WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MICHAEL ZAPATA, ***Applicant***

vs.

CITY OF FOSTER CITY, permissibly self-insured, administered by THE CITIES GROUP, ***Defendants***

Adjudication Number: ADJ15563574
San Francisco District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact and Order (F&O) issued on June 16, 2025 by a workers' compensation administrative law judge (WCJ). The WCJ found that applicant sustained injury arising out of and in the course of employment to his right shoulder; that defendant authorized a consultation with John Costouros, M.D., to examine applicant's right shoulder to cure or relieve the effects of his right shoulder injury; that it is 151 miles each way between applicant's residence and Dr. Costouros' office and public transportation is not a reasonable travel option; and, that the distance of 151 miles for the one-time consultation with Dr. Costouros is reasonable. The WCJ also found that applicant cannot drive himself to the consultation and ordered defendant to provide medical transportation to the one-time consultation or to prepay applicant for an Uber or Lyft type transportation if the parties mutually agree on that type of transportation.

Defendant contends on reconsideration that the F&O is based on outdated medical evidence from January 2023 with no updated documentation; and, that defendant's authorization of the one-time consultation with Dr. Costouros does not make the one-time consultation and its attendant transportation cost with Dr. Costouros a reasonable medical expense under Labor Code section 4600 because Dr. Costouros' office is unreasonable distant from applicant's residence and applicant failed to establish there were no closer, qualified orthopedic specialists to conduct the same consultation.

Applicant filed an Answer to Petition for Reconsideration (Answer). The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the

petition be denied and pointing out that the contention raised by defendant on reconsideration related to applicant's ability to drive were not raised by defendant at trial; instead, defendant's contention at trial had been applicant's failure to establish that medical transportation was necessary in lieu of rideshare or public transportation.

We have reviewed the record in this case, the allegations of the Petition for Reconsideration, the Answer, and the contents of the Report. Based on the reasons set forth in the Report which we adopt and incorporate herein, and for the reasons set forth below, we deny reconsideration.

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 July 25, 2025, and 60 days from the date of transmission is September 22, 2025. This decision is issued by or on September 22, 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 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 July 25, 2025, and the case was transmitted to the Appeals Board on July 25, 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 July 25, 2025.

II.

Defendant's primary contention on reconsideration is that the WCJ's F&O is not based on substantial medical evidence given that the WCJ relied on an outdated report from agreed medical evaluator (AME) Jacquelyn Weiss, M.D., wherein Dr. Weiss restricted applicant from driving "in the short term." (Petition for Reconsideration, p. 4, citing App. Exh. 6, p. 87.) Defendant argues that this report from January 19, 2023 is not substantial evidence of applicant's ability to drive because in defendant's opinion, the phrase "in the short term" was not intended to mean more than two years and because are "no recent 2024 reports from primary treating physician Dr. Padgett that discuss...Applicant's ability to drive." (*Id*.) A review of defendant's trial brief evidences that defendant did not raise this contention below and appears to have conceded that applicant is "unable to operate a vehicle." (Defendant's Trial Brief, April 7, 2025, p. 5.)[1]

We therefore agree with the WCJ that this contention is raised for the first time on reconsideration. As a result, it is not possible for us to determine this new issue on the record

[1] This conclusion is also supported by the WCJ's Opinion on Decision wherein the contentions are identified: "Defendant is disputing the provision of medical transportation, or pre-payment of transportation, because the evaluation is not within a reasonable geographic distance and asserts that the applicant has not shown he cannot use public or private transportation due to his injury. (Defendant's Trial Brief, filed 4/7/2025, p. 1, line 23 – p. 2, line 6.) ... Defendant does not appear to be disputing that the applicant cannot drive himself to the evaluation with Dr. Costouros. (Defendant's Trial Brief, filed 4/7/2025, p. 1, line 23 – p. 2, line 6.)" (F&O, Opinion on Decision, p. 5.)

before us, nor interpose our own findings without running afoul of the parties' rights to due process. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584] citing *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158.)

