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

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OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

Defendant seeks reconsideration of our Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (O&O) issued on January 29, 2026, wherein we rescinded the Findings and Award (F&A) issued by the workers' compensation judge (WCJ) on November 4, 2025, including the WCJ's findings on apportionment, and substituted it with a new F&A which affirmed the stipulations of the parties and returned the matter to the trial level for calculation of permanent disability, including the permanent disability rate and related attorney fees.

Defendant contends that they have "met [their] burden of proving non-industrial apportionment of Mr. Maguire's disability" because the apportionment findings of pain medicine panel Qualified Medical Evaluator (PQME), Michael Amster, M.D., and internal medicine/cardiovascular PQME, James Schmitz, M.D., constitute substantial medical evidence. (Petition for Reconsideration (Petition), pp. 8-9, 16, 21.) Defendant further contends that the Appeals Board should rescind the O&O and direct the WCJ to apply apportionment consistent with the original F&A or "remand the matter for further development of the record" and "reopen discovery by supplemental report of the QME, or selection of a new QME." (Petition, p. 23.)

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report). However, only a WCJ "from whose

decisions or actions relief is sought" shall prepare a report. (Cal. Code Regs., tit. 8, 10962.) In this case, defendant is seeking reconsideration of our O&O. Therefore, a report from the WCJ is not appropriate.

We have considered the contents of the Petition and Answer, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

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 arising out of and occurring in the course of employment (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 related to work. (*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.

On November 17, 2025, applicant filed a Petition for Reconsideration of the November 4, 2025 F&A.

On January 29, 2026, we issued an O&O rescinding the F&A, including the WCJ's findings on apportionment, and substituted it with a new F&A which affirmed the stipulations of the parties, and found that applicant sustained permanent disability without apportionment. We deferred the calculation of permanent disability, including the rate for same, as well as related attorney fees. Thereafter, we issued an order returning the matter to the trial level for further proceedings and applicant was awarded further medical treatment.

It is from this O&O that defendant seeks reconsideration.

DISCUSSION

I.

Preliminarily, former Labor Code[1] 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:

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

(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 March 5, 2026, and 60 days from the date of transmission is May 4, 2026. This decision was issued by or on May 4, 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 March 5, 2026, and the case was transmitted to the Appeals Board on March 5, 2026. Service of the Report 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 March 5, 2026.

II.

Turning now to the merits of the Petition, defendant contends that the apportionment findings of pain medicine panel Qualified Medical Evaluator (PQME), Dr. Amster and internal medicine/cardiovascular PQME, Dr. Schmitz constitute substantial medical evidence. (Petition, pp. 8-9, 16, 21.) Defendant further contends that "if the Appeals Board feels the evidence is unclear as to causation, it would be reasonable to obtain evidence that would clear up uncertainty by remanding the case back to the trial level and giving the parties leave to develop the record." (Petition, p. 23.)

We note that while the Appeals Board has a general duty, pursuant to sections 5701 and 5906, to develop the record to ensure substantial justice, this duty is not a "bailout" mechanism for parties who fail to meet their burden of proof. (See *Lozano v. Workers' Comp. Appeals Bd.* (2002) 67 Cal.Comp.Cases 970 [2002 Cal. Wrk. Comp. LEXIS 1420] (writ den.).) This is particularly the case wherein, as here, it is defendant who has the burden of proof to produce substantial evidence on an issue.

As expressed in our O&O, "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.4th922, 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.)

On the issue of apportionment, 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]pportionment 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.)

We remain of the opinion that defendant did not establish substantial medical evidence of nonindustrial apportionment of impairment for the lumbar spine, bilateral hips, heart, and hernia for the cumulative injury claim ending on May 10, 2019 and that the opinions of Drs. Amster and Schmitz on the issue of apportionment are not written in accordance with the requirements outlined in *Escobedo* and *Gatten* given their lack of specificity, lack of reasoning, and lack of supporting evidence.

Accordingly, we deny defendant's Petition.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (O&O) issued on January 29, 2026, is **DENIED.**

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

MAY 4, 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 MUNOZ, P.C.
STATE COMPENSATION INSURANCE FUND

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