WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MICHELLE DELAO, *Applicant*

vs.

STATE OF CALIFORNIA, IHSS, and INTERCARE HOLDING INSURANCE, *Defendants*

Adjudication Number: ADJ14950155
San Jose District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant in pro per seeks reconsideration of the Findings and Order (F&O) issued on December 19, 2024, wherein the workers' compensation administrative law judge (WCJ) found that (1) while employed as a caregiver on November 18, 2020, applicant did not sustain injury arising out of and in the course of employment (AOE/COE) as a result of COVID-19/Long Haul COVID; (2) on the date of alleged injury, the employer was legally uninsured; (3) applicant's exhibits 1, 2, and 3 are admitted into evidence; (4) applicants' exhibits 2, 3 and 4 do not constitute substantial medical evidence; and (5) applicant failed to establish that she contracted COVID-19 from exposure to her care recipient.

The WCJ ordered that applicant take nothing on her claim.

Applicant contends that the WCJ erroneously failed to find that she sustained injury AOE/COE from her November 18, 2020 exposure to her care recipient.

We received an Answer from defendant.

We received a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have reviewed the contents of the Petition, the Answer, and the Report. Based upon our review of the record, and for the reasons set forth below, we will grant reconsideration, and, as our Decision After Reconsideration, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On May 20, 2024, the matter proceeded to trial on the following issues:

1. Injury arising out of and in the course of employment;
2. Liability for self-procured medical treatment is raised and deferred.

Defendant asserts the reports of Dr. Cervenka are not substantial medical evidence. (Minutes of Hearing and Summary of Evidence, May 20, 2024, p. 2:21-28.)

In the Report, the WCJ states:

[A]pplicant claims to have sustained injury arising out of and in the course of employment as a result of COVID-19 (Covid), while transporting her care recipient from the hospital to his home on 11/18/2020. The care recipient subsequently tested positive for Covid on 11/19/2020. There were several timelines provided in primary treating physician Dr. Andrea Cervenka's letters and also in Dr. Bonilla's 4/11/2023 report. However, the undersigned found the following timeline of events to be the most accurate, as it was confirmed by the parties during the 12/20/2022 deposition of QME David Baum, M.D. (Exhibit G, p. 7: 20-25; p. 8, 1-23):

> 11/16/2020 - Applicant had negative Covid test when preparing for esogophagogastroduodenoscopy.
> 11/18/2020 - Transported care recipient from hospital. He was symptomatic.
> 11/19/2020 – Applicant underwent endoscopy procedure.
> 11/19/2020 or 11/20/2020 – symptoms of sniffles started.
> 11/20/2020 – Daughter and granddaughter visited with applicant
> 11/20/2020 – Applicant became aware of client's Covid positive diagnosis and immediately started quarantine.
> 11/23/2020 or 11/25/2020 – Granddaughter tested positive for Covid.
> 11/28/2020 – Daughter tested positive for Covid.
> 12/05/2020 – Applicant had negative Covid test while still in quarantine.
> 12/15/2020 – Applicant underwent abdominal ultrasound at O'Connor Hospital
> 12/21/2020 – Applicant began to have worsening symptoms while still in quarantine.
> 12/23/2020 – Applicant felt worse and tested positive for Covid.
> 01/01/2021 – Applicant's symptoms worsened and she was hospitalized.

Applicant relies on the letters of her primary treating physician Andrea Cervenka, M.D. and the 4/11/2023 initial consultation clinical notes of Hector Bonilla M.D. of the Stanford Long-COVID clinic, wherein the doctors opine that applicant's

Covid/Long-Covid was as a result to her 11/18/2020 exposure to her care recipient.
. . .
The undersigned found the reports and opinions of QME Dr. Baum were more persuasive and are substantial medical evidence supporting non-industrial causation for applicant's Covid infection.
. . .
On 1/03/2025, applicant dismissed her attorney and is now unrepresented and was so at the time her petition was filed. (Judicial Notice, EAMS Doc. ID No. 78747301) Applicant has attached several documents to her Petition in violation of 8 CCR § 10945(c)(2), which states that a document that is not part of the adjudication file shall not be attached to or filed with a petition for reconsideration or answer unless a ground for the petition for reconsideration is newly discovered evidence. As applicant makes no mention of newly discovered evidence as grounds for her petition, the undersigned has not read nor will consider said attachments.
. . .
On 5/07/2021, Dr. Cervenka issued a letter indicating that on 11/18/2020, applicant had unknowingly been exposed, in closed quarters for a prolonged period, to an individual with Covid while in the course of her work as a caregiver. It was her opinion that this was the cause of applicant's subsequent Covid diagnosis. (Exhibit 8)