It should be noted, however, that a decision of the Appeals Board (or WCJ) must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274, 280-281 [39 Cal.Comp.Cases 310].) Substantial evidence is evaluated in light of the entire record, and not by isolating evidence which supports a contention and ignoring that which rebuts the contention. (*Lamb, supra,* 11 Cal.3d at p. 281.) For instance, no decision could be supported by isolating the phrase "in the short term" from the context in which it was used in Dr. Weiss' January 19, 2023 report, or from the record as a whole. In January 2023, *more than two years out from applicant's injury*, AME Dr. Weiss stated that "it probably is inadvisable for [applicant], at least in the short term, to be driving, for everyone's safety." (App. Exh. 6, pp. 86; see also App. Exh. 5, p. 2.) Dr. Weiss did not define "in the short term" but *did* explain when and how it might be advisable for applicant to be released to drive again:

> **He relates that he has difficulty driving. Some of this is due to depth perception problems which will need to be evaluated by an ophthalmologist. I think his perception of cars moving toward him is related to vestibular dysfunction, particularly as his vestibular symptoms are worse while riding in a car.** Given the subjective complaints, and the fact that he does have some nystagmus on provocative maneuvers on exam, it probably is inadvisable for him, at least in the short term, to be driving, for everyone's safety. **What I recommend is that he undergo vestibular testing which I will order to obtain more data, and then have him participate in a vestibular rehabilitation program. He should also be evaluated by an ophthalmologist to assess depth perception, and then once improved and cleared, he may be able to drive although it may be prudent to have him undergo a driving test to err on the side of caution** unless his vestibular and visual symptoms resolve sufficiently with treatment. **If necessary, I will revise my opinions once vestibular testing results are available.**

(App. Exh. 6, p. 86, all emphasis added.)

On January 19, 2023, AME Dr. Weiss also determined that although there was "potential for improvement," applicant's condition was permanent and stationary as of the date of her report, January 19, 2023. (App. Exh. 6, p. 87.)

> **Vestibular function is quite markedly limiting his activities. I do believe that there is objective verification of vestibular dysfunction based on exam findings.** Referring to Table 15-13, page 334, he falls into Class 1 in that there is minimal equilibrium impairment, but he is limited in activities in hazardous surroundings at 8%. **This means that he would not be able to work at heights and, at this point, it is inadvisable for him to drive.** He does not fit into Class 2 in that there is no limitation for all daily activities except simple self-care. **This rating is somewhat provisional and may need to be revised depending on the results of vestibular testing.**

(*Id.*, at p. 89, emphasis added.)

Consequently, even had the issue been raised below, we would have had sufficient grounds to deny the petition on this issue on the merits. Defendant failed to produce any evidence to contradict the medical evidence produced by applicant at trial. (See Report, p. 4 ["The applicant submitted nine documentary exhibits. Defendant did not offer any exhibits and there was no testimony."].)[2] For instance, defendant did not produce evidence at trial that the testing and treatment related to applicant's vestibular symptoms and visual symptoms took place, or more importantly, that any such testing and/or treatment changed AME Dr. Weiss' opinion that it was unsafe for applicant to drive. Defendant is correct that applicant's treating physician does not discuss whether applicant should be released to drive, although as the WCJ points out, applicant submitted evidence that his treating physician continues to try to schedule the tests and treatment recommended by AME Dr. Weiss. (Report, p. 5.)

As to defendant's contentions that Dr. Costouros' office is unreasonably distant from applicant's residence and that applicant failed to establish there were no closer, qualified orthopedic specialists to conduct the same consultation, we concur with the WCJ's conclusions:

> There is no evidence that Dr. Costouros has an office anywhere else other than in Fremont. Based on applicant's May 9, 2024 letter to defendant, **defendant was aware of Dr. Costouros' office location at the time authorization was provided.** By authorizing the consultation with Dr. Costouros, the defendant was therefore authorizing the consultation in Fremont. Defendant is therefore liable for medical transportation to and from that appointment as stated in *Albarran v. Beach Haven Inn, supra.*

(Report, p. 9, fn. 3 omitted, emphasis added.)

