

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CHRISTOPHER MAGUIRE, *Applicant*

vs.

**SIERRA CONSERVATION CENTER, legally uninsured; adjusted by STATE
COMPENSATION INSURANCE FUND (SCIF), *Defendants***

**Adjudication Number: ADJ12317646
Lodi District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Award (F&A) issued on November 4, 2025, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that while employed by defendant as a correctional officer during the period from May 10, 2018 through May 10, 2019, applicant sustained injury arising out of and in the course of employment (AOE/COE) to his bilateral shoulders, heart, lumbar spine, bilateral hips, abdomen, and groin; that applicant's average weekly wage was \$2,661.98 per week, warranting a temporary total disability indemnity rate of \$1,619.15 weekly, and a corresponding permanent disability indemnity rate of \$290.00 weekly; and that the injury caused a 48% permanent disability, warranting an award to applicant of \$74,530.00, at the rate of \$290.00 weekly for 257 weeks, payable starting April 18, 2023, less credit for prior benefits paid and reasonable attorney's fees. The permanent disability findings were based upon the reporting from pain medicine panel Qualified Medical Evaluator (PQME), Michael Amster, M.D., internal medicine/cardiovascular PQME, James Schmitz, M.D., and ophthalmology PQME, Philip Edington, M.D. Future medical treatment was awarded for the bilateral shoulders, heart, lumbar spine, bilateral hips, abdomen, and groin.

Applicant contends that the apportionment findings of Dr. Amster do not constitute substantial medical evidence as he failed to provide a "how and why" analysis regarding

apportionment to age related degeneration and obesity to the bilateral hips and lumbar spine. (Petition for Reconsideration (Petition), pp. 4-5.) Applicant similarly contends that Dr. Schmitz's apportionment findings do not constitute substantial medical evidence as he relied upon general population statistics for nonindustrial apportionment of applicant's hypertension impairment, which is speculative, and failed to provide supporting medical evidence for apportionment to "preexisting abdominal wall weakness" for applicant's umbilical hernia impairment. (*Id.* at pp. 7-9.)

We have not 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 Petition and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant reconsideration, rescind the F&A, substitute it with a new F&A which affirms the stipulations of the parties, and return the matter to the trial level for calculation of permanent disability, including the appropriate rate, as well as related attorney fees.

FACTS

On June 26, 2019, applicant filed an Application for Adjudication of Claim (Application) alleging that while employed by defendant as a correctional officer during the period from May 10, 2018 through May 10, 2019, he sustained injury AOE/COE to the circulatory system (heart), hernia, lumbar spine, bilateral shoulders, and excretory system (kidney stones). On January 20, 2020, applicant filed an amended Application adding the additional body part(s) of the eyes/vision.

Thereafter, applicant sought treatment and the parties proceeded with discovery, retaining Dr. Amster as the pain medicine PQME, Dr. Schmitz as the internal/cardiovascular PQME, and Dr. Edington as the ophthalmology PQME.

Dr. Amster evaluated applicant on three occasions and issued reports dated March 20, 2020, July 9, 2020, January 27, 2021, November 16, 2021, April 8, 2022, April 12, 2022, June 15, 2022, and December 5, 2023. (Exhibits 1-8.)

In his January 27, 2021 report, Dr. Amster opined that applicant sustained injury AOE/COE to his right shoulder on July 1, 2014, to his left shoulder on February 1, 2018, and to the lumbar spine, bilateral shoulders, eyes, hernia, and cardiovascular system during the

