

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

**MARY CARMEN DIAZ CASTELLO (widow);
ELVIN BERRIOS (decedent), *Applicants***

vs.

**LX HAUSYS AMERICA, INC.;
GREAT AMERICAN INSURANCE GROUP, *Defendants***

**Adjudication Number: ADJ19102087
Anaheim District Office**

**OPINION AND ORDER DENYING
PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of the Findings, Award and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on May 22, 2026 wherein the WCJ found that Elvin Berrios, the deceased injured worker (decedent), sustained injury arising out of and in the course of his employment to his heart resulting in his death. The WCJ issued an award in favor of applicants Mary Carmen Diaz Castello, Elvin Noel Berrios, and Juan Manuel Berrios¹ of death benefits pursuant to Labor Code² sections 4702 to 4705, and burial expenses pursuant to section 4701, all deferred and to be adjusted between the parties subject to the continuing and reserved jurisdiction of the Workers' Compensation Appeals Board. The WCJ ordered all other issues deferred.

Defendant contends that the opinions of panel qualified medical evaluator (QME) Stuart Fischer, M.D., do not constitute substantial medical evidence because they are based on an inadequate and biased factual foundation that violate fundamental principles of medical investigation and scientific methodology; and, that the cases relied on by the WCJ to support the finding that decedent's injury and death were industrially caused can be distinguished from this case as they do not discuss section 3202.5 and the need for applicants to establish by a

¹ The WCJ also issued the award in favor of the deceased injured worker for death benefits and burial expenses; however, we must conclude this was a drafting error.

² All further references are to the Labor Code unless otherwise noted.

preponderance of the medical evidence that actual events of employment were the predominant cause of decedent's death.

Applicants filed an Answer to Petition for Reconsideration (Answer) and the WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be denied.

We have reviewed the record in this case, the allegations of the Petition for Reconsideration and the Answer, and the contents of the Report. Based on the Report, which we adopt and incorporate as though fully set forth herein, and based on the following, we deny reconsideration.

I.

Through July 1, 2024, petitions for reconsideration were subject to former Labor Code section 5909, which 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.)

During the period from July 2, 2024 through June 30, 2026, petitions for reconsideration were subject to former Labor Code section 5909, which stated 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 Labor Code section 5909, subdivision (a) (in effect from July 2, 2024 through June 30, 2026), 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 June 16, 2026. 60 days from the date of transmission is August 25, 2026. This decision is issued by or on August

25, 2026, so that we have timely acted on the petition as required by former Labor Code section 5909, subdivision (a) (in effect from July 2, 2024 through June 30, 2026).

Labor Code section 5909, subdivision (b)(1) (in effect from July 2, 2024 through June 30, 2026) 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. Labor Code section 5909, subdivision (b)(2) (in effect from July 2, 2024 through June 30, 2026) 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 workers' compensation administrative law judge, the Report was served on June 16, 2026, and the case was transmitted to the Appeals Board on June 16, 2026. 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 Labor Code section 5909, subdivision (b)(1) (in effect from July 2, 2024 through June 30, 2026), because service of the Report in compliance with Labor Code section 5909, subdivision (b)(2) (in effect from July 2, 2024 through June 30, 2026) provided them with actual notice as to the commencement of the 60-day period on June 16, 2026.

II.

This matter involves a claim for *death benefits* by the widow of an injured worker who sustained a sudden cardiac arrest and died on November 10, 2023 while at the place and during the period of his employment. (F&O, Opinion on Decision, p. 1.) While the QME in this case states that stress from decedent's employment contributed to the cause of his sudden cardiac arrest and death, *there is no claim for psychiatric injury*. (See Applications for Adjudication of Claim-Death, April 8, 2024 and April 29, 2024.)

