WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

DANIEL LOZANO, ***Applicant***

vs.

FLEET MAINTENANCE SOLUTIONS;
STATE COMPENSATION INSURANCE FUND, ***Defendants***

Adjudication Number: ADJ12435916
Bakersfield District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant, in pro per, seeks reconsideration of the "Rulings and Orders Admitting Evidence Findings Fact & Award Opinion on Decision" (F&A) issued on December 2, 2025 by the presiding workers' compensation administrative law judge (PWCJ). The PWCJ found, in relevant part, that on June 11, 2017, while employed by defendant as a mechanic, applicant sustained industrial injury to a finger of his left hand and left wrist, causing permanent partial disability of eleven percent (11%). The PWCJ further found applicant sustained an injury from a dirt-bike riding accident on April 16, 2023, but that this event was not an industrial injury arising out of and in the course of employment (AOE/COE) with defendant nor a compensable consequence of the June 11, 2017 injury. The PWCJ denied defendant's petition for credit.

Applicant contends that the finding that the injury from the April 16, 2023 accident was nonindustrial and not a compensable consequence of the 2017 injury, rests upon legal error, application of an incorrect burden of proof, and an incomplete medical record. Applicant requests that the record be further developed to address causation of the 2023 accident and functional deficits in his hand, grip and dexterity and the mechanism of involuntary hand opening.

We have received an Answer from defendant.

The PWCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition and the Answer, and the contents of the PWCJ's Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, and we will affirm the F&A, except that we will defer the issues of whether applicant sustained injury to any other body parts (Finding of Fact 1); when applicant reached maximum medical improvement (Finding of Fact 6); permanent disability (Finding of Fact 8, Award B); whether the injury on April 16, 2023 is an industrial injury arising out of and in the course of applicant's employment with defendant as a compensable consequence of the June 11, 2017 industrial injury (Finding of Fact 9); and attorney's fees (Finding of Fact 10; Award C). We will return the matter for further proceedings consistent with this opinion.

FACTS

We will briefly review the relevant facts.

On August 7, 2019, applicant filed an Application for Adjudication of Claim (Application) claiming an injury to his left index finger, left hand, and left wrist while employed by defendant as a mechanic on June 11, 2017.

On August 8, 2023, applicant filed an Amended Application to add his left shoulder, left arm, and left upper extremity as a result of a compensable consequence accident that occurred on April 16, 2023. On May 18, 2023, applicant underwent surgery for his left shoulder.

Defendant admitted the claim only for the left wrist and left index finger.

The parties selected Mark Bernhard, D.O., as the panel qualified medical evaluator (QME) in physical medicine and rehabilitation. Applicant was evaluated by the QME on January 9, 2020, October 8, 2020, and on May 23, 2024. (Joint Exhibit A1; Exhibit 3; Joint Exhibit A3.)

In the May 23, 2024 supplemental report, the QME noted that "applicant sustained injuries to the left shoulder, one on April 17, 2023, when he was riding a motorbike with his left hand on the clutch, downshifting when the clutch froze up and the hand seized. He lost control of the bike and fell, striking the handlebars with his left shoulder, rolling six to eight times with eight." (Joint Exhibit A3, QME Report by Mark Bernhard, D.O., dated May 23, 2024, at p. 3.) Dr. Bernhard did not find the left shoulder injury from April 16, 2023 to be industrial. (*Id.* at p. 19.)

On August 13, 2025, parties proceeded to trial on the following issues:

1. Injury AOE/COE, with applicant alleging and defendant disputing that an April 16, 2023 dirt bike injury was a compensable consequence of the June 11, 2017 injury.
2. Parts of the body injured with injury to a finger of the left hand and the left wrist accepted but injury to the left shoulder and left upper extremity, particularly the left arm, disputed.
3. The extent of PD.
4. Apportionment.
5. Credit against liability for PD on account of alleged temporary disability overpayment in the amount of $4,912.11.
6. Attorney fees.

(August 13, 2025 Minutes of Hearing and Summary of Evidence (MOH/SOE), at pp. 2-3.)

