposure." Hence there is no specific injury. Petitioners claim that the physician can determine legal issues or even have any knowledge of the legal definitions involved is unsound.

(Report at pp. 1-5.)

III.

We highlight the following legal principles that may be relevant to our review of this matter:

In order to establish the compensability of a psychiatric injury under section 3208.3, an injured worker has the burden of establishing "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.); *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 246 (Appeals Board en banc).)

In *Rolda*, we set forth the multilevel analysis for determining if a claimed psychiatric injury is compensable when the affirmative defense of lawful, nondiscriminatory, good faith personnel action has been raised: "The WCJ, after considering all the medical evidence, and the other documentary and testimonial evidence of record, must determine: (1) whether the alleged psychiatric injury involves actual events of employment, a factual/legal determination; (2) if so, whether such actual events were the predominant cause of the psychiatric injury, a determination which requires medical evidence; (3) if so, whether any of the actual employment events were personnel actions that were lawful, nondiscriminatory and in good faith, a factual/legal determination; and (4) if so, whether the lawful, nondiscriminatory, good faith personnel actions were a "substantial cause" of the psychiatric injury, a determination which requires medical evidence." (*Rolda, supra*, 66 Cal.Comp.Cases at pp. 245-247.)

It is 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 v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *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 Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Medical evidence is required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c)(d), 4061(i), 4062.3(l).) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. en banc).) "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].)

Based on our review, we are not persuaded that the record is properly developed. Where the medical evidence or opinion on an issue is incomplete, stale, and no longer germane, or is based on an inaccurate history, or speculation, it does not constitute substantial evidence. (*Place v. Workers' Comp. Appeals Bd*. (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Here, it is unclear from our preliminary review that there is substantial medical evidence to support the WCJ's decision without additional development of the record. In this case, the WCJ determined that there were actual events of employment that describe an ongoing cumulative trauma rather than a specific injury. Yet, because the only case set for trial involved an alleged specific injury in Case No. ADJ16432899 and not the three (3) other cases filed by applicant (Case Nos. ADJ16015921, ADJ12380250, and ADJ17195897), the question of a cumulative trauma was not reached. Thus, it appears that these cases should have been consolidated pursuant to WCAB Rule 10396.

Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

IV.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for

determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra,* at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

V.

Accordingly, we grant applicant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. ***While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to*** WCABmediation@dir.ca.gov.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 25, 2025

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

JUNG KIM
STRAUSSNER, SHERMAN, LONNE, TREGER, HELQUIST
LAW OFFICES OF DENNIS TRIPLETT

PAG/bp

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