

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

NICOLAS LOPEZ, *Applicant*

vs.

**PREMIER AG MANAGEMENT, INC.; STAR INSURANCE COMPANY
ADMINISTERED BY MEADOWBROOK INSURANCE GROUP
(AMERITRUST), *Defendants***

**Adjudication Number: ADJ12069406
Bakersfield District Office**

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.¹

Applicant seeks reconsideration of the Findings and Order (F&O) issued on October 3, 2022, wherein the workers' compensation administrative law judge (WCJ) found, in pertinent part, that applicant sustained injury to his left eye on March 15, 2019, arising out of and occurring in the course of employment (AOE/COE); that applicant was entitled to temporary and permanent disability payments; that defendant paid applicant 104 weeks of temporary disability indemnity; that applicant is not entitled to additional temporary disability payments; and that applicant's eye injury was not a high-velocity eye injury. He ordered that applicant would not receive additional temporary disability indemnity under Labor Code section 4656(c)(3)(F).²

Applicant contends that the evidence does not support the findings of fact, because the findings omit the fact that applicant was struck in the eye by a branch that was on a moving vehicle, and that the branch was traveling at motor vehicle speed when it struck applicant. Applicant contends further that the mechanism of injury as well as the damage to applicant's eye caused by

¹ Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board. A new panel member has been appointed in her place.

² All section references are to the Labor Code, unless otherwise indicated.

the injury support a finding that the injury was a “high-velocity eye injury” under section 4656(c)(3)(F).

We have received an Answer from defendant.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Removal, the Answer, and the contents of the WCJ’s Report with respect thereto. Based on our review of the record and as discussed below, we will rescind the WCJ’s October 3, 2022 F&O and substitute a new F&O that defers the issues of whether applicant sustained a high velocity eye injury and whether he is entitled to additional temporary disability pursuant to section 4656(c)(3)(F). We will return this matter to the trial level for further proceedings consistent with this opinion.

BACKGROUND

Applicant was employed as a farm worker, serving on a vineyard cleaning crew. He sustained specific injury to his left eye and his optic nerve on March 15, 2019 when he was hit in the eye by a vine branch while removing wooden posts from vine rows and loading them onto a trailer. (4/19/19 application; Defendant’s Exh. A; Joint Exh. 3 at p. 9.)

In the Supervisor’s Accident Investigation Form, completed on the day of the injury, applicant’s supervisor wrote that applicant’s left eye was injured when he “was taking out wood post from vine rows and a vine branch hit his left eye.” (Defendant’s Exh. A, Supervisor’s Accident Investigation Form.) Applicant was wearing safety glasses and a safety helmet when the incident occurred. (*Ibid.*)

Applicant explained in his Disability Evaluation Unit Employee’s Disability Questionnaire, completed May 8, 2019, that the injury occurred when he was “putting post to support the grape vines” and “one of the vines of the grapevine snapped into my left eye.” (Joint Exh. 3, Employee Disability Questionnaire, at p. 2.) This resulted in “a cut,” and “two eye surgeries [for] cataract and retina separation,” which left him unable to return to work and suffering from “declined vision.” (*Ibid.*)

On June 11, 2019, applicant was evaluated by Dr. Ray Nejad as the Qualified Medical Evaluator (QME) in Ophthalmology. (Joint Exh. 3, 7/2/19 QME report, at pp. 3-42.) Dr. Nejad explained that the mechanism of injury was that, while applicant was “loading wooden poles into

a trailer...a vine branch thrust across his left eye.” (*Id.* at p. 10.) Applicant has not worked since his date of injury. (*Id.* at p. 9.)