cumulative injury ending on May 10, 2019. (Exhibit 6, p. 22.) In his subsequent November 16, 2021 report, Dr. Amster also found injury AOE/COE the bilateral hips as a result of the cumulative injury. (Exhibit 5, p. 19.) With respect to impairment, in his April 12, 2022 report, Dr. Amster found a 5% whole person impairment (WPI) to the lumbar spine under DRE category II, a 3% upper extremity impairment (UEI) (2% WPI) for each shoulder, and a 6% WPI to each hip, using the ROM method. (Exhibit 3, p. 24.) Tentative apportionment findings included 20% nonindustrial apportionment to age related degeneration for the lumbar spine, bilateral hips, and bilateral shoulders. (*Id.* at p. 27.) The remaining impairment was apportioned 80% to the cumulative injury for the lumbar spine and bilateral hips, 30% to the cumulative injury for the bilateral shoulders, 50% to the February 1, 2018 specific injury for the left shoulder, and 50% to the July 1, 2014 specific injury for the right shoulder. (*Ibid.*) In his June 15, 2022 report, Dr. Amster opined that adding the impairment ratings for the bilateral hips and shoulders was appropriate given the “synergism of the impairments.” (Exhibit 2, p. 5.) In his December 5, 2023 report, he updated his apportionment findings for the lumbar spine and bilateral hips to reflect the following allocation: 65% to the cumulative injury, 20% to age related degeneration, and 15% to the impact of obesity. (Exhibit 1, p. 9.)

Dr. Schmitz evaluated applicant on at least two occasions and issued reports dated August 13, 2020, November 15, 2020, April 15, 2021, and March 3, 2023. (Exhibits 9-12.)

In his August 13, 2020 report, Dr. Schmitz opined that applicant’s hypertension “was caused and/or aggravated by the prolonged duty hours and overtime of employment[,]” which resulted in a 3% WPI, with 83% apportionment to nonindustrial factors, including age, sex, family history, obesity, and obstructive sleep apnea, and 17% apportionment to the cumulative injury. (Exhibit 12, pp. 10, 13, 16.) He similarly found injury AOE/COE for applicant’s umbilical hernia, which resulted in a 3% WPI, with 50% apportionment to “preexisting and nonindustrial weakness in the abdominal musculature” and 50% to the cumulative injury. (*Id.* at pp. 10, 14, 17.) He did not find applicant’s recurrent kidney stones and irritable bowel syndrome to be work related. (*Id.* at p. 11.) In his subsequent November 15, 2020 report, Dr. Schmitz amended his findings to reduce nonindustrial apportionment for applicant’s hypertension from 83% to 71%. (Exhibit 11, p. 11.) He provided further amendments in his April 15, 2021 report, including an increase in applicant’s hypertension impairment from 3% WPI to 28% upon review of an echocardiogram. (Exhibit 10, p. 7.)

Dr. Edington evaluated applicant on October 14, 2021, and issued a report dated November 5, 2021, wherein he diagnosed applicant with an early cataract in the left eye and psychophakia and status post epiretinal membrane surgery in the right eye. (Exhibit 13, p. 7.) He concluded that applicant sustained injury AOE/COE to his eyes/vision with a resulting 11% WPI based upon visual acuity and field scores, with a continuing need for future medical treatment. (*Id.* at pp. 9-10.) Non-industrial apportionment was not indicated.

On July 16, 2025, applicant filed a Declaration of Readiness to Proceed to a mandatory settlement conference on all issues. The matter proceeded to hearing and was ultimately set for trial on October 6, 2025.

At trial, the parties stipulated to injury AOE/COE to the bilateral shoulders, heart, lumbar spine, bilateral hips, abdomen, and groin; future medical care; and an average weekly wage of \$2,661.98, warranting a weekly temporary disability indemnity rate of \$1,619.15 and a weekly permanent disability indemnity rate of \$290.00. Issues set for determination included permanent disability; apportionment; and attorney's fees.

On November 4, 2025 the WCJ issued a F&A which found, in relevant part, that while employed by defendant as a correctional officer during the period from May 10, 2018 through May 10, 2019, applicant sustained injury AOE/COE to his bilateral shoulders, heart, lumbar spine, bilateral hips, abdomen, and groin; that applicant's average weekly wage was \$2,661.98 per week, warranting a temporary total disability indemnity rate of \$1,619.15 weekly, and a corresponding permanent disability indemnity rate of \$290.00 weekly; and that the injury resulted in a 48% permanent disability, warranting an award of \$74,530.00, payable at \$290.00 weekly for 257 weeks, starting on April 18, 2023, less credit for prior benefits paid and reasonable attorney's fees. Future medical was also awarded.

