

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CARLOS VALENCIA ORTIZ, *Applicant*

vs.

ADVANCED MANUFACTURER DEVELOPMENT; NATIONAL CASUALTY COMPANY administered by ILLINOIS MIDWEST SPRINGFIELD, *Defendants*

Adjudication Number: ADJ17943105
Santa Rosa District Office

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Award (F&A) issued on October 23, 2025 by the workers' compensation administrative law judge (WCJ) which found, in pertinent part, that applicant sustained injury arising out of and in the course of employment (AOE/COE) to his left ankle only but failed to establish any industrial injury to his neck, back, chest, or shoulders and sustained permanent disability of 24% with no apportionment for left ankle.

Applicant contends that his Award of 24% permanent disability insufficiently compensates him for his injury and that he sustained injury to other body parts.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation (Report) on the Petition for Reconsideration recommending that we deny reconsideration.

On November 8, 2025 applicant filed a one page correspondence and on December 18, 2025 applicant filed a second, one page correspondence with six documents attached. Insofar as applicant's correspondences constitute supplemental pleadings, WCAB Rule 10964 requires that supplemental pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board. (Cal. Code Regs., tit. 8, § 10964(a).) Applicant has not sought the permission of the WCAB to file a supplemental pleading and the

attached documents are not in the evidentiary record. Accordingly, we have not considered the correspondences filed on November 8, 2025 or December 18, 2025.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and as discussed below, we will deny reconsideration.

I.

Preliminarily, we note that former Labor Code¹ section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on November 13, 2025 and 60 days from the date of transmission is January 12, 2026. This decision was issued by or on January 12, 2026, so that we have timely acted on the petition as required by section 5909(a).

¹ All further references are to the Labor Code unless otherwise noted.

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. 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 WCJ, the Report was served on November 13, 2025, and the case was transmitted to the Appeals Board on November 13, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on November 13, 2025.

II.

BACKGROUND

Applicant filed an Application for Adjudication of Claim alleging industrial injury on June 7, 2023 to his left foot, left ankle, neck, chest, back and waist. (Application for Adjudication of Claim, at p. 9.) Applicant's left ankle injury was accepted. (MOH/SOE, at p. 2:22-23.) At trial, applicant claimed injury to neck, back, chest, head and shoulders. (*Id.* at 2:24-25)

On day of the injury, applicant sought emergency care. (Exhibit L.) Applicant complained of left heel pain, was diagnosed with a non-traumatic rupture of the left Achilles tendon, referred to an orthopedist and taken off work until he was cleared for work by an orthopedist. (*Id.* at pp. 1-2.)

On June 13, 2023, applicant consulted with orthopedic surgeon, William Bowen, M.D. (Exhibit K.) Applicant complained of shoulder and all over body pain. (*Id.* at p. 1.) When asked, applicant did not tell Dr. Bowen when the pain in his neck, shoulder and back started. (*Id.* at p. 2.) Dr. Bowen diagnosed applicant with unexplained subjective complaints of pain throughout his body, etiology unclear. (*Id.* at p. 3.)

On June 17, 2023, applicant sought emergency treatment. (Exhibit J.) Applicant complained of pain over his entire back and left leg. (*Id.* at p. 1.) An examination of applicant's back revealed:

No signs of trauma including abrasions or ecchymosis on the back. There is no midline tenderness to palpation or step off palpated in the thoracic or lumbar spine. No obvious bony deformity. There is no paraspinal muscle tenderness. Negative straight leg raise bilaterally.

(*Id.* at p. 2.)

Applicant's request for a back MRI was not accommodated on an emergency basis. (*Id.*)

On February 2, 2024, applicant returned to industrial care with John Alchemy, M.D., serving as primary treating physician. (Exhibit I.) Applicant reported a prior 1997 low back surgery and testicle pain on the left side. (*Id.* at pp. 4-5.) Regarding the testicle pain, Dr. Alchemy observed that applicant had not mentioned it to his primary care physician. (*Id.* at p. 5.)

On June 10, 2024, Dr. Alchemy indicated that applicant's neck and low back were not part of the industrial claim and referred him to his primary care physician for those body parts. (Exhibit Q, at p. 6.)

On November 8, 2024, Dr. Alchemy issued a Primary Treating Physician's Permanent and Stationary Report (PR-4). (Exhibit D.) Dr. Alchemy assigned applicant 8% whole person impairment (WPI) with no apportionment and noted that future treatment was indicated for the left ankle/foot. (*Id.* at pp. 6-7.)