On the date of injury, applicant was seen by a doctor in an occupational injury clinic, who placed him on temporary total disability and referred him to the emergency room (ER), which further referred him to a retina specialist. (*Id.* at pp. 10, 13-15.) The ER doctor, Dr. Sheryl Haggerty, wrote in her report that applicant stated that the injury occurred when “he was putting poles into a trailer, when a branch of vine hit his left eye (which was on a moving trailer)...” (*Id.* at p. 13.) The next day, he was evaluated by Dr. Tawansy at Golden State Eye Medical Group, who diagnosed applicant with “VH (vitreous hemorrhage), possible retinal break and retinal detachment. He then admitted the patient for surgical repair including Pars Plana Vitrectomy (PPV) and removal of VH (vitreous hemorrhage) and repair of the cornea.” (*Id.* at pp. 10, 15-19, 22.) A second surgery was performed by Dr. Tawansy, on April 9, 2019, for “left retinal detachment repair, Pars Plana Vitrectomy (PPV) and scleral buckle and cryo-application of left eye.” (*Ibid.*) Applicant continues to see Dr. Tawansy for follow-up care. (*Id.* at p. 10.)

Applicant reported to Dr. Nejad that he has “vision acuity issues in the left eye” as well as photophobia (light sensitivity), severe blurred vision, excessive tearing, intermittent pain in and around the left eye, and headaches. (*Id.* at 11-12.) Applicant had no history of eye conditions or eye injuries prior to the March 15, 2019 injury. (*Id.* at 12.) After examination, Dr. Nejad concluded that applicant’s relevant diagnoses were:

...

3. Poor visual acuity of 20/400 in left eye
4. Left superior corneal opacity
5. S/P VH (vitreous hemorrhage), left eye
6. Corneal-scleral laceration, S/P exposed corneal sutures causing severe pain, photophobia for the patient.
7. Left corneal endothelial cells decompensation with mild corneal edema superiorly.
8. Shallow angle left eye at superior quadrant.
9. Probable high Intra-ocular pressure left eye (patient is being treated with glaucoma eye drop (Combigan).
10. RD (retinal detachment), S/P RD (retinal detachment) surgery with Pars Plana Vitrectomy (PPV), scleral buckle and gas injection, left eye

(*Id.* at pp. 21-22.)

Dr. Nejad included a review of the medical literature in his report, providing context and further discussion regarding these diagnoses. (*Id.* at pp. 24-39.) The article entitled “Ocular Penetrating and perforating injuries” included the following, regarding the etiology of these injuries,

Penetrating or perforating ocular injuries can be due to injury from any sharp or *high velocity* object. The home is the most frequent location for injuries. The most common blunt objects reported by May et al from the United States Eye injury Registry were rocks, fists, baseballs, lumber and fishing weights. The most common sharp objects were sticks, knives, scissors, screwdrivers and nails.

(*Id.* at p. 30, emphasis added.)

Dr. Nejad found that applicant, “has not reached to MMI (Maximum Medical Improvement) state regarding to his ocular complaints at this time. He needs to receive proper medical or surgical care including removal of his corneal sutures and possible another RD (retinal detachment) surgery in order to improve his visual acuity in left eye.” (*Id.* at pp. 22-23.) Applicant’s ocular impairment was 100% industrial, resulting from his ocular injury on March 15, 2019. (*Id.* at p. 39.) Regarding disability status, Dr. Nejad found that applicant “has had temporary total disability from date of injury on 03/15/2019 till present. He is not able to work with current condition of his left eye.” (*Ibid.*) Dr. Nejad concluded that applicant required future medical care with his “retina specialist” or other eye clinic “for multi-discipline therapy,” noting “**All the necessary medical and surgical therapy cost shall be paid by the insurance company.**” (*Id.* at p. 40.)

Applicant was further evaluated by Ophthalmologist Bernard Monderer, M.D., as a QME on December 21, 2020 and on February 17, 2022. (Joint Exh. 2 and Joint Exh. 1.) In Dr. Monderer’s first QME report, he wrote that applicant was injured when “he was walking next to a trailer while simultaneously placing wooden post into the trailer.... As he was doing this, a branch from one of the vines struck his left eye causing extreme pain and according to the patient a loss of consciousness that lasted for two hours.” (Joint Ex. 2, Dr. Monderer’s 12/21/20 QME Report, at p. 2.) Dr. Monderer’s diagnoses of applicant’s left eye included:

1. History of ruptured globe, with retinal detachment and iris sphincter tear, and vitreous hemorrhage, left eye.
2. History of three separate left eye surgical procedures involving repair of the rupture globe, repair of retinal detachment, epiretinal membrane peeling, pars plana vitrectomy, cataract surgery with lens implant and pupilloplasty.