[2] Any documents attached to defendant's post-trial briefing are not part of the trial record and therefore cannot be considered without infringing on the parties' right to due process. (See Report, p. 3; F&O, Opinion on Decision, p. 1.)

In addition, applicant did provide reasons that Dr. Costouros was the closest, qualified orthopedic specialist to conduct this one-time consultation. As already stated, defendant offered no evidence at trial to rebut applicant's evidence.

> There were challenges in finding a surgeon willing to accept workers compensation and take over this case with a prior reverse right shoulder arthroplasty performed June of 2021. In the PTP report of April 18, 2024, Applicant's Exhibit 7, the PTP Dr. Padgett reiterates that this consultation is for a revision of the initial 2021 surgery in light of progressing symptoms. This will need to be done by a physician other than the original surgeon (who already altered the joint's anatomy). Dr. Costouros has an expertise in rotator cuff replacements with experience in implants and repositioning. Additionally, our office requested Dr. Costouros for this shoulder consultation back in May 2024 almost a year ago (Applicant's Exhibit 3). Since that time, the defendant has failed to provide any alternative physicians. Defendant does not have a medical provider network or the equivalent of a medical access assistant who would have knowledge of our search and request.

(Applicant's Trial Brief, p. 3.)

In addition, we agree with the conclusion of the WCJ that "the sheer distance to Dr. Costouros' office, 151 miles, precludes a realistic public transit option." (F&O, Opinion on Decision, p. 5.) Defendant did not cite to evidence in support of its argument that there was a "public transit option" *or* that such an option would represent a reasonable alternative to medical transportation or the $600.00 currently requested for the one-time transportation cost.[3]

Finally, we concur with the WCJ that the cases cited by defendant are distinguishable both on their facts and pursuant to the underlying policy of the workers' compensation system:

> In *Hansen, supra*, it was the defendant who was seeking to compel the applicant to travel an unreasonable distance. **As stated in *Hansen, supra,* "… it is incumbent on the Board to interpret and apply all aspects of workers' compensation law, especially Labor Code provisions and its own regulations, liberally in favor of the worker consistent with the underlying**

[3] A simple internet search reveals that it would take almost five hours (*each way*) on a multi-leg "public transit" journey, likely involving a taxi to reach YoloBus or Amtrak from the Colusa area to the Sacramento area or Bay Area, and then connecting to AC Transit or other regional services to reach Fremont, with another taxi ride to the doctor's office – and then the reverse of that journey to return home. (See Evid. Code, § 452(h) [Appeals Board may take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."] In addition to the approximately 10 hours needed to take this round-trip "public transit" journey, the financial cost of the transport alone would most likely exceed the $600.00 currently requested for the one-time Dr. Costouros consultation, not including any overnight accommodation should it be necessary given the journey's length and/or schedule of the transit companies. (*Id.*)

> **policy of a pervasive and abiding solicitude for the worker."** (*Hansen v. Workers' Comp. Appeals Bd*. (1989) 211 Cal.App.3d 717, 722.) Therefore, while *Hansen, supra*, supports that a significant distance may be unreasonable for an unwilling applicant to be compelled to travel, it does not necessarily support that it is unreasonable distance where the consultation at that distance has been authorized, and the applicant is willing to travel the distance.
>
> The other three cases involve a determination of what is a reasonable distance for ongoing treatment. Certainly, if the treatment at issue in this case was ongoing, then the four cases would support a finding that 151-miles each way was not reasonable. However, the treatment at issue here is a one-time consultation. As emphasized in my Opinion on Decision, my decision that the distance to Dr. Costouros is reasonable was strictly limited to the one authorized consultation. (6/16/2025 Opinion on Decision.) My corresponding finding of fact that the distance was reasonable was also expressly limited to the on[e]-time consultation in Finding of Fact No. 5. (6/16/2025 Findings of Fact and Order.)

(Report, p. 10, emphasis added.)