On 6/25/2021, Dr. Cervenka issued a letter with a timeline of applicant's exposure and subsequent illness. Missing from that timeline is the 12/15/2020 visit to O'Connor Hospital. Dr. Cervenka stated applicant tested negative for COVID again on 12/5/21, however, this appears to be a typo. [fn]1 Dr. Cervenka indicated, "[applicant] began to have symptoms on 12/21/20. She was tested for COVID again on 12/23/21[fn]2 (still while in quarantine) and the test was positive. Her symptoms continued to get worse until she was hospitalized on 1/1/21."
. . .
On 9/27/2021, Dr. Cervenka issued another letter indicating applicant had tested negative for COVID on 12/5/2020 and had been having some symptoms since November 27, 2020. Dr. Cervenka stated, "There are a variety of reasons why her test may have been negative, including that she may have had a longer incubation period than normal, she may have had a low viral load, and the test may have been a false negative result." (Exhibit 5) However, Dr. Cervenka offered no further explanation as to whether and why any of these reasons had occurred with applicant.

On 2/22/2022, Dr. Cervenka issued yet another letter indicating a timeline that is similar to the one in her 6/25/2021 letter. Although she corrects the dates of the Covid tests, applicant's 12/15/2020 visit to O'Connor Hospital is still absent. It is apparent that Dr. Cervenka's opinion is based on her incorrect belief that applicant was completely quarantined after the exposure to her care recipient and "was not exposed to anyone who could have infected her (between the time she began quarantine and the time she was formally diagnosed.)" Dr. Cervenka also opined, without supporting medical evidence nor explanation, that she believed applicant

would have tested positive if she had done another test between 12/6/20 and 12/23/20. (Exhibit 4)

On 4/11/2023, Dr. Hector Bonilla issued an Initial Consultation report/clinical notes. Page 4 indicates the following timeline:

> Timeline: In December 2020, she worked as a caregiver, ad (sic) her client became sick with a cough. He went to the hospital and tested positive for covid. Her symptoms started on December 19/2020, with a running nose and itching throat, and she stayed at home, but her symptoms worsened. In December, she had a flu-like illness with cough, HA, eye pain, and more fatigue, and her stomach was very uncomfortable, with nausea and body ache. She tested negative for Covid; her wheezing became worse. On December 23, 2020, she positive for covid. 12/31/2022, she was admitted to O'Connor hospital for respiratory failure, Sat 92%...

On page 1, he noted a "CORRECTION" to correct the symptoms of covid start date to 11/20/2020. On page 2, under "New Patient Questionnaire – Post-COVID infection", a symptom start date of 11/20/2020 is also noted, with duration of symptoms of 35 days and date of first positive Covid test indicating 12/23/2020. Also on page 2, after the question, "Have you been infected with COVID-19 multiple times?" it indicates "(2) 12/23/2020 and 1/5/2021" (Exhibit 3) It is unclear whether there was a 1/5/2021 infection date, but it coincides with applicant's hospital discharge date. On page 9, he indicated, "Her symptoms of covid started on 12/19/20. Dx by PCR on 12/23/220."

On 5/15/2023, Dr. Cervenka issued another letter in which she indicated applicant had seen Dr. Bonilla at the Stanford Long-COVID clinic on 4/11/2023, and that he agrees that applicant's symptoms are consistent with Long-COVID syndrome and with the timeline of exposure and subsequent testing sequence.

. . .

As discussed in the undersigned's opinion, the reports and opinions of Dr. Cervenka and Dr. Bonilla are based on an inaccurate history, are internally inconsistent, and are not framed in terms of reasonable medical probability. Neither doctor issued a comprehensive medical report offering their reasoning to support their opinion.

. . .

In her petition, applicant asserts that at the time of her Covid test of 12/5/2020, she was tested in a drive-through testing site and that she expressed in one of the phone calls that she was swabbed further in her nose but that the nurse she spoke to said that should be fine.

. . .