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

DISCUSSION

I.

Preliminarily, 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

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

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 under the Events tab 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 December 2, 2025, and 60 days from the date of transmission is January 31, 2026, which is a Saturday. The next business day, that is 60 days from the date of transmission, is February 2, 2026, which is a Monday. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision was issued by or on February 2, 2026, so that we have timely acted on the petition as required by section 5909(a).

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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on December 2, 2025, and the case was transmitted to the Appeals Board on December 2, 2025. Service of the Report

² 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.

and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on December 2, 2025.

II.

Turning now to the merits of the Petition, applicant contends that the findings of Drs. Amster and Schmitz do not constitute substantial medical evidence on the issue of apportionment.

“The term ‘substantial evidence’ means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value.” (*Braewood Convalescent Hospital v. Workers’ Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) Pursuant to *E.L. Yeager v. Workers’ Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687], “[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. (citations.) 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. (citation.)” “A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial evidence to support a denial of benefits. (citation.)” (*Kyle v. Workers’ Comp. Appeals Bd (City and County of San Francisco)* (1987) 195 Cal.App.3d 614, 621.)

With respect to the issue of apportionment, it is well established that defendant carries the burden of proof. (Lab. Code, § 5705; *Pullman Kellogg v. Workers’ Comp. Appeals Bd. (Normand)* (1980) 26 Cal.3d 450, 456 [45 Cal.Comp.Cases 170]; *Kopping v. Workers’ Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 613 (Appeals Bd. en banc.) To meet this burden, defendant “must demonstrate that, based upon reasonable medical probability, there is a legal basis for apportionment.” (*Gay v. Workers’ Comp. Appeals Bd.* (1979) 96 Cal.App.3d 555, 564 [44 Cal.Comp.Cases 817]; see also *Escobedo*, *supra*, at p. 620.) Ultimately, however, “[a]ppportionment is a factual matter for the appeals board to determine based upon all the

evidence[,]” and the WCJ has the authority to determine the appropriate amount of apportionment, if any. (*Gay, supra*, at p. 564.) As noted above, however, any decision issued by a WCJ must be based upon substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb, supra*, at p. 274; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque, supra*, at p. 627.)

In *Escobedo*, the Appeals Board outlined the following requirements for substantial evidence on the issue of apportionment:

“[I]n the context of apportionment determinations, the medical opinion must disclose familiarity with the concepts of apportionment, describe in detail the exact nature of the apportionable disability, and set forth the basis for the opinion, so that the Board can determine whether the physician is properly apportioning under correct legal principles. (citations.)

Thus, to be substantial evidence on the issue of the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors, a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions.”

(*Escobedo, supra*, at p. 621.)

Here, the parties stipulated to injury AOE/COE to the bilateral shoulders, heart, lumbar spine, bilateral hips, abdomen, and groin. (Minutes of Hearing, October 6, 2025, p. 2.) With respect to impairment, Dr. Amster opined that applicant sustained a 5% WPI to the lumbar spine, a 2% WPI to each shoulder, and a 6% WPI to each hip. (Exhibit 3, p. 24.) Dr. Amster apportioned impairment for the lumbar spine and bilateral hips as follows: 65% to the cumulative injury, 20% to age related degeneration, and 15% to the impact of obesity. (Exhibit 1, p. 9.) For the left shoulder, Dr. Amster apportioned 20% of the impairment to age-related degeneration, 30% to the cumulative injury, and the remaining 50% to the February 1, 2018 specific injury. (Exhibit 3, p. 27.) For the right shoulder, he apportioned 20% to age related degeneration, 30% to the cumulative injury, and the remaining 50% to the July 1, 2014 specific injury. (*Ibid.*) Although Dr. Amster noted that his opinions were based upon review of available medical records and an examination of applicant, he provided no basis for his decision to apportion 20% of the impairment for the above-noted body parts to age related degeneration.