Accordingly, given that the WCJ's decision is based on the issues raised below and based on substantial, unrebutted evidence, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings of Fact and Order issued on June 16, 2025 by a workers' compensation administrative law judge is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PAUL F. KELLY, 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.

MICHAEL ZAPATA
LAUGHLIN, FALBO, LEVY & MORESI
GALINE, FRYE, FITTING & FRANGOS
LITTLER MENDELSON, P.C.

AJF/mc

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

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

MICHAEL ZAPATA, ***Applicant*,** **vs.** **CITY OF FOSTER CITY, permissibly self-insured, administered by THE CITIES GROUP,** ***Defendant*.**	**Case No. ADJ15563574** **REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION AND NOTICE OF TRANSMISSION TO WCAB**

Lawrence Keller, Workers' Compensation Judge, hereby submits his report and recommendation on the Petition for Reconsideration filed herein.

I. INTRODUCTION

Defendant seeks reconsideration of my June 16, 2025 Findings of Fact and Order that the defendant is liable to provide medical transportation to a consultation with Dr. John Costouros, whose office is 151 miles each way from the applicant's home, since the applicant cannot drive himself. The defendant's verified Petition for Reconsideration was timely filed on July 11, 2025 (the 7/11/2025 Petition). The applicant did not file an Answer to the 7/11/2025 Petition.

The applicant Michael Zapata, born April 29, 1965, while employed on December 7, 2020, as a load/maintenance supervisor in California, by the City of Foster City, sustained injury arising out of and in the course of employment to his right shoulder. The applicant's primary treating physician was Dr. David Padgett. The parties stipulated that the shoulder consult with Dr. Costouros was authorized. The parties additionally stipulated that mileage from the applicant's home to Dr. Costouros is 151 miles one way. This matter proceeded to trial on March 19, 2025 on the issue of whether defendant is required to either provide transportation or prepay costs of applicant's Uber or Lyft type transportation, to the authorized shoulder surgery second opinion appointment with Dr.

John Costouros. Both applicant and defendant submitted post-trial briefs, and the matter was submitted for decision on April 7, 2025.

For the trial, the applicant was requesting prepayment in the amount of $600 for travel to Dr. Costouros. Defendant asserted there was not a requirement to advance expenses. Defendant also asserted the distance to Dr. Costouros' appointment was not reasonable.

In my June 16, 2025 Decision I found that the applicant was unable to drive the distance to an evaluation with Dr. Costouros and that public transportation was not a reasonable option. (6/16/2025 Findings of Fact Nos. 4 and 6.) I found that defendant authorized a consultation with Dr. Costouros in his Fremont offices, and that the 151-mile distance was reasonable for that one consultation. (6/16/2025 Findings of Fact Nos. 2, 3, and 5.) I therefore ordered that defendant arrange medical transportation unless the parties mutually agree to have the applicant arrange his own Uber or Lyft type transportation which shall be pre-paid by defendant. (6/16/2025 Findings of Fact and Order, p. 2.)

Defendant has filed their appeal of my decision as a Petition for Reconsideration, and I will accordingly treat it as such.

II. THE PETITION DOES NOT PROPERLY CITE TO THE EVIDENTIARY RECORD

Title 8 California Code of Regulations section 10945 states the requirements for a Petition for Reconsideration, including that:

> "(b) Every petition and answer shall support its evidentiary statements by specific references to the record.
>
> (1) References to any stipulations, issues or testimony contained in any Minutes of Hearing, Summary of Evidence or hearing transcript shall specify:
>
> (A) The date and time of the hearing; and
>
> (B) If available, the page(s) and line number(s) of the Minutes, Summary, or transcript to which the evidentiary statement relates (e.g., "Summary of Evidence, 5/1/08 trial, 1:30pm session, at 6:11-6:15").
>
> (2) References to any documentary evidence shall specify:

(A) The exhibit number or letter of the document;
(B) Where applicable, the author(s) of the document;
(C) Where applicable, the date(s) of the document; and
(D) The relevant page number(s) (e.g., "Exhibit M, Report of John A. Jones, M.D., 6/16/08 at p. 7.")."