“Stress is not a diagnosis, disease, or syndrome. It is a nonspecific set of emotions or physical symptoms that may or may not be associated with a disease or syndrome. Whether or not stress contributes to a disease or syndrome depends on the vulnerability of the individual, the intensity, duration, and meaning of the stress; and the nature and availability of modifying resources.” (American College of Occupational and Environmental Medicine (ACOEM) Practice Guidelines, 2nd Edition at p. 1055.) **However, stress may cause a physical injury or a psychiatric injury or both.**

(*Camargo v. Cox Petro. Transp.*, 2017 Cal.Wrk.Comp. P.D. LEXIS 277, *6, emphasis added.)

The only issue presented for adjudication at trial was whether decedent's *death* arose out of and in the course of his employment. (Minutes of Hearing and Summary of Evidence (MOH), May 18, 2026, p. 2.) Defendant argued in defense that the QME reports did not constitute substantial medical evidence of compensability, and that applicant lacked credibility. (*Ibid.*) All other issues were deferred. (*Ibid.*)

As an initial matter, we give great deference to the credibility determinations of the WCJ because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500, 504-505]; also see *Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140-141.)³ Only evidence of considerable substantiality would warrant rejecting a WCJ's credibility determination. (*Garza, supra*, 3 Cal.3d at 318-319.) We find no such evidence in the record of this case and concur with the WCJ's conclusion that defendant cannot rely on speculation to attack applicant's credibility. (Report, p. 4, 5.) In addition, we also concur with the conclusion of the WCJ that the testimony of defense witness Thomas Richard D'Angelo was impeached on cross-examination. (Report, p. 5.)⁴ As a result, defendant's attempt to impeach applicant through Mr. D'Angelo's testimony was not successful. (See F&O, Opinion on Decision, pp. 2-3.) Finally, we concur with the WCJ that evidence produced by defendant to further impeach applicant, i.e., VPN logs (Def. Exh. A), *support* applicant's credibility by confirming her testimony that decedent answered work phone calls and work e-mails at any time during the day. (See F&O, Opinion on Decision, p. 3.)

Next, we start our discussion on compensability with a reminder that all reasonable doubts as to compensability in this death claim must be resolved in favor of the widow. (*Clemmens v. Workers' Comp. Appeals Bd.* (1968) 261 Cal.App.2d 1, 7-8 [33 Cal.Comp.Cases 186].)⁵ Next,

³ "The law has long recognized the problem of appellate review in the matter of credibility of witnesses based upon their demeanor, and for that reason the rule has evolved that the trier of facts is the sole and exclusive judge of the credibility of witnesses as determined by their demeanor. A written transcript of testimony is but a pallid reflection of what actually happens in a trial court. "'The best and most accurate record is like a dehydrated peach; it has neither the substance nor the flavor of the fruit before it was dried.'" It resembles a pressed flower.' (*Broadcast Music v. Havana Madrid Restaurant Corp.*, 175 F.2d 77, 80.)" (*Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140 [94 Cal.Rptr. 702].)

⁴ We note a drafting error in the Report, which cites to "page 12 lines 3-5" when discussing Mr. D'Angelo's testimony; the page citation should be "page 14 lines 3-5."

⁵ [I]n order to determine whether there is any causal connection between the employment and the death, the board is bound, as are the courts, "by the fundamental principle that to effectuate the purposes of the compensation statute, all

employment need only be a contributing cause of decedent's death in order for the death to be compensable. (*South Coast Framing, Inc., et al. v. Workers' Comp. Appeals Board (Clark)* (2015) 61 Cal.4th 291, 297-299 [2015 Cal. LEXIS 3896]; *Wickham v. North American Rockwell Corp.* (1970) 8 Cal.App.3d 467, 473 [35 Cal.Comp.Cases 751] citing *Madin v. Industrial Acc. Com.* (1956) 46 Cal.2d 90, 92-93.) "[I]ndustrial causation itself need not be certain, but only 'reasonably probably.'" (*McAllister v. Workmen's Comp. Appeals Board* (1968) 69 Cal.2d 408, 417 [33 Cal.Comp.Cases 660] (*McAllister*).)

Of course, a WCJ's decision on compensability must be based on admitted evidence (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc)), and 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].) To be considered substantial evidence, a medical opinion does not require absolute certainty but rather, "must be predicated on reasonable medical probability." (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *McAllister, supra*, 69 Cal.2d at 413, 416-17.) A medical opinion is not substantial evidence if it is based on "inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-21 (Appeals Bd. en banc).)