3. Ptosis, left upper eyelid.
4. Corneal opacity, left eye
5. Chronic cystoid macula edema with residual epiretinal membrane of the left eye (secondary to trauma and surgical procedures).
6. Traumatic glaucoma (ocular hypertension), left eye.
- ...
8. Myopic astigmatism, left eye (secondary residual refractive error after cataract surgery).
9. Presbyopia, both eyes (age-related).

(*Id.* at p. 4.)

Dr. Monderer summarized applicant's medical history and current situation as follows:

Mr. Nicolas Lopez sustained traumatic injury to his left eye in a work-related accident. Subsequently, the patient needed three separate surgical procedures to repair the ruptured globe and a subsequently diagnosed retinal detachment in the left eye. The patient also went to developed a traumatic cataract as a result of the initial injury and multiple surgical procedure. This required a third operation to remove the cataract and replace it with a lens implant. At the time of the same surgical procedure, the patient had a repair of iris pupil rupture requiring a pupilloplasty procedure to reduce the patient's photosensitivity. Despite the multiple surgical procedures, the patient continues to have chronic ocular problems related to elevated intraocular pressure in the left eye, ptosis of the left upper eyelid, and chronic cystoid macula edema. At the present time, with an appropriate spectacle correction, he is able to achieve a moderate level of vision in the left eye, both for near and distance purposes with spectacle correction. The patient, however, still has ongoing medical problems which need attention. These include treatment of the chronic cystoid macula edema, which may require additional intravitreal Avastin injections and possibly additional surgical removal. He also needs treatment of his ocular hypertension, because if the pressure in the eye remains elevated, he may develop significant damage to the optic nerve which can cause further loss of vision and visual field in that eye. Currently there are no objective finding of optic nerve retinal nerve fiber layer damage found on OCT testing. Finally, the ptosis of the left upper eyelid creates a cosmetic problem, as well as causing him to have a constricted upper portion of his field of vision in the left eye.

The patient states that he has not been able to return to work because of his problems with recurrent dizziness, irritation of the eye when exposed to chemicals, residual photosensitivity and difficulty with judging distances and avoiding trip and fall injuries. It is felt that when he receives his new eyeglasses, he will most likely be able to function better, both visually and in terms of being able to judge distances with improvement of his depth perception.

On the other hand, there remains a possibility that improvement in visual functioning may be temporary if the ongoing medical problems of the left eye are not resolved. The patient can lose visual acuity if his cystoid macula edema cannot

be resolved medically or surgically and his field of vision may deteriorate further is the ocular hypertension condition is not controlled.

(*Id.* at pp. 4-5.)

Dr. Monderer concluded that applicant is currently temporarily totally disabled, and his condition is 100% due to “the work injury and its sequelae.” (*Id.* at pp. 5-6.) Applicant has not yet reached permanent and stationary status, and he requires ongoing medical treatment. (*Id.* at p. 6.)

Dr. Monderer conducted a reevaluation of applicant on February 17, 2022. (Joint Exh. 1, Dr. Monderer’s 2/17/22 Reexamination QME Report.) He wrote that after the 2020 report, applicant obtained eyeglasses, but “the difference in the refractive status of the two eyes has made it impossible for the patient to tolerate the eyeglasses previously prescribed. As a result, he quickly abandoned the use of the eyeglasses.” (*Id.* at p. 6.) LASIK treatment was recommended to address this problem. (*Ibid.*) Applicant “will continue to need ongoing evaluation and treatment for the persistent macular edema in the left eye” as well as “an additional surgical procedure” to address his ptosis of the left upper eyelid. (*Id.* at pp. 6-7.) Dr. Monderer’s discussion, diagnoses, and conclusions in the 2022 report were otherwise similar to those in his prior report. (*Id.* at pp. 1-7.)