Title 8 California Code of Regulations section 10972 provides that, "[a] petition for reconsideration, removal or disqualification may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved."

Defendant's 7/11/2025 Petition contains a statement of relevant facts that contains only two citations to the record but makes statements of alleged facts without citation to the record in reference to those alleged facts. It appears that the defendant is asserting facts that are not in the evidentiary record. For example, defendant stated "Defendants requested Applicant select a shoulder specialist within a reasonable geographic area for his second consultation. Defendants does not have a Medical Provider Network ("MPN"). Applicant is free to choose any shoulder specialist as a consult." (7/11/2025 Petition, p. 3, lines 8-10.) I found no evidence supporting these assertions. In fact, the email exchange between the applicant's attorney and defense counsel stated, "Is your client able to obtain transportation and submit reimbursement or is there difficulty there?" (Applicant's Exhibit 10, p. 1.) The evidence not only does not have defendant requesting the applicant select a different specialist in a reasonable geographic distance but rather appears to accept the location and is instead seeking to clarify that applicant can seek reimbursement for travel.

It is further noted that the defendant attempted in its post-trial brief to submit additional exhibits that had not been offered at trial. (6/16/2025 Opinion on Decision, p. 1.) Because of the failure to reference the evidentiary record with specificity, and apparent misrepresentation of the evidentiary record, defendant's Petition for Reconsideration should be denied. Notwithstanding the

foregoing, defendant's 7/11/2025 Petition should be denied upon its merits as well, as discussed below.

III. EVIDENCE

The applicant submitted nine documentary exhibits. Defendant did not offer any exhibits and there was no testimony. The below summary of evidence is taken directly from my June 16, 2025 Opinion on Decision, as the facts seem relevant to defendants arguments in the 7/11/2025 Petition.

Applicant's Exhibit 5: AME report of Jacquelyn Weiss, M.D., dated February 24, 2023.
Applicant's Exhibit 6: AME report of Jacquelyn Weiss, M.D., dated January 19, 2023.
Applicant's Exhibit 7: Report of David Padgett, D.O., dated April 18, 2024, with April 19, 2024 RFA.
Applicant's Exhibit 8: Report of Allen Kaisler-Meza, M.D., dated May 3, 2022.
Applicant's Exhibit 9: Report of David Padgett, D.O., with RFA, dated May 31, 2024.

The exact mechanism of injury is not clear as the applicant's fall was not witnessed. (Applicant's Exhibit 6, p. 40.) He was working in the back of a non-moving truck and found himself on the ground or floor when he regained consciousness with a laceration to the head, perhaps having fallen into or having struck a dumpster. (*Id*. at pp. 40, 78.) The applicant was seen via telemedicine by David Padgett, D.O. on May 3, 2022. (Applicant's Exhibit 8, p. 1.) The applicant reported "significant dizziness and cognitive disturbance with riding in a car. He states that he does not feel safe driving. He states that if he is in a car for more than 45 minutes he has to lay down for at least 30 minutes until his dizziness clears." (*Id*. at p. 2.) Dr. Padgett reviewed a report of Dr. Trevino that stated, "Post traumatic sensation of things moving when they are not and headaches". (*Ibid*.) Dr. Padgett stated that the applicant had cognitive and visual disturbances that were worsened by his being in or driving a car and he accordingly requested transportation to and from in-person medical evaluations. (*Id*. at p. 3.) The applicant was unable to work as a result of his injury symptoms that included cognitive impairment and dizziness. (*Ibid*.)

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The applicant was evaluated via telemedicine by neurology AME Jacquelyn Weiss, M.D. on January 19, 2023. (Applicant's Exhibit 6, p. 1.) Among the applicant's current symptoms was that he cannot drive due to dizziness and vertigo when in the car. (*Id*. at p. 3.) Dr. Weiss' review of records reveals that the applicant continued to have concerns about driving after the May 3, 2022 appointment with Dr. Padgett. (*Id*. at p. 79-82.) Dr. Weiss recommended vestibular testing, evaluation by an ophthalmologist, and a functional restoration program, but nevertheless found the applicant's disability to be permanent and stationary. (*Id*. at p. 87.)