Here, there is substantial medical evidence in the record that decedent's employment was a contributing cause of his sudden cardiac arrest and death on November 10, 2023. QME Dr. Fischer stated in his initial report that stress from decedent's employment contributed to his sudden cardiac arrest and death, and that opinion did not change in subsequent reports or in deposition:

Mr. Berrios was a 43-year-old gentleman who was followed regularly by his physician with no history of hypertension. There was a history of mildly elevated cholesterol though he was not being treated, and a long history of smoking. **According to his wife, there was significant stress daily in his job. He worked five days a week but literally was on call 7 days a week. He would drive long distances for sales of granite and granite supplies. She also stated that he would frequently open up distant territories and then would lose the territories to local salespeople. He was also under recent stress as he was being taken to small claims court regarding a recent sale of granite. It**

reasonable doubts as to whether an injury is compensable are to be resolved in favor of the employee." (*California Comp. & Fire Co. v. Workmen's Comp. App. Bd.*, 68 Cal.2d 157, 161 [65 Cal.Rptr. 155, 436 P.2d 67].)

appears then that this gentleman suffered sudden cardiac arrest which led to sudden cardiac death. This is usually an arrhythmogenic phenomenon.

There is an excellent review of sudden cardiac arrest and sudden cardiac death in the journal up to date, authored by Philip J. Podrid with the literature review current through August 2024 and the last topic update was May 20, 2024. It is referred as sudden cardiac arrest if some event is aborted, but if it goes on it is sudden cardiac death. The incident is sudden cardiac arrest increases with age but also with underlying cardiovascular disease which this gentleman had. It does increase 6-10 fold with the presence of clinically recognizable heart disease which this gentleman had. Coronary heart disease is the most significant cause. Acute ischemia is usually one of the triggers with the development of ventricular tachycardia. Risk factors include cigarette smoking; it is a significant risk for development of sudden cardiac arrest and sudden cardiac death. Excess alcohol intake is also significant and psychosocial factors specifically acute stressful situations and the risk of sudden, cardiac arrest. Risk factor reduction would have been cessation of smoking with this gentleman as a chronic smoker, regular exercise and treatment of ischemic heart disease. Once again, this gentleman presented as sudden cardiac death, and he had evidence for stress with evidence for stress in his work environment.

In the Work Comp Arena, we just have to show is there evidence for medical probability that his job aggravated, accelerate or revved up an underlying condition. It is my expert medical opinion that there is definitely a greater than 1% medical probability that all of the above was true with Mr. Berrios, Apparently, there was significant stress in his job. He had recent stress with the lawsuit and as stated above he was a chronic smoker. Therefore, it is my expert medical opinion that there is an industrial component to this gentleman's sudden cardiac death.

(Joint Exh. X1, State Panel Qualified Medical Examination/Cardiology Evaluation, QME Stuart Fishcer, M.D., September 10, 2024, emphasis added.)⁶

As described by the WCJ in the Opinion on Decision, and contrary to defendant's assertions in the petition, *QME Dr. Fischer based his opinion on causation on his medical expertise and journal review and a comprehensive review of the record including meeting with applicant, reviewing decedent's recent and historical medical records, reviewing applicant's deposition, and reviewing depositions from all defense witnesses.* (F&O, Opinion on Decision, p. 4.) A medical expert's opinion "cannot be disregarded [by the Appeals Board] as being speculative when it was based on his expertise in evaluating the significance of these facts. This was a matter

⁶ All drafting errors original to the QME report.

of scientific medical knowledge...” (*Gatten, supra*, 145 Cal.App.4th at p. 930.) As described by the WCJ in the Opinion on Decision, the QME in this case relied on his expertise and his scientific medical knowledge to form his opinions:

