WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARIA HERNANDEZ, ***Applicant***

vs.

VALLARTA FOOD ENTERPRISES, INC.; SAFETY NATIONAL CASUALTY CORPORATION, administered by CHARLES TAYLOR, ***Defendants***

Adjudication Number: ADJ18492736
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant Safety National Insurance seeks reconsideration of the "Findings of Fact and Order" (F&O) issued on July 21, 2025. The workers' compensation administrative law judge (WCJ) found that applicant sustained injury while employed by defendant Vallarta Food Enterprises during the period of "June 12, 2007 through November 9, 2003" to her bilateral shoulders, wrists, and hands.[1] The WCJ also found that there was insufficient evidence to make a finding regarding the cardiovascular system as it relates to hypertension and deferred the issue.

Defendant contends in relevant part that applicant did not meet her burden of proof for injury as the report of the treating physician, Albert Kandkhorov, D.C., is not substantial medical evidence because Dr. Kandkhorov did not review medical records nor support his conclusions, and that the WCJ should have relied on the reports of the qualified medical evaluator (QME), Jeffrey Benton, D.C. Defendant admits that applicant sustained a cumulative injury to her left hand.[2]

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[1] These dates appear to be a typographical error and should read June 12, 2007 to November 9, 2023 based on the issue presented in the Minutes of Hearing, July 16, 2025, at p. 2.

[2] Further, defendant argues that the report is not substantial because a Spanish interpreter was not utilized and the report was not signed. While it is true that there is no mention of an interpreter, the report is signed. (Exhibit 1, p. 7).

WCJ filed a Report and Recommendation (Report) recommending denial of defendant's Petition. Applicant did not file an answer.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record, we will grant reconsideration, rescind the Findings and substitute new Findings that applicant sustained injury to the left hand only and defers the issue of injury to other body parts and return the matter for further proceedings consistent with this decision.

FACTS

Applicant filed an Application for Adjudication on November 16, 2023 alleging injury during the period of June 12, 2007 through November 9, 2023 to wrist, hand, nervous system-psyche, circulatory system, and shoulders. The Application was later amended to remove psyche. The case was denied on January 17, 2024. (Exhibit E).

On December 18, 2023, applicant sought treatment with Dr. Kandkhorov. The report was signed by Dr. Kandkhorov and Gregory Tardagila, D.C., and dated the same date, December 18, 2023. (Exhibit 1). Applicant described her job as a supermarket cashier as requiring her to, "continuously and repetitively type the codes for product and carry the boxes of soda and beer to scan for the customers." (*Id.* at p. 2). She indicated that due to the repetitive work she gradually developed pain in her bilateral shoulders and hands. (*Id.* at p. 2). She was diagnosed with right and left shoulder sprain/strain and contusion, right and left wrist sprain/strain and contusion, right and left hand sprain/strain and contusion. (*Id.* at p. 6). Dr. Kandkhorov requested MRI scans of the bilateral shoulders and bilateral wrists/hands. He determined that her injuries were the result of a cumulative trauma while performing her job duties through November 9, 2023. (*Id.* at p. 6).

Dr. Benton was designated as the QME and issued three reports. The first report, dated May 15, 2024, is a comprehensive evaluation report, wherein applicant was evaluated and assisted by an interpreter. (Exhibit A). In this report, applicant provided a comprehensive summary of her job duties and injury as follows:

> She was working as a cashier. She would stand by the cash register. Patrons would unload items onto a conveyor belt. She would either scan the items, weigh and enter items into the computer, and recently (2019-2023) bag the merchandise. She would clean her work area daily with spray cleansers and paper towels. In the morning she would clock in, then go to a booth to receive a tray with money which she would carry to and place into the cash register. Her cash register was positioned close to the entrance of the supermarket, about 1O feet away and she often felt the wind hit

her, especially when it was raining. Air was coming from the door and from the air conditioner. Pains began in 2018. She saw a doctor and was given work restrictions which include not working at the register where the wind hit her directly, or work at a register where it was cold to work (less than 50 degrees Fahrenheit)

The applicant had to occasionally carry cases of water and beer, on the weekends and holidays. The heaviest item she had to carry is cases of water which weigh approximately 20 pounds and 30 bottles of beer in a case. A case would weigh 30-35 pounds. Her hands would hurt when she did that. Due to the cool temperature and draft from the front door, she would wear a t-shirt, a thermal shirt, the work uniform, and a sweater.