In discussing the vestibular dysfunction, Dr. Weiss stated that it was inadvisable for the applicant to drive. (Applicant's Exhibit 6, p. 87.) In discussing work limitation, Dr. Weiss stated that the applicant should avoid driving "… at least in the short term." (*Id*. at p. 89.) The vestibular rating was "… somewhat provisional and may need to be revised depending on the results of vestibular testing." (*Ibid*.) In a supplemental, report Dr. Weiss noted that she was advised the vestibular testing could not be arranged and she recommended an evaluation with an Ear, Nose, and Throat QME who might be able to perform vestibular testing. (Applicant's Exhibit 5, p. 2.)

In a largely handwritten treatment note from an April 18, 2024 video visit, Dr. Padgett noted that the applicant's attorney stated the applicant was accepted for a University of California – San Francisco (UCSF) neuro-ophthalmology consultation. (Applicant's Exhibit 7, p. 2.[1]) In his prescription section, Dr. Padgett requested a full neuro-ophthalmology consultation. (*Id*. at p. 5.) In a follow-up report from a May 31, 2024 video visit, Dr. Padgett noted that there was, "No word on UCSF Neuro Opthalmologist [sic] evaluation." (Applicant's Exhibit 9, p. 3.) Neither of the 2024 reports of Dr. Padgett discussed work restrictions or the applicant's ability to drive.

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[1] Page numbers reflect the page of the PDF of the exhibit as saved in FileNet.

Applicant's Exhibit 1: Applicant's attorney's letter to defense counsel dated February 7, 2025.
Applicant's Exhibit 2: Applicant's letter to defense counsel dated June 24, 2024.
Applicant's Exhibit 3: Applicant's letter to defense counsel dated May 9, 2024.
Applicant's Exhibit 10: Email chain between applicant's attorney and defense attorney from July 1 through July 8, 2024.

On May 9, 2024, the applicant's attorney wrote to the adjuster requesting authorization for a consultation with Dr. Costouros, providing Dr. Costouros' Fremont address.[2] (Applicant's Exhibit 3.) Applicant's attorney's office wrote defense counsel requesting that transportation for an MRI and to a Dr. Reeve be arranged in advance. (Applicant's Exhibit 2.) The applicant's attorney's office stated that the applicant was "… not in a position to arrange Uber rides and advanced arrangements would need to be considered for up-front costs." (*Ibid*.)

In an email to defense counsel on July 8, 2024, it was indicated that transportation was an issue in getting the applicant to his primary treating physician, an MRI, and an eye appointment. (Applicant's Exhibit 10, p. 1.) On the same day the defense attorney responded, asking if the applicant could obtain his own transportation and submit a reimbursement request or if there was difficulty in addressing transportation in that manner. (*Ibid*.) On February 7, 2025 the applicant's attorney wrote to defense counsel "… re-requesting transportation and authority for him to be seen by Dr. John Costouros. [] Dr. Costouros is the only specialist who will see Mr. Zapata and I estimate the transportation fee will be $600.00 which I am requesting in advance." (Applicant's Exhibit 1.)

IV. CONTENTIONS ON RECONSIDERATION

The defendant petitioned for reconsideration of my June 16, 2025 decision on the grounds that, "The evidence does not justify the finding of fact when the WCJ relied on outdated medical

[2] A review of the EAMS file indicates the applicant is a resident of Colusa, California, which supports the parties' stipulation that the one-way distance between the applicant's home and Dr. Costouras' office is 151 miles.

reports from 2023 to conclude that the Mr. Michael Zapata ("Applicant") cannot drive and requires transportation, despite the fact that the burden of proof lies with the Applicant." (7/11/2025 Petition, p. 2, lines 9-11.) From my review of the defendant's trial brief, I had been under the impression that they were not disputing that the applicant could not drive himself to the evaluation with Dr. Costouros, but rather that the applicant had not shown he could not use public transit. (Defendant's Trial Brief, filed 4/7/2025, p. 1, line 23 – p. 2, line 6.) From the 7/11/2025 Petition, it is clear that defendant is disputing my Finding of Fact that the applicant cannot drive himself to and from the evaluation with Dr. Costouros. (7/11/2025 Petition, p. 4, lines 15-20.) Defendant further contends that, "The WCJ acted without or in excess of his power when he required Defendants to provide medical transportation to a medical consultation solely because the consultation was authorized despite the distance being unreasonable." (Id. at p. 2, lines 12-14.)