Applicant further asserts that in 2022, she became sick and was tested for Covid, flu and RSV several times and tested negative, but that after still being very sick, she visited the emergency department and was re-tested for everything about 6 weeks after her symptoms started and tested positive for the flu. This event was

documented on Dr. Cervenka's 1/26/2023 letter, in which she noted two episodes where applicant was ill and had a delay in her testing positive for the disease. She states the first was Covid, wherein applicant was closely exposed on 11/18/2020 and was repeatedly tested and closely monitored, but did not test positive until 12/23/2020. The other, more recent event, was where applicant was exposed to influenza by her family member and became ill around November 22, 2022. After being seen multiple times in Urgent Care, she was tested for Covid/RSV/Flu on 11/29 and12/8 and eventually tested positive for Influenza A on 12/14/2023. Dr. Cervenka indicates she is concerned that applicant shows a delay in positive testing and wonders if she has some type of immunological issue. Dr. Cervenka referred applicant to an immunology specialist "to further investigate this phenomenon." (Exhibit 2) However, the follow up evaluation by Dr. Bonilla did not mention this incident. The 4/11/2023, Clinical Notes of Dr. Bonilla indicate an "N/A" after "Exogenous or Endogenous Immunosuppression." He also does not make any reference to any immunological issue that may have resulted in applicant's delay in positive testing.

QME David Baum, M.D. issued several reports in which he opines that applicant's Covid exposure to her client on [1]1/18/2020, could not have resulted in her positive Covid test on 12/23/2020 and her 1/01/2021 hospitalization. On 9/10/2021, QME David Baum, M.D. noted,

> On the other hand, her history is difficult to reconcile. She was exposed to a client who was diagnosed with COVID-19 around November 18, 2020. She claims that she developed symptoms in late November 2020. However, on November 19, 2020 she was examined for esophagogastroduodenoscopy, at which time she underwent the procedure. The progress notes dated 11/19/20 make no reference to respiratory symptoms.
>
> Judging from the progress notes provided, the symptoms of her COVID infection developed between December 21 and December 23, 2020. In other words, the symptoms developed more than a month after the alleged exposure, which ended on November 18, 2020.
>
> In most cases, the acute COVID-19 symptoms develop three to seven days after the acute exposure. The symptoms may develop as long as 14 days after the exposure. In the present case, however, the evidence suggests that her symptoms began about 40 days after the alleged exposure. I will not speculate about the source of her COVID-19 infection. The incubation period of the COVID-19 virus is four to five days. It is not 40 days. The time discrepancy between the exposure and the symptoms in this case argues against the IHSS presumption for COVID-19 infection.

> In summary, it is not medically probable that her COVID-19 infection was acquired in the course of her services for IHSS. It is however, medically probable that she is a true "long hauler" who has apparently developed an autoimmune condition provoked by her COVID-19 infection. (Exhibit C, p. 30)

Dr. Baum was deposed twice, on 12/20/2022 and on 10/17/2023. During his 12/20/2022 deposition, Dr. Baum testified it is not medically probable that applicant was infected with Covid on 11/18/2020 by her care recipient because applicant's Covid positive test on 12/23/2020 does not fall within the generally medically accepted timeline of the incubation period. (Exhibit G, p.22: 20-25; p. 23: 1) Dr. Baum opined that based on the 12/23/2020 Covid positive test, applicant's period of exposure would have been sometime between December 16th to December 22nd. (Exhibit G, p. 25: 9-10) He testified that the exceptions to the general 14-day rule are extremely rare. Dr. Baum opined that the more likely scenario was that the Covid antigen was, in fact, positive on December 23, because applicant developed hypoxia, pneumonia, and other symptoms, which led to her hospitalization on 1/01/2021. (Exhibit I, p. 52: 22-25) He further opined that, "there is no way that he can say that applicant's exposure was related to her client's disease on November 18. It just doesn't add up. If the incubation period of Covid is mean four to five days with a range of two to 14 days, there's no way that that would fit into the scenario." (Exhibit I, p. 53: 8-13) Dr. Baum opined that most likely, applicant developed the sniffles or mild viral infection in early to mid November of 2020. He opined that applicant's mild illness in November was likely not Covid, and that her severe illness in December was likely Covid. (Exhibit I, p. 53: 20-22) Significantly, Dr. Baum emphasized that if he were to conclude that applicant's Covid infection was related to her exposure on 11/18/2020, he "would be hard pressed to explain the time frame of her serology and the time frame of her testing and the time frame of her hospitalization." (Exhibit I, p. 72: 16-21) Dr. Baum opined that, while he cannot know where applicant acquired the Covid infection, he is reasonably certain she did not acquire it from her client. (Exhibit I, p. 73: 16-19)

. . .

While applicant asserts she quarantined as soon as she learned of her care recipient's Covid positive diagnosis, applicant broke quarantine on 12/15/2020, when she underwent an abdominal ultrasound at O'Connor Hospital. This significant break in quarantine was not considered nor discussed by either Dr. Cervenka nor Dr. Bonilla. Further, the 12/23/2020 Covid positive test appears to support applicant's potential exposure on 12/15/2020, as Dr. Baum opined the period of exposure would have been sometime between December 16th to December 22nd. (Exhibit G, p. 25: 9-10) Significantly, applicant testified her symptoms became worse on 12/20/2020, five days after her ultrasound procedure of 12/15/2020. (7/24/2024 MOH/SOE, p. 8: 41-42)

(Report, pp. 2-9.)