She would work 6 days a week, 6.5 - 7 hours a day. She never suffered any type of specific injury…

Due to the repetitive nature of the work and the work conditions she developed aches and pains. She initiated self-treatment. She went to see a joint pain specialist on Washington Blvd in the city of Whittier. She received a note with work restrictions that she showed to her store manager. The store was unable to accommodate the restrictions.

In early 2023 she saw a general medicine doctor. He gave her a letter with restrictions. This clinic is on Huntington Drive - Dr. Luis Trompete. She was prescribed medication for joint inflammation. She resigned on or about November 09, 2023. The register she was working at malfunctioned. The store manager tried to get her to work at a different register which would exacerbate her joint pains. She counted the money in her drawer and left. Shortly thereafter she hired an attorney.

(*Id.* at p. 2.)

As relevant herein, Dr. Benton diagnosed shoulder strain, humerus pain, and wrist strain/sprain. (*Id.* at p. 9.) The medical records provided by defendant were not applicant's, and as a result, he determined that he did not have medical evidence to support an industrial cumulative trauma injury. (*Id.* at p. 9.) He requested, in relevant part, x-rays of the shoulders, humerus, wrists and hands, lab tests, medical records, and a return for re-evaluation once the testing is complete. (*Id.* at p. 10.)

The QME then issued a supplemental report dated August 5, 2024, following service of medical records as well as applicant's personnel file. (Exhibit B.) After a lengthy review, the QME adjusts his diagnoses to cervical sprain, lumbar sprain, bilateral shoulder sprain, overuse syndrome upper extremities, thoracic sprain, and plantar fasciitis. (*Id.* at p. 35.) He notes that in review of

the medical records she reported work related injuries after she had quit, but he requests the reports of another physician to make a conclusion on causation. (*Id.* at p. 38.)

On October 28, 2024, Dr. Benton issued another supplemental report following receipt of additional medical records. The diagnoses change again, and only include left shoulder strain, left wrist strain, left hand strain. (Exhibit C, p. 9). Without explanation, the QME finds only the left hand is work related. (*Id.* at p. 10). It is worth noting that the QME continues to recommend x-rays, lab tests, thyroid panel, chiropractic care and acupuncture for the neck, shoulders, and wrists. (*Id.* at p. 11).

This matter was set for trial and submitted on July 16, 2025. The only issue was "injury arising out of and in the course of employment." (Minutes of Hearing/Summary of Evidence (MOH/SOE, 2:11.)

Applicant testified by way of a certified Spanish interpreter in relevant part as follows. She resigned from her employment with defendant on November 9, 2023 when the employer could no longer honor her work restrictions. (MOH/SOE, 4:8-9.) Her physician restricted her from working near entrance doors as it aggravated her shoulder pain. (MOH/SOE, 4:10-11.) She felt pain in her wrist due to lifting heavy groceries. (MOH/SOE, 4:12.)

Neither party submitted a job description as evidence, and there was no additional testimony provided as to the weight or frequency of the lifting.

DISCUSSION

I

Former Labor Code section 5909[3] 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:

> (2) 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.

[3] All further statutory references will be to the Labor Code unless otherwise indicated.

> (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 August 1, 2025 and 60 days from the date of transmission is September 30, 2025. This decision is issued by or on September 30, 2025 so that we have timely acted on the petition as required by section 5909(a).

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on August 1, 2025 and the case was transmitted to the Appeals Board on August 1, 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 August 1, 2025.

II

It is well established that decisions and awards 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].)

To constitute substantial medical evidence, a medical opinion must be predicated on reasonable medical probability. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd.*

(*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416–17, 419 [33 Cal.Comp.Cases 660].) A physician's report must also be framed in terms of reasonable medical probability, it 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. (*Gatten*, *supra*, 145 Cal.App.4th at p. 922; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 612 (Appeals Board en banc).) A medical opinion is not substantial medical evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93, 97]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378–379 [35 Cal.Comp.Cases 525]; *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 798 [33 Cal.Comp.Cases 358].) 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*, *supra*, 3 Cal.3d at pp. 378-379.)