V. DISCUSSION

WHETHER THE APPLICANT IS ABLE TO DRIVE HIMSELF TO THE EVALUATION.

Dr. Weiss found that the applicant should not drive at the time of her January 19, 2023 report in this matter. At the time the applicant's disability was permanent and stationary, meaning the applicant's condition was well stabilized, and unlikely to change substantially. (Cal. Code Regs., tit. 8, § 10116.9(m).) Dr. Weiss did opine that the recommendation regarding driving could change based on further testing, but there is no evidence that the additional testing occurred. In an April 18, 2024 report Dr. Padgett opined that a neuro-ophthalmology consultation had not yet occurred.

It is acknowledged that the report of Dr. Weiss is over two years old. It is also acknowledged that her statement that the applicant should not drive is tempered by the statement "… at least in the short term." However, the report is also a permanent and stationary report, meaning that the disability is permanent and unlikely to change. I find that sufficient for the applicant to meet his burden to demonstrate that he cannot drive. The burden then shifts to defendant to show that there

has been some change to that permanent and stationary disability which would mean the applicant can now drive. Defendant offered no such evidence, and none is found in applicant's exhibits.

Instead, there is a report from May 31, 2024 evidencing that the applicant continued, more than a year after the evaluation by Dr. Weiss, to require a neuro-ophthalmology consultation. This would support that the applicant continues to have medical issues which could impact his ability to drive. The mere need for a neuro-ophthalmology consultation may not independently be sufficient to support a finding that the applicant cannot drive, but it supports that there has not been a significant improvement to the applicant's condition from the time that Dr. Weiss found he should not drive.

Therefore, I found, and continue to find, that the applicant is unable to drive himself to and from the appointment with Dr. Costouros that is 151-miles away, each way.

WHETHER THE DISTANCE TO THE EVALUATION IS REASONABLE.

The defendant is required to provide reasonable medical treatment to cure or relieve from the effects of an industrial injury. (Lab. Code, § 4600(a).) The defendant is required to provide transportation expenses for medical appointments. (Lab. Code, § 4600(e).) However, there is no legal authority that defendant must pre-pay transportation expenses. (*Avila v. Payless Cashways*, 2017 Cal. Wrk. Comp. P.D. LEXIS 554, *12.) As stated in the non-binding panel decision of *Albarran v. Beach Haven Inn*, 2023 Cal. Wrk. Comp. P.D. LEXIS 293, "… the provision of transportation to and from medical appointments is an ancillary component to medical treatment benefits under section 4600. (See also *Onruang v. UCLA* (December 14, 2021, ADJ10793479) [2021 Cal. Wrk. Comp. P.D. LEXIS 348].)" (*Albarran v. Beach Haven Inn*, 2023 Cal. Wrk. Comp. P.D. LEXIS 293, *9.)

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Defendant disputed the provision of medical transportation, or pre-payment of transportation, because the evaluation is not within a reasonable geographic distance. (7/11/2025 Petition, p. 5, lines 1-26.) The parties have also stipulated that the consultation with Dr. Costouros has been authorized. (3/19/2025 MOH, p. 2, lines 16-17.) There is no evidence that Dr. Costouros has an office anywhere else other than in Fremont. Based on applicant's May 9, 2024 letter to defendant, defendant was aware of Dr. Costouros' office location at the time authorization was provided.[3] By authorizing the consultation with Dr. Costouros, the defendant was therefore authorizing the consultation in Fremont. Defendant is therefore liable for medical transportation to and from that appointment as stated in *Albarran v. Beach Haven Inn, supra*.