DISCUSSION

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:

> (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 January 21, 2025, and 60 days from the date of transmission is March 22, 2025. The next business day that is 60 days from the date of transmission is Monday, March 24, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on Monday, March 24, 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

[1] 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.

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 January 21, 2025, and the case was transmitted to the Appeals Board on January 21, 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 January 21, 2025.

II.

Applicant contends that the WCJ erroneously failed to find that she sustained injury AOE/COE from her November 18, 2020 exposure to her care recipient.

The test for whether an injury arose out of and in the course of employment is well-established. *(LaTourette v. Workers' Comp. Appeals Bd*. (1998) 17 Cal.4th 644 [72 Cal. Rptr. 2d 217, 951 P.2d 1184, 63 Cal.Comp.Cases 253].)

First, the injury must occur "in the course of employment," which ordinarily "refers to the time, place, and circumstances under which the injury occurs." (*LaTourette*, supra, 63 Cal.Comp.Cases at p. 256.) An employee is acting within "the course of employment" when "he does those reasonable things which his contract with his employment expressly or impliedly permit him to do." (*Ibid*.) An employee necessarily acts within the "course of employment" when "performing a duty imposed upon him by his employer and one necessary to perform before the terms of the contract [are] mutually satisfied." (*Maher v. Workers' Comp. Appeals Bd*. (1983) 33 Cal.3d 729 [190 Cal. Rptr. 904, 661 P.2d 1058, 48 Cal.Comp.Cases 326, 328].)

Second, the injury must "arise out of" the employment, "that is, occur by reason of a condition or incident of employment." (*Employers Mutual Liability Ins. Co. of Wisconsin v. I.A.C.* (*Gideon*) (1953) 41 Cal.2d 676 [18 Cal.Comp.Cases 286, 288]. "[T]he employment and the injury must be linked in some causal fashion," but such connection need not be the sole cause, it is sufficient if it is a "contributory cause." (*Maher*, *supra*, 48 Cal.Comp.Cases at page 329.)

A finding that an injury is an industrial injury must be based on substantial medical evidence. To be substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and set forth

reasoning to support the expert conclusions reached. (*E.L. Yeager 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 (Appeals Board en banc).) "A medical report predicated upon an incorrect legal theory and devoid of relevant factual basis, as well as a medical opinion extended beyond the range of the physician's expertise, cannot rise to a higher level than its own inadequate premises." (*Zemke v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 794 [69 Cal.Rptr. 88, 441 P.2d 928, 33 Cal.Comp.Cases 358, 363].) "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 [36 Cal.Comp.Cases at 93, 97] Whether a physician's opinion constitutes substantial evidence "must be determined by the material facts upon which his opinion was based and by the reasons given for his opinion." (*Ibid*.)

Substantial evidence of industrial causation must be based on reasonable medical probability--it is not required to prove causation to a "scientific certainty." (See *McAllister v. Workmen's Comp. App. Bd*. (1968) 69 Cal. 2d 408, [71 Cal.Rptr. 697, 445 P.2d 313, 33 Cal.Comp.Cases 660]; *Rosas v. Workers' Compensation Appeals Board* (1993) 16 Cal.App.4th 1692 [20 Cal.Rptr.2d 778, 58 Cal.Comp.Cases 313, 319].) In cases where an applicant's injury is caused by a communicable disease, the essential questions of when and where applicant contracted the disease may be unanswerable with any certainty. In those circumstances, the employee can establish industrial causation by demonstrating that it is more likely applicant acquired the disease at work or that the employment subjected the employee to a special risk of exposure in excess of the general population. (*Bethlehem Steel Co. v. Industrial Acc. Com.* (1943) 21 Cal.2d 742 [135 P.2d 153, 8 Cal.Comp.Cases 61].)