The parties then obtained a Panel QME with Dr. Fischer. **Dr. Fischer met with the widow, issued four reports and was deposed three times.** Defendant is contending the medical evidence is not substantial. The court has reviewed Joint Exh. X1, the four medical reports and three depositions of Dr. Fisher. Dr. Fischer’s medical reports are substantial medical evidence. **The initial report dated 9/10/24 reviews in detail the history of the applicant’s smoking, his family history of father having hypertension. The doctors also reviewed the check up the applicant had in January prior to his death and his primary treating doctors’ reports. None of these reports show the applicant was hypertensive or prescribed medication for hypertension.** They show a mildly high cholesterol level but Mr. Berrios was not in the need of medication. In his 7/7/25 supplemental report, **Dr. Fischer also reviewed multiple records from the applicant’s primary care physicians, the deposition transcripts from the three defense witnesses. He had previously reviewed the widow’s deposition transcript in his 11/29/24 report,** JT Exh. X1. In his supplemental report dated 7/7/25, JT Exh. X1, the doctor quotes the deposition of Mr. Ontinerver (Ontiveros) wherein the deponent stated,

When asked if Mr. Berrios ever mentioned that he was stressed because of work, Mr. Ontinerver states, “Not in those words. It was more like an unspoken conversation just because we had to meet a certain quota, certain sales numbers, and our numbers weren’t the best in the company.” Mr. Berrios never said that he was so stressed out or anything like that. **“It was just kind of an unspoken discussion,”** See Dr. Fischer’s report dated 7/7/25 page 4.

The doctor in reviewing the deposition of Mr. D’Angelo, stated Mr. D’Angelo described the applicant’s job duties as follows,

“Mr. D’Angelo is aware of what Mr. Berrios’ work duties were as a territory manager, which was to drive engagement, exposure, and demand with their customer base”

The doctor further stated in reviewing Mr. D’Angelo’s deposition that it confirmed the **applicant was upset about the losing the Las Vegas portion of his territory.** See page 6 of Dr. Fischer’s 9/10/24 report.

“Mr. D’Angelo made the business decision around 08/2023 or 09/2023 to move the Las Vegas territory back to the Arizona team. When asked if Mr. Berrios was upset about the territory being taken away from him, Mr. D’Angelo stated that Mr. Berrios did not

want to lose it, He does not know if he would say that Mr. Berrios was upset, However, over a few months, Mr. Berrios continued to try to make a case why he should keep Las Vegas, and that he felt he was doing good there. He wanted to stay. Mr. D'Angelo could not quite understand why Mr. Berrios was so adamant about wanting to stay in Vegas and want to work in that territory when in this business. Orange County could potentially be one of the largest territories in the whole U.S ... **Mr. D'Angelo thinks that for anybody who has worked in sales as long as he has, there is an inherent nature of stress in the sales business."**

In his 7/7/25 supplemental report, **Dr. Fischer reviewed the applicant's blood pressure readings from his primary care doctors on page 7 that showed between 4/15/21 and 1/25/23 there were no elevated blood pressure readings.** None of the additional records or depositions changed his position that the applicant's death was related to his employment with LX Hausys. **Dr. Fischer's reports are consistent with the trial testimony, the deposition testimony as submitted to him for review and with the autopsy reporting. Dr. Fischer finds the applicant's sudden cardiac arrest and death was caused by the stresses of the job. *As indicated in the report for a death to be industrial the work must have contributed to his death, that the job aggravated, accelerated or revved up and underlying condition, see page 5 Discussion section of this 9/10/24 report.* In his medical opinion there was definitely greater than 1% medical probability that the job stress was an industrial component of his death.**

(F&O, Opinion on Decision, pp. 4-5, emphasis added.)⁷

Also contrary to defendant's arguments, the QME correctly stated the standard to be applied to determine whether decedent's death was proximately caused by his employment. First, "[d]eath attributable to both industrial and nonindustrial causes may support a death claim..." (*Clark, supra*, 61 Cal.4th at p. 300.)⁸ As explained by the Supreme Court in *Clark*, the proximate cause standard in workers' compensation is "less restrictive than that used in tort law, because of the statutory policy set forth in the Labor Code favoring awards of employee benefits. In general, for the purposes of the causation requirement in workers' compensation, **it is sufficient if the connection between work and the injury be a contributing cause of the injury**" (citations) (*Clark, supra*, 61 Cal.4th at p. 298-299, emphasis added.) **"Further, 'the acceleration,**

⁷ All drafting errors original to the Opinion on Decision.