Defendant cites to a number of cases to support that it should only be liable for transportation expenses within a reasonable geographic area, including *Hansen v. Workers' Comp. Appeals Bd*. (1989) 211 Cal.App.3d 717. That case involved an applicant objecting to a defense medical examination that was 185 miles from the applicant's residence. (*Id*. at pp. 718-719.) In *Hansen* it was found that, "Ordering the worker to attend a medical examination 185 miles from his residence is unreasonable and should not be sanctioned by the Board under its own practice." (*Id*. at p. 721.) *Hansen, supra*, cites to two cases which also found a requirement for distances to be reasonable. (*Id*. at p. 721.) In *County of Santa Barbara v. Workers Compensation Appeals Bd. of California & Patrick J. Breeding* (1978) 43 Cal.Comp.Cases 493, it was found that requiring an applicant to travel to Santa Barbara from Santa Maria for medical treatment was too far of a distance. (*Id*. at 495.) In *McRae v. Owens-Corning Fiberglass Corp*. (1951) 16 Cal. Comp. Cases 203, fifty miles was found to be too far for defendant to require the applicant to travel for treatment. (*Id*. at 204.) In *Singh v. Workers Compensation Appeals Bd*. (1998) 63 Cal. Comp. Cases 225, cited by defendant, it

[3] The date of authorization is unknown but it would have been sometime between the May 9, 2024 letter and the date of the trial.

was found that defendant was permitted to change the applicant's treating physician to a provider closer to applicant's address when a move meant the prior treating physician was now over 100 miles away. (*Id*. at p. 226.)

The four cases discussed immediately above are distinguishable from the case at issue. In *Hansen, supra*, it was the defendant who was seeking to compel the applicant to travel an unreasonable distance. As stated in *Hansen, supra*, "… it is incumbent on the Board to interpret and apply all aspects of workers' compensation law, especially Labor Code provisions and its own regulations, liberally in favor of the worker consistent with the underlying policy of a pervasive and abiding solicitude for the worker." (*Hansen v. Workers' Comp. Appeals Bd*. (1989) 211 Cal.App.3d 717, 722.) Therefore, while *Hansen*, *supra*, supports that a significant distance may be unreasonable for an unwilling applicant to be compelled to travel, it does not necessarily support that it is unreasonable distance where the consultation at that distance has been authorized, and the applicant is willing to travel the distance.

The other three cases involve a determination of what is a reasonable distance for ongoing treatment. Certainly, if the treatment at issue in this case was ongoing, then the four cases would support a finding that 151-miles each way was not reasonable. However, the treatment at issue here is a one-time consultation. As emphasized in my Opinion on Decision, my decision that the distance to Dr. Costouros is reasonable was strictly limited to the one authorized consultation. (6/16/2025 Opinion on Decision.) My corresponding finding of fact that the distance was reasonable was also expressly limited to the on-time consultation in Finding of Fact No. 5. (6/16/2025 Findings of Fact and Order.)

The distance is found to be reasonable for the consultation because the defendant authorized the consultation knowing of the location that the consultation was to occur. Because the distance is

reasonable for this one consultation, and because the applicant cannot drive himself and public transit is not an option, I found, and continue to find, that defendant is required to provide transportation to the applicant's appointment with Dr. Costouros. Without the provision of transportation to the consultation with Dr. Costouros, the applicant would effectively be prevented from attending the authorized consultation. To find that defendant was not responsible to provide transportation to the authorized consultation would be to excuse the defendant for a failure to provide authorized medical treatment to cure or relieve the effects of the applicant's injury.

VI. RECOMMENDATION

For the foregoing reasons, I recommend that the defendant's Petition for Reconsideration, filed July 11, 2025, be DENIED. This matter is being transmitted to the Appeals Board on the service date indicated below my signature.

DATE: July 24, 2025

LAWRENCE A. KELLER
WORKERS' COMPENSATION JUDGE