With respect to applicant's hypertension, Dr. Schmitz opined that applicant sustained a 28% WPI, with apportionment divided 83%, later reduced to 71%, to nonindustrial factors, including age, sex, family history, obesity, and obstructive sleep apnea, and the remaining 29% to the cumulative injury. (Exhibit 12, pp. 10, 13, 16; Exhibit 11, p. 11; Exhibit 10, p. 7.) To support his apportionment findings, Dr. Schmitz apparently relied upon general data from various academic literature but failed to provide supporting medical or other evidence specific to applicant and his case.

For applicant's umbilical hernia, Dr. Schmitz opined that applicant sustained 3% WPI, with apportionment of impairment divided 50% to "preexisting and nonindustrial weakness in the abdominal musculature" and the remaining 50% to the cumulative injury. (Exhibit 12, pp. 10, 14, 17.) Once again, Dr. Schmitz cited several academic articles, but medical proof of applicant's preexisting abdominal muscle weakness was not provided and is therefore speculative. (Exhibit 12, pp. 16, 18.)

As noted above, a medical opinion proffered as substantial evidence must set forth reasoning in support of its conclusions and not be speculative. (*Gatten, supra*, at pp. 922, 928; *Escobedo, supra*, at p. 604.) Given the lack of specificity, lack of reasoning, and lack of supporting evidence for the apportionment findings of Drs. Amster and Schmitz, we conclude that their opinions on apportionment are not written in accordance with the requirements outlined in *Escobedo* and *Gatten* and defendant therefore failed to meet their burden of proof with respect to nonindustrial apportionment of impairment for the lumbar spine, bilateral hips, heart, and hernia for the cumulative injury claim ending on May 10, 2019.

Accordingly, we grant the Petition, rescind the F&A, substitute it with a new F&A which affirms the stipulations of the parties, and return this matter to the trial level for calculation of permanent disability, including the appropriate rate, as well as related attorney fees.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Award issued on November 4, 2025, is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award issued on November 4, 2025, is **RESCINDED** and **SUBSTITUTED** with a new Findings and Award, as provided below, and that

this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

FINDINGS OF FACT

1. Christopher Maguire, born [], while employed during the period from May 10, 2018 through May 10, 2019 as a correctional officer, Occupational Group Number 490, at Jamestown, California, by Sierra Conservation Center, sustained injury arising out of and in the course of employment to the bilateral shoulders, heart, lumbar spine, bilateral hips, abdomen, and groin.
2. At the time of injury, the employer was legally uninsured.
3. At the time of injury, the employee's earnings were \$2,661.98 per week, warranting a temporary disability indemnity rate of \$1,619.15 per week.
4. The carrier/employer has paid compensation as follows: permanent disability indemnity at the rate of \$290.00 per week from April 18, 2023, through August 18, 2025, and continuing, subject to proof.
5. The employer has furnished all medical care, and the primary treating physician is Dr. Brendan Morely.
6. Applicant is entitled to further medical treatment to cure or relieve from the effects of the industrial injury herein to his bilateral shoulders, heart, lumbar spine, bilateral hips, abdomen, and groin.
7. Applicant has sustained permanent disability to his bilateral shoulders, heart, lumbar spine, bilateral hips, and groin. Calculation of permanent disability is deferred.
8. There is no basis for legal apportionment of applicant's permanent disability.
9. Attorney's fees and the rate for permanent disability indemnity are deferred.

AWARD

AWARD IS MADE in favor of Christopher Maguire against Sierra Conservation Center, legally uninsured, as follows:

1. Further medical treatment to cure or relieve from the effects of the industrial injury herein to applicant's bilateral shoulders, heart, lumbar spine, bilateral hips, abdomen, and groin.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 29, 2026

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

**CHRISTOPHER MAGUIRE
FRANCO MUÑOZ, P.C.
STATE COMPENSATION INSURANCE FUND**

RL/cs

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