⁸ As conceded by defendant, the WCJ is correct that death benefits cannot be apportioned. (*Pacific Gas & Electric Co. v. Industrial Acci. Com.* (1961) 56 Cal.2d 219, 223.)

aggravation or “lighting up” of a preexisting disease is an injury in the occupation causing the same.’ (citations)” (*Clark, supra*, 61 Cal.4th at p. 301, emphasis added.) It is *not* a “prerequisite to recovery” that a “precise percentage figure” be assigned to decedent’s work stress and its contribution to decedent’s sudden cardiac arrest and death. (See *Clark, supra*, 61 Cal.4th at pp. 305.) As stated by the Supreme Court in *Clark*,

The Court of Appeal’s analysis emphasized Dr. Bruff’s inability to offer a precise percentage figure for Elavil’s contribution to Clark’s death. In rejecting a similar argument, *McAllister* reasoned: “Of course, such a detailed account would have been desirable, but it was not a prerequisite to recovery. Such a burden on applicants would often be unbearable. The exact amount and kinds of pollutants inhaled by decedent could only be known if a chemist had gone with him to each fire over his 32 years as a fireman. The precise toxicity of each type of pollutant, alone or in combination with others, is still not known.” (*McAllister, supra*, 69 Cal.2d at p. 417.) The court thus reasoned that “[i]n order to cover such unavoidable uncertainties, we require applicants to establish no more than that industrial causation is reasonably probable.” (*Ibid.*)

(*Clark, supra*, 61 Cal.4th at pp. 305-306, emphasis added.)

Defendant’s citation to the panel decision in *Camargo v. Cox Petro. Transp.*, 2017 Cal.Wrk.Comp. P.D. LEXIS 277, to force application of section 3208.3 (relevant only for claims of psychiatric injury), does not aid defendant. Defendant ignores the obvious truth that “stress may cause a physical injury or a psychiatric injury or both” *but when “stress causes a physical injury, section 3208.3 does not apply.”* (*Camargo, supra*, at *6-7, emphasis added.) In this case, QME Dr. Fischer provides substantial medical evidence that stress from decedent’s employment was a contributing cause in the sudden cardiac arrest that led to his death. *Sudden cardiac arrest is a physical injury* – not a psychiatric injury. As already stated above, this case involves a claim for death benefits resulting from the death of applicant’s husband from sudden cardiac arrest. There is no claim that a psychiatric injury caused decedent’s death. (Cf., *Chu v. Workers’ Comp. Appeals Bd.* (1996) 49 Cal.App.4th 1176, 1182 [depression caused by work stress led to suicide].)

Moreover, *Camargo* cannot be used to find QME Dr. Fischer’s opinions wanting as the factual circumstances in these two matters are quite distinguishable from each other. The panel in *Camargo* determined that the record in that case needed further development because the QME failed to even address whether applicant’s alleged employment stress and/or documented physical stress could have caused or aggravated his internal medicine conditions. (*Camargo, supra*, at *9-

12.) The facts here are obviously distinguishable as QME Dr. Fischer *did* address the issue of decedent's employment stress in relation to his sudden cardiac arrest and death, and because there were no allegations that there was any employment related physical stress that may have contributed to his cardiac arrest and death.⁹

Accordingly, there is substantial medical evidence from QME Dr. Fischer in this case to support the WCJ's decision that stress from decedent's employment contributed to the sudden cardiac arrest that led to his death on November 10, 2023, while decedent was at the place and during the period of his employment. We therefore deny reconsideration.