In his report of December 23, 2024, Dr. Alchemy discharged applicant from his care. (Exhibit CC, at p. 6.) Dr. Alchemy reviewed applicant's lumbar spine x-rays and MRI and explained to him that his left foot/ankle were the only accepted body part and that he had maximized recovery for this. (*Id.* at p. 5.)

From February 13, 2024 through October 25, 2024, Mark Schakel, M.D., served as secondary treating physician in orthopedic surgery. On July 18, 2024, applicant underwent a "synovectomy and debridement left Achilles tendon; excision retrocalcaneal bursitis and resection posterior superior tuberosity of calcaneus; left Achilles tendon repair." (Exhibit Z, at p. 1.) Ultimately, Dr. Schakel deferred to Dr. Alchemy regarding applicant's complaints of neck and back pain. (Exhibit M, at p. 3.)

Vincent Marino, D.P.M., served as the agreed medical evaluator (AME) in this matter. On March 19, 2025, Dr. Marino declared applicant to have reached maximum medical improvement.

(Exhibit B, at p. 5.) Dr. Marino assigned applicant 15% whole person impairment (WPI) with no apportionment and noted that future treatment was indicated for the left ankle. (*Id.* at pp. 5-6.)

At trial, the WCJ found no injury to applicant's back, neck, chest and shoulders. The WCJ explained this finding as follows:

Finally, the court notes that although the applicant has complained about pain [in] the back, neck, chest and shoulders, there is no medical evidence that applicant injured any body part other than his Achilles tendon. For this reason, and on this record, the court cannot find any industrial injury to those body parts.

(Opinion on Decision, at p. 5.)

It is from this F&A that applicant seeks reconsideration.

III.

Here, applicant appears to contend that his Award of 24% permanent disability insufficiently compensates him for his injury and that he also sustained injury to his neck, back, chest, shoulders and navel pain/left testicle.

The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (Clark) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a), 3202.5.) The Supreme Court of California has long held that an employee need only show that the "proof of industrial causation is reasonably probable, although not certain or 'convincing.'" (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].) The parties presumably choose an AME because of the AME's expertise and neutrality. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) We will follow the opinions of the AME unless good cause exists to find their opinion unpersuasive. (*Ibid.*)

Here, as explained below, the WCJ was presented with no good reason to find the AME's opinion unpersuasive, and we also find none. As the WCJ observed, applicant did complain about his neck, back, chest and shoulders, however complaints about alleged injuries are not substantial medical evidence of injury. On June 13, 2023, one week after the industrial injury to left ankle, applicant reported shoulder and whole body pain (including neck and back) to his consulting orthopedist, Dr. Bowen. When Dr. Bowen attempted to evaluate applicant about the alleged

injuries, applicant was not forthcoming. On June 17, 2023, applicant sought emergency treatment and requested a spine MRI, however on physical examination applicant's back was normal. Eventually, applicant self-procured lumbar spine x-rays and an MRI which were reviewed by his primary treating physician but no further action was indicated by him. Applicant also complained of left side testicle pain, however, Dr. Alchemy referred him to his primary care physician for it and per applicant he treated for it non-industrially including surgical intervention. There is simply no evidence in the record of industrial navel pain/left testicle injury. Significantly, AME, Dr. Marino only found injury to applicant's left ankle, and we are bound to make our findings based on the medical evidence. Hence, applicant did not prove any industrial injury to his neck, back, chest, shoulders nor navel pain/left testicle.

Section 4660.1 sets forth the framework for determining the appropriate percentage of permanent disability. Specifically, subdivision (b) requires that whole person impairment be determined based on the *American Medical Association Guides to the Evaluation of Permanent Impairment* (AMA Guides). Subdivision (d) provides for a *Schedule for Rating Permanent Disabilities* (PDRS).

Here, Dr. Marino provided his medical opinion as to the level of applicant's impairment to his left ankle based on the AMA Guides. Then, pursuant to section 4660.1, the WCJ used the PDRS to convert the percentage of impairment determined by the medical evaluator to a dollar amount. Thus, even though applicant appears to believe that he is owed a greater amount of compensation, the WCJ is required to apply section 4660.1 in every case to determine the compensation owed and may not take individual factors into account.

After careful consideration of the record, we agree with the WCJ that applicant did not meet his burden to show industrial injury to any other body parts other than the left ankle and that AME Dr. Marino's opinion regarding applicant's level of impairment is supported by substantial evidence. As such, the Petition for Reconsideration is denied.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration 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

January 12, 2026

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

**CARLOS VALENCIA ORTIZ
MULLEN & FILIPPI**

SL/abs

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