At trial, applicant testified as follows:

> On April 16, 2023, he was riding on a dirt bike. He crossed over a road. He lost control of the dirt bike when his left hand seized up causing him to lose control. He had experienced some problems earlier. He had been experiencing such problems since the cast was removed following his surgery. When he had the problems, his hand would remain open rendering it useless to him.

(MOH/SOE, at p. 4.)

On December 8, 2025, applicant dismissed his attorney.

On December 16, 2025, applicant, in pro per, filed the Petition.

DISCUSSION

I.

Preliminarily, former Labor Code section 5909[1] 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.

[1] All section references are to the Labor Code, unless otherwise indicated.

> (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 January 27, 2026, and 60 days from the date of transmission is March 28, 2026, which is a Saturday. The next business day that is 60 days from the date of transmission is Monday, March 30, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision was issued by or on March 30, 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 shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on January 27, 2026, and the case was transmitted to the Appeals Board on January 27, 2026. Service of the Report and transmission of the cases 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 January 27, 2026.

[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.

II.

Turning to the merits of the Petition, applicant alleges that the April 26, 2023 injury to the left shoulder was a compensable consequence injury as a result of the July 11, 2017 industrial injury to his left hand, left index finger, and left wrist.

Our system is based on medical evidence. (*Peter Kiewit Sons v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 831, 838-839 [30 Cal.Comp.Cases 188]; (*City & County of San Francisco v. Industrial Acc. Com.* (*Murdock*) (1953) 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103]; *Bstandig v. Workers' Comp. Appeals Bd.* (1977) 68 Cal.App.3d 988 [42 Cal.Comp.Cases 114].) Medical evidence is required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c)(d), 4061(i), 4062.3(l).) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction 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, 620-621 (Appeals Bd. en banc).) "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, 169 [36 Cal.Comp.Cases 93].)

As we stated in our en banc opinion in *Wilson v. State Cal Fire* (2019) 84 Cal.Comp.Cases 393 (Appeals Bd. en banc):

> An injury must be proximately caused by the employment in order to be compensable. (Lab. Code, § 3600(a)(3); see also *Clark*, *supra*, 61 Cal.4th at pp. 297-298.[3]) Proximate cause in workers' compensation requires the employment be a contributing cause of the injury. (*Clark*, *supra*, 61 Cal.4th at pp. 297-298 [outlining this standard and analyzing the difference between causation in tort law and causation in workers' compensation].) Causation of an injury may be either direct or as a compensable consequence of a prior injury. More precisely, an injury may be directly caused by the employment. Alternatively, a subsequent injury is a compensable consequence of the first injury where it "is not a new and independent injury but rather the direct and natural consequence of the" first injury. (*Carter v. County of Los Angeles* (1986) 51 Cal.Comp.Cases 255, 258 (Appeals Board en banc).) The "first injury need not be the exclusive cause of the second but only a

[3] *South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal. 4th 291, 297-298 [80 Cal.Comp.Cases 489]

> contributing factor to it…So long as the original injury operates even in part as a contributing factor it establishes liability." (*State Compensation Ins. Fund v. Industrial Acc. Com.* (*Wallin*) (1959) 176 Cal.App.2d 10, 17 [24 Cal.Comp.Cases 302].) In other words, if the first injury is a contributing cause of the second injury, the second injury is a compensable consequence of the first injury. Whereas the first injury is directly caused by the employment, a compensable consequence injury is indirectly caused by the employment via the first injury.

(*Wilson v. State Cal Fire* (2019) 84 Cal.Comp.Cases 393, 403-404 (Appeals Bd. en banc).)

A subsequent injury to a body part may be compensable, whether an aggravation of the original injury or a new and distinct injury, if it is the direct and natural result of a compensable primary injury. (*So. Cal. Rapid Transit Dist. v. Workers' Comp. Appeals Bd.* (*Weitzman*) (1979) 23 Cal.3d 158 [44 Cal.Comp.Cases 107]; *Rodgers v. Real Property Mgt. Co.* (1984) 49 Cal.Comp.Cases 561 (Appeals Bd. en banc); *Laines v. Workers' Comp. Appeals Bd.* (1975) 48 Cal.App.3d 872 [40 Cal.Comp.Cases 365].) In such cases, there is a causal nexus between the two events. Thus, the secondary incident is not considered a new and independent injury.