⁹ We note that even if we assumed *arguendo* that the QME may have considered the potential physical stressors of applicant's job in the causation of the fatal cardiac arrest on November 10, 2023, the QME has *already* determined that work stress contributed to decedent's cardiac arrest and death. Therefore, applicant has thereby met her burden to establish that decedent's cardiac arrest and death arose out of and in the course of his employment.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings, Award and Order issued by a workers' compensation administrative law judge on May 22, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 25, 2026

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

**MARY CARMEN DIAZ CASTELLO
LAW OFFICES OF ROSE, KLEIN & MARIAS, LLP
EMPLOYER DEFENSE GROUP, LLP**

AJF/md

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

REPORT AND RECOMENDATION ON PETITION FOR RECONSIDERATION

INTRODUCTION

The Petition for reconsideration is proper as this is a final order.

At the time of preparing this Report and Recommendation on Petition for Reconsideration no response has been filed by the applicant's attorney.

BACKGROUND

The applicant passed away on the side of the freeway while traveling between two sales calls for defendant, LX HAUSYS AMERICA, (hereinafter defendant). The dependents filed an Application for Adjudication -Death Claim on 4/8/24 EAMS Doc. ID #51306021. A Petition for Appointment of a Guardian Ad Litem was filed on 4/12/24, EAMS Doc. ID #51392152 and approved by the court on 4/14/24, EAMS Doc. ID #77861953. An Amended Application correcting the widows name was filed 4/29/24, EAMS Doc. ID #51650517. Defendant's attorney filed a Notice of Representation on 4/26/24, EAMS Doc. ID #51635324 and an answer denying the injury AOE/COE in EAMS Doc. ID #51653977. A Declaration of Readiness to Proceed (DOR) was filed and the matter was set for an MSC on 6/30/25 at which time the matter was continued to 8/25/25, to allow for further discovery, EAMS Doc. ID #79320946. On 8/25/25 the matter was set for trial on 10/22/25 before Judge Lemberg. The Minutes of Hearing (MOH) Pre-Trial Conference Statements (PTCS) were filed, EAMS Doc. ID #79504593, 79502445, 59673545 respectively. After defendant's request for a continuance, EAMS Doc. ID #60460019, the matter was continued to 12/10/25. On 12/10/25 the matter was reassigned to Judge Skelly and the court ordered further development of the record and continued the matter to 2/11/26. On page two of the MOH, EAMS Doc. ID #79846470, the

court made specific rulings regarding the additional evidence needed, that the defense witnesses were to appear in person, and due to the doctor's failure to turn over the article he based his report on and defendant's request to strike the report, the court ordered the doctor to appear at trial to afford him his due process rights regarding striking his medical report. On 2/11/26 the court again discussed the issues with the parties and ordered again the defendant file the evidence they wanted the court to consider including the daily log sheets, the listing of all texts, cell phone and emails in chronological order. The court again had the parties advise the doctor if the article was not turned over that the report would have to be stricken. At that time, defendants advised the court for the first time they were contesting dependency, so the court ordered the defendant to file a Form-510, NOTICE OF EMPLOYEE DEATH, and advise the Death Without Dependents of the death for Mr. Berrios. At that time the matter was continued until 4/30/26, EAMS Doc. ID #80035591. On 4/23/26 the parties jointly requested the trial be continued, EAMS Doc. ID #63905088, and the matter was continued to 5/18/26. At trial on 5/18/26 the defendant advised the court they were no longer contesting dependency, that the article requested from the doctor was received, and the daily log sheets, the listing of all texts, cell phone and emails in chronological order were filed in EAMS. The parties indicated the matter was ready for trial on the issue of whether or not the applicant's death arose out of or occurred during the course of his employment with defendant. Trial commenced on 5/18/26 and the court heard testimony from the applicant's widow and three defense witnesses. At trial the applicant offered an exhibit in rebuttal to the defense witnesses' testimony, Applicant's Exh. 2 which was marked and entered into the record. Thereupon the court prepared the Summary of Evidence (SOE) and Minutes of Hearing (MOH) and submitted the matter on the record. The court issued is Opinion on Decision and Findings, Award and

Order finding that Mr. Berrios death arose out of and occurred during the course of his employment with the defendant, and all other issues were deferred. It is from these findings that defendant filed its timely, verified and properly served Petition for Reconsideration on 6/16/26 contending the record did not support the finding the applicant's death arose out of or occurred during the course of his employment.