The matter proceeded to trial via teleconference on May 27, 2022. The parties stipulated to: employment; that applicant’s March 15, 2019 eye injury was AOE/COE; that applicant was making \$576 per week at the time of injury, resulting in a temporary disability rate of \$384 per week, and a permanent disability rate of \$290 per week; and that defendant paid applicant the temporary disability rate of \$384 per week, during the time period from March 16, 2019 to March 15, 2021. (5/26/22 PTCS, at p. 2; 5/27/22 MOH, at p. 2.) Framed for trial were the issues of temporary disability for the time period “3/16/21 to present day,” and, whether applicant was entitled to more than 104 weeks of temporary disability under section 4656(c)(3)(F). (5/27/22 MOH, at p. 2.) Applicant did not testify, and there were no other witnesses. (*Id.* at pp. 1-3.)

In the October 3, 2022 F&O, the WCJ found that applicant’s eye injury “was not a high velocity eye injury,” and thus, applicant “is not entitled to additional temporary disability under Labor Code § 4656 (c)(3)(f).” (F&O, at p. 1.) In the Opinion on Decision (OOD), the WCJ explained his reasoning for these findings, as follows:

Dr. Bernard Monderer, in both the December 21, 2020, and February 17, 2022 reports states that the injury to Applicant’s left eye occurred while Applicant was walking next to a trailer putting wooden posts into the trailer. A branch from one of the vines being held up by the posts struck Applicant’s eye.

Although the phrase “high velocity” is not defined in Labor Code section 4656, it seems to require something more than the speed of a person’s walking. Since Applicant was injured while walking beside a trailer, the eye injury did not occur at high velocity.

Labor Code section 4656(c)(3)(f) does not increase the maximum temporary disability period from 104 weeks to 240 weeks, Since Applicant has already received over 103 weeks of temporary disability, Applicant is not entitled to additional temporary disability.

(OOD, at p. 4.)

DISCUSSION

I.

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) The Appeals Board has a constitutional mandate to “accomplish substantial justice” in all cases. (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board has “a duty to develop an adequate record” and “it is well established that the WCJ or the Board may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence.” (*Id.* at pp. 403-404.)

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].) To constitute substantial evidence “a medical opinion must be predicated on reasonable medical probability.” (*E.L. Yeager Construction v. Workers’ Comp. Appeals Bd.*, (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687], citing *McAllister v. Workmen’s Comp. App. Bd.* (1968) 69 Cal.2d 408, 413, 416–417, 419 [33 Cal.Comp.Cases 660].) A medical opinion “is not substantial 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.” (*Id.* citing *Heggin v. Workmen’s Comp. App. Bd.* (1971) 4 Cal.3d 162, 169.) “Further, a medical report is not substantial evidence unless it sets forth the reasoning behind

the physician's opinion, not merely his or her conclusions.” (*Id.* citing *Granado v. Workmen's Comp. App. Bd.* (1968) 69 Cal.2d 399, 407.)

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) Sections 5701 and 5906 “authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings. Before directing augmentation of the medical record, however, 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 v. L.A. County Metro. Transit Auth.* (2002) 67 Cal.Comp.Cases 138, 141 (Appeals Board en banc).)

Temporary disability is defined as incapacity to work that is reasonably expected to be improved with medical treatment. (*Chavira v. Workers' Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463, 473 [56 Cal.Comp.Cases 631].) Temporary disability indemnity is intended primarily to substitute for the worker's lost wages, in order to maintain a steady stream of income. (*Ibid.*)

Section 4656 sets a cap for temporary disability indemnity of 104 weeks, except as follows:

(3) Notwithstanding paragraphs (1) and (2), for an employee who suffers from the following injuries or conditions, aggregate disability payments for a single injury occurring on or after April 19, 2004, causing temporary disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury:

- (A) Acute and chronic hepatitis B.
- (B) Acute and chronic hepatitis C.
- (C) Amputations.
- (D) Severe burns.
- (E) Human immunodeficiency virus (HIV).
- (F) High-velocity eye injuries.
- (G) Chemical burns to the eyes.
- (H) Pulmonary fibrosis.
- (I) Chronic lung disease.