For example, in *4Leaf, Inc. v. Workers' Compensation Appeals Bd*. (*Sanchez*), 88 Cal.Comp.Cases 1164 (writ den.), the Court of Appeals affirmed a finding that an applicant sustained injury AOE/COE in form of COVID-19 on January 27, 2021, where the evidence demonstrated that it was more likely the applicant acquired the disease at work and that applicant's employment subjected her to special risk of exposure in excess of that of general public. More specifically, the Appeals Board found that it was more likely the applicant was infected with COVID-19 in the workplace based upon evidence that (1) there was exposure to COVID-19 from

a coworker with whom she worked in close proximity during the days before she tested positive for COVID-19; (2) the COVID-19-positive test result was contemporaneous with the exposure; (3) COVID-19 precautions were lacking in her workplace; and (4) it was more medically probable that applicant acquired COVID-19 at her workplace than during her non-workplace activities. (*Id.*; see also *City of Fresno v. Workers' Comp. Appeals Bd*. (*Bradley*) (1992) 57 Cal.Comp.Cases 375 (writ den.) (finding that a detective sustained industrial injury in the form of Hepatitis B infection based upon evidence that his work exposed him to drug addicts and needles and those exposures resulted in a higher probability of contracting Hepatitis B than the general population); *City of Turlock v. Workers' Comp Appeals Bd.* (STK09YYZZZ) (2007) 72 Cal.Comp.Cases 931, 934 (writ den.) (finding industrial injury to a sewage worker in the form of Hepatitis C infection based on medical reporting that it was "more probable than not" that the infection resulted from exposure to the virus at work).)

Reasonable probability does not require applicant to prove in detail, "...the approximate number of hours of exposure, or as to the amount of exposure needed to increase materially the danger of injury." (*McAllister*, *supra*, 69 Cal.2d at 418 referring to *Industrial Indem. Exchange v. Industrial Acc. Com*. (1948) 87 Cal.App.2d 465 [13 Cal.Comp.Cases 220].) Nor does an employee have to prove "scientifically...the source of contagion or the cause of the disease, but only that he establish by a preponderance of likelihood the fact that his disability arose out of and happened in the course of employment." (*McAllister*, *supra*, 69 Cal.2d at 417-418.) It is a medical expert's job to assess whether it is medically probable that disease transmission occurred at work. The opinions of qualified physicians are entitled to consideration "since it is part of their vocation to observe diseases and how they spread and to draw conclusions from those observations." (*Pacific Employers Ins. Co. v. Industrial Acc. Com.* (*Ehrhardt*) (1942) 19 Cal.2d 622, 629 [122 P.2d 570], quoting *San Francisco v. Industrial Acc. Com*. (*Slattery*) (1920) 183 Cal. 273, 284 [191 P. 26].)

In this case, the WCJ relied upon Dr. Baum's reporting that applicant could not have contracted COVID-19 on November 18, 2020, because the maximum latency period between exposure to COVID-19 and development of symptoms is 14 days, and applicant first tested positive for the virus on December 23, 2020.

But Dr. Baum's reporting is inconsistent with applicant's clinical history. Specifically, Dr. Baum opined that applicant did not develop COVID-19 symptoms within the latency period because progress notes for her November 19, 2020 endoscopy omit mention of respiratory

symptoms. (Report, p. 7.) However, the reporting fails to explain (1) why Dr. Baum would have expected applicant to exhibit respiratory symptoms the day after her alleged exposure; (2) how Dr. Baum concluded that applicant had "sniffles or mild viral infection in early to mid[-]November of 2020" when the history as understood by Drs. Cervenko and Bonillo (and by the WCJ) was that she first experienced sniffles on November 19 or 20, 2020; or (3) how Dr. Cervenko's reporting that applicant had symptoms by the third week of November 2020 was in error. (*Id*., pp. 2-9.)

Because Dr. Baum's reporting is not supported by adequate clinical history and does not contain reasoning which supports its conclusions, it does not constitute substantial medical evidence. Accordingly, we will rescind the F&O.

The Appeals Board has authority to develop the record when the medical record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389 [65 Cal. Rptr. 2d 431, 62 Cal.Comp.Cases 924]; see McClune v. Workers' Comp. Appeals Bd. (1998) 62 Cal.App.4th 1117 [72 Cal. Rptr. 2d 898, 63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that Labor Code sections "5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record ... the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete." (*McDuffie*, *supra*, at p. 141.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*Id*.)

Here, the record requires further development in the form of comprehensive medical reporting on the issue of whether it is more likely that applicant acquired the disease at work or that her employment subjected her to a special risk of exposure in excess of the general population, including reporting which explains applicant's viral exposure, the timing of the development of her symptoms (including her history of immunological response), and the factors suggesting the likelihood or unlikelihood that exposure from her care recipient, from her break of quarantine to undergo abdominal ultrasound, or from some other source, caused her to contract COVID-19. Accordingly, we will return the matter to the trial level for further development of the medical record.

Accordingly, we will grant reconsideration and, as the Decision After Reconsideration, we will rescind the F&A and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings and Order issued on December 19, 2024 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration by the Workers' Compensation Appeals Board, that the Findings and Order issued on December 19, 2024 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 24, 2025

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

MICHELLE DELAO
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK

SRO/*cs*

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