Section 3208.1 defines a "cumulative" injury as one "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. Cumulative injury occurs from repetitive mental or physical activities at work over a period of time, which causes any disability or need for medical treatment. (§ 3208.1; *Western Growers Ins. Co., v. Workers' Comp. Appeals Bd.* (*Austin*) (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323]; *J.T. Thorp, Inc., v. Workers' Comp. Appeals Bd.* (*Butler*) (1984) 153 Cal.App.3d 327, 332-333 [49 Cal.Comp.Cases 224].) Findings regarding cumulative injury and the date of injury must be based on substantial evidence such as medical opinion and testimony considering the entire record. (*Garza*, *supra*, 3 Cal.3d at pp. 317-319; *Austin*, *supra*, 16 Cal.App.4th at pp. 233- 241; *City of Fresno v. Workers' Comp. Appeals Bd.* (*Johnson*) (1985) 163 Cal.App.3d 467, 470-473 [50 Cal.Comp.Cases 53].)

In this matter, we disagree that the primary treating physician report is substantial medical evidence. As noted by defendant, Dr. Kandkhorov, an interpreter was not utilized at the evaluation as no interpreter listed. The lack of proper translation affected the job description outlined by applicant as compared to the detailed description provided to Dr. Benton. More importantly, Dr. Kandkhorov was not afforded the opportunity to review applicant's medical records or the MRI

he requested. Without records, a proper history, or a correct job description, the opinion cannot be substantial.

In turn, we likewise do not find that Dr. Benton's reporting is complete as it relates to all other body parts aside from the left hand. Dr. Benton also did not review the MRI of the left shoulder, but also he repeatedly requests diagnostics that do not appear to have been completed. Without the same, he relies merely on the fact that there were no records of injury pre-dating her resignation on November 9, 2023. The fact that there is no report prior to his own opinion or her resignation does not invalidate the existence of a cumulative injury where the medical evidence would otherwise support such a finding. In general, an employee is not charged with knowledge that their disability is job-related without medical evidence to that effect. (*Johnson*, *supra*, 163 Cal.App.3d at p. 471; *Newton v. Workers' Comp. Appeals Bd.* (1993) 17 Cal.App.4th 147, 156, fn. 16 [58 Cal.Comp.Cases 395].) It is the physician's job to opine as to whether the symptoms are due to a cumulative injury. For example, Dr. Benton's last report diagnoses left shoulder strain, left wrist strain, and left hand strain, but ultimately only finds only injury to the left hand to be industrially related. (Exhibit C, p.10). He provides no explanation for excluding the left shoulder and the left wrist. Moreover, in the supplemental report dated August 5, 2024, he goes so far as to diagnose overuse syndrome upper extremities. (Exhibit B, p. 35). Seemingly, this diagnosis would lend itself to the finding of a cumulative injury regardless of applicant reporting it to her personal doctor prior to her resignation. Essentially, Dr. Benton's analysis appears to mistakenly require applicant to have known her symptoms were industrial and to have reported them prior to her resignation.

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (*McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; see also *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924]; §§ 5701, 5906.) The Appeals Board also has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd*. (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) The "Board may act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately

applied in favor of the employee." (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd*. (*McKernan*) (1999) 74 Cal. App. 4th 928, 937-938 [64 Cal.Comp.Cases 986].) The preferred procedure to develop a deficient record is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board en banc).)

Here, we are not persuaded by defendant's argument that applicant failed to treat and therefore did not meet her burden to prove injury. Dr. Benton finds that applicant sustained a cumulative injury to her left hand, and defendant concedes in its Petition that applicant sustained injury to the left hand. Moreover, there is no evidence that the diagnostics were authorized. Regardless, the MRI that was completed was not reviewed by either physician. Last, applicant provided a detailed job description to the QME, while her testimony at trial and her description to Dr. Kandkhorov were much less thorough. We suggest that a job description be obtained and sent to each physician accordingly. There is a clear need for development of the record here.

Accordingly, we rescind the Findings and substitute new Findings that applicant sustained cumulative injury to her left hand and defers the issue of injury to any other body parts.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the decision of July 21, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of July 21, 2025 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant, Maria Hernandez, while employed during the period of June 12, 2007 to November 9, 2023, as a cashier, occupational group number: 214, at Los Angeles, California by Vallarta Food Enterprises, Inc., insured by Safety National Casualty Corporation, sustained injury arising out of and in the course of employment to her left hand.

2. The issue of injury to other body parts is deferred pending further development of the record.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 30, 2025

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

MARIA HERNANDEZ
LAW OFFICES OF WILLIAM D. HENDRICKS
FLOYD SKEREN MANUKIAN LANGEVIN

TF/md

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