(Lab. Code, § 4656(c)(3).)

At issue here is the determination of whether applicant's admitted eye injury is a “high-velocity eye injury” under section 4656(c)(3)(F), such that applicant is entitled to temporary

disability for up to 240 compensable weeks within five years of the date of injury. (Lab. Code, § 4656(c)(3)(F).) Although the statute does not define high-velocity eye injury, our panel decisions provide guidance.³ A determination that a worker has a high velocity eye injury is a fact-based determination, based on evidence regarding the mechanism or circumstances of the injury, as well as medical evidence about the extent of the injured worker’s injuries. (*Gonzalez v. Tres Generaciones* (2021) 2021 Cal.Wrk.Comp.P.D. LEXIS 1, at p. *1 [applicant’s testimony regarding the “circumstances” of his eye injury “justifies the WCJ’s finding that the injury to applicant’s eye falls within the scope of Labor Code section 4656(c)(3)(F)” and that his testimony “was sufficient to meet his burden to establish by a preponderance of the evidence that his injury occurred by the mechanism he described...”]; *Glick v. Knight-Swift Transportation Holdings* (2022) 88 Cal.Comp.Cases 145 [2022 Cal.Wrk.Comp.P.D. LEXIS 306] [the circumstances of the injury and the extent of damage to applicant’s eye were relevant considerations in determining if an injury constituted a high velocity eye injury].)

Moreover, our cases have consistently held that a determination that an injury was a “high velocity eye injury” may appropriately be based on an inference of high velocity, drawn from medical evidence regarding the severity of the injury. (*Gonzalez v. Tres Generaciones*, *supra*, at pp. *1-2 [“reasonable inference can be drawn from the severity of applicant’s injury as described in the medical record that he was struck in the eye at high velocity”]; *Glick*, *supra*, at p. 153 [when applicant’s injury “directly compromised applicant’s vision, resulting in the need for a surgical repair to the muscles of the eye...” we found that “the WCJ appropriately exercised his discretion to find that applicant sustained a high-velocity eye injury”]; *Hanrahan v. Cal. Horsemen’s Alliance* (2012) 2012 Cal.Wrk.Comp.P.D. LEXIS 578, at p. *8 [WCJ correctly found that applicant, a jockey, sustained a high velocity eye injury when a horse’s head struck her face, resulting in a fractured orbital bone and displaced left eye, explaining, “given the resulting damage to applicant’s face and eye, the horse’s head could only have been traveling at a high rate of speed.”].)

³ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc); *Griffith v. Workers’ Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].)

The legislative intent underlying the statutory language may also be considered. In *AA Gonzalez, Inc. v. WCAB*, we affirmed the WCJ’s finding that applicant experienced a high velocity eye injury, when “a machine pumping stucco explode[ed] with great force into the applicant’s eyes,” and we adopted the WCJ’s Report, which explained that in defining “velocity,”

the Court is to first look at the plain or ordinary meaning of the language contained in the statute to determine the legislature's intent. It is clear to this Court that [section 4656(c)(3)]...was an attempt to provide additional temporary disability for certain major injuries such as chemical burns to the eyes and high-velocity eye injuries.

(*AA Gonzalez, Inc. v. Workers' Compensation Appeals Bd.* (2009) 74 Cal.Comp.Cases 760, 761-762 [writ denied].)