Here, the existing record is insufficient on the issue of whether the April 16, 2023 left shoulder injury was a compensable consequence of the June 11, 2017 industrial injury to the left hand, left index finger, and left wrist. The QME concluded that '[t]he left shoulder condition is non-industrial as it happened from the fall that occurred on April 16, 2023." (Joint Exhibit #A3, at p. 19.) However, we find the QME's opinion on causation of the left shoulder injury to be conclusory and to not constitute substantial medical evidence. In the supplemental report issued after the May 23, 2024 re-evaluation, the QME reviewed medical records spanning from June 10, 2019 to July 19, 2023. (*Id.* at pp. 9-18.) The QME opined there was no medical evidence to support that the "June 11, 2017 injury, contributed to occurrence of the April 16, 2023, accident in terms of weakness or inability to engage in the function of the hand operating the motorbike." (*Id.* at p. 19.) However, the QME appears to ignore the medical history and the records that show applicant had been continuously obtaining treatment for his left wrist and left hand prior to the injury in April 2023. Applicant saw his primary treating physician (PTP), Richard D. Scheinberg, M.D., on February 27, 2023, which was less than two months before the April 16, 2023 injury. (*Id.* at pp. 11-12.) In the progress report, the PTP notes that "[t]the patient continues to have primarily radial sided left wrist pain. He is functioning adequately at work, but continues to have pain. He indicates his left wrist seizes up on him. He also says he gets left hand severe numbness at night." (*Id*. at pp. 11-12.) An examination demonstrated tenderness primarily over the first dorsal

compartment of the left wrist and an EMG/NCV of the left upper extremity was ordered to rule out cubital tunnel on ulnar. (*Id.* at p. 12.)

Applicant's medical history leading up to the April 2023 injury contradicts the QME's current opinion without further explanation by the QME. In light of applicant's long history of treatment and symptoms to his left wrist, left index finger, and left hand, the current record lacks a reasoned analysis as to how and why the June 11, 2017 injury was not a contributing factor of the April 16, 2023 injury. Accordingly, further development of the record is necessary.

As explained in *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.)

Further, it is well established that the Appeals Board has the discretionary authority to develop the record when the medical record is not 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 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [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 "[s]ections 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.) When the record requires further development, the preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie*, *supra*, at p. 142.) Here, the parties should return to the QME for a supplemental opinion. If the PWCJ determines that the QME's reporting is still not substantial evidence, he can consider the appointment of a regular physician pursuant to section 5701.

Accordingly, we grant applicant's Petition and affirm the F&A, except that we defer the issues of whether applicant sustained injury to any other body parts (Finding of Fact 1); when applicant reached maximum medical improvement (Finding of Fact 6); permanent disability (Finding of Fact 7, Award B); whether the injury on April 16, 2023 is an industrial injury arising out of and in the course of applicant's employment with defendant as a compensable consequence of the June 11, 2017 industrial injury (Finding of Fact 9); and attorney's fees (Finding of Fact 10; Award C). We return the matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the decision of December 2, 2025 is **GRANTED.**

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the December 2, 2025 Findings and Award is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Applicant Daniel Lozano, then 30 years of age, sustained a specific industrial injury to a finger of his left hand and left wrist on June 11, 2017, while employed in Bakersfield, California, as a Mechanic (Occupational Group 470) by Defendant-Employer Fleet Maintenance Solutions. The issue of whether applicant sustained injury to other body parts is deferred.

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6. The issue of the date when applicant reached maximum medical improvement is deferred.

7. The issue of permanent disability is deferred.

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9. The issue of whether the injury on April 16, 2023 is an industrial injury arising out of and in the course of applicant's employment with defendant as a compensable consequence of the June 11, 2017 industrial injury is deferred.

10. The issue of attorney's fees is deferred.

AWARD

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B} The issue of an award of permanent disability indemnity is deferred.

C} The issue of attorney's fees is deferred.

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 27, 2026

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

DANIEL LOZANO
J SMITH LAW
STATE COMPENSATION INSURANCE FUND

JL/abs

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