Here, while it is clear from the medical record and the stipulation of the parties that applicant sustained a serious, industrial injury to his left eye, the specific mechanism of injury has not been identified to a reasonable medical probability. (See Lab. Code, § 3202.5; *McAllister, supra*, 69 Cal.2d at pp. 413, 416–417, 419.) Applicant did not testify regarding the “circumstances of his injury” (*Gonzalez v. Tres Generaciones, supra*, at p. *1) and the documentary evidence includes various similar—but not identical—descriptions of how the injury occurred: “a vine branch hit his left eye” (Defendant’s Exh. A, Supervisor’s Accident Investigation Form); “one of the vines of the grapevine snapped into my left eye” (Joint Exh. 3, Employee Disability Questionnaire, at p. 2); “a vine branch thrust across his left eye” (Joint Exh. 3, 7/2/19 QME report at p. 10); “a branch of vine hit his left eye (which was on a moving trailer)...” (*Id.* at p. 13); and, when “he was walking next to a trailer while simultaneously placing wooden post into the trailer.... As he was doing this, a branch from one of the vines struck his left eye causing extreme pain and according to the patient a loss of consciousness that lasted for two hours.” (Joint Ex. 2, Dr. Monderer’s 12/21/20 QME Report, at p. 2.)

The WCJ, in considering whether the injury was a “high-velocity eye injury,” focused on the speed applicant was walking. (OOD, at p. 4.) It appears, however, that under the circumstances of this case, neither the speed applicant was walking, nor the speed of the vehicle next to him, were the relevant inquiries. Rather, the velocity of the branch that struck applicant’s eye must be considered. (See *Hanrahan v. Cal. Horsemen’s Alliance, supra*, at p. *8 [Velocity of horse’s head that hit jockey’s face was the relevant inquiry].) Here, the branch that hit applicant’s eye may have hit him gently as the vehicle drove by him or may have caught on something and whipped back

across his eye at high velocity. The record here contains insufficient evidence to answer these questions.

Moreover, to the extent that the applicant alleges his disability was the result of a high-velocity eye injury, there is no substantive discussion in the medical record of whether such injury was “high-velocity” as contemplated in section 4656(c)(3)(F). (See, e.g., *Glick, supra*.) The three QME reports do not specifically address this question. Medical reporting on this question is required, in part, because a determination that an injury to the eye is a “high velocity” injury may be inferred from the severity of the injury. (*Gonzalez v. Tres Generaciones, supra*, at pp. *1-2; *Glick, supra*, at p. 153; *Hanrahan, supra*, at p. *8.) Medical reporting must address whether the severity of the injury necessarily supports a conclusion that the injury was a high velocity eye injury.

In the absence of these discussions, expressed to a reasonable medical probability, the record does not afford a sufficient basis for adjudication of whether the extended period of temporary disability payments available under section 4656(c)(3)(F) is applicable. The record must be developed to ascertain the mechanism of injury, expressed to a reasonable medical probability, and to ascertain, from evidence and/or inference from the medical record, whether the branch was moving at high velocity when it struck applicant’s eye. (*McAllister, supra*, 69 Cal.2d at p. 413.) We will therefore return the matter to the trial level for development of the record and further proceedings to determine whether applicant’s continuing temporary disability is caused by a high-velocity eye injury, thus entitling him to additional temporary disability indemnity.

Accordingly, we rescind the October 3, 2022 F&O and substitute a new F&O that defers the issues of whether applicant sustained a high velocity eye injury and whether he is entitled to additional temporary disability pursuant to section 4656(c)(3)(F). We return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the October 3, 2022 decision is **RESCINDED** and the following is **SUBSTITUTED** therefor:

1. Nicholas Lopez, 49 years old, while employed on March 15, 2019 as a field worker, at Bakersfield, California, by Premier Ag Management sustained injury arising out of and occurring in the course of employment to the left eye. Defendant was insured by Meadowbrook.
2. At the time of injury, applicant's earnings were \$576.00 per week, warranting indemnity rates of \$384.00 a week for temporary disability and \$290.00 a week for permanent disability.
3. Defendant paid temporary disability at \$384.00 a week for the period from March 16, 2019, to March 15, 2021, a period of 104 weeks and three days.
4. Applicant has been medically temporarily totally disabled from March 16, 2019, to at least February 17, 2022.
5. The issue of whether the injury to applicant's left eye on March 15, 2019, was a high-velocity eye injury is deferred.

IT IS FURTHER ORDERED that this matter **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 23, 2025

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

**NICOLAS LOPEZ
REED & GARCIA LAW, P.C.
GILSON DAUB**

MB/ara

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