DISCUSSION

Defendant's contention in the petition for reconsideration is that the applicant did not meet her burden and prove that her husband death was related to his employment at LX HAUSYS AMERICA. Defendant also contends that the reporting of Dr. Fischer is not substantial medical evidence and the applicant's widow's testimony was inconsistent. The court found the applicant met her burden and that the reporting of Dr. Fischer was far more persuasive on injury AOE/COE than the testimony of the defense witnesses. The doctors must look at the record as a whole; the court believes Dr. Fischer did. Dr. Fischer reviewed the deposition transcripts of the widow and the three defense witnesses in preparing his four reports; he was also deposed three times, see JT Exh X1. Defendant challenged the doctor on his findings, and the doctor did not change his mind. Labor Code §3202.5¹ required a party to prove by a preponderance of the evidence the death was industrially related. In the Statement of Facts, defendant makes several statements which are not entirely accurate. Statement #8 claims the defense witnesses testified that Mr. Berrios told them of marital problems. There is no proof that the widow knew about this. It is pure speculation that she lied. Mr. Berrios may have had these thoughts and never shared them with his wife. It is not uncommon for one spouse to not know whether the other spouse is thinking of leaving the marriage. Dr. Fischer reviewed this testimony and considered it in his reporting. Statement 9 claims the widow did not tell the doctor about marital problems. There is no proof submitted that the doctor

asked her about marital problems. The widow testified on direct there were problems in 2019-2020 when she was working nights, see MOH/SOE page 6 lines 13-18. Dr. Fischer reviewed this transcript. Defendant contends in Statement 10 that the doctor exclusively relied on the statements of the widow. This is not true; he reviewed the deposition of the three defense witnesses also. Dr. Fischer opined that the applicants sudden cardiac arrest was 60% industrially related and 40% non-industrial. This meets the predominant cause of §3202.5.

The court found the applicant met her burden by a preponderance of the evidence under Labor Code §3202.5. The court evaluated the evidence and weighed the evidence and gave it due consideration. The overwhelming evidence showed that the applicant's widow's un rebutted testimony showed the reporting of Dr. Fischer was far more persuasive and more convincing and showed a greater probability for the truth. The applicant produced prima facie evidence the applicant's death arose out of and occurred during the course of employment with defendant as an outside salesperson/territory manager covering the territories of Las Vegas, Inland Empire, San Diego, Orange County and parts of Los Angeles County.

The defendants contend the Mr. Berrios widow's testimony was impeached. The court does not agree with this. The only witness whose creditability was impeached was defense witness Mr. D'Angelo. On direct examination he testified the applicant did not cover Los Angeles County, on cross-examination he changed his testimony and had to admit Mr. Berrios did cover parts of Los Angeles County, Gardena, Long Beach and other cities in the South Bay, See SOE/MOH page 9 lines 4-7, page 10 lines 16-19, and page 12 lines 3-5., and Opinion on Decision page 2 and 3. He testified they did not refer to the parts he covered as Los Angeles County for their territories. The widows' testimony was consistent with the record,

and with Dr. Fischer's reporting. The court found nothing in the record to impeach her creditability. In fact, it was confirmed by the defense witnesses. They contend the widow's testimony was inaccurate as to the time Mr. Berrios was working. She testified that Mr. Berrios logged in early in the morning, late at night and on weekends. This testimony was confirmed by the logs submitted by the defendant, Exh. A. Defendant contends in Statement #17 misstates the widow's testimony. She testified the applicant would wake up about 4:00 a.m., would work out then start work, see MOH/SOE page 4 lines 4-8. In statement #11 defendant contends the applicant set his own schedule. That may be true but that has no bearing on whether or not there was any stress on the job.

Defendant contends in Statements #s 12, 13, 15 and 16 that the applicant never complained of stress or said he was stressed out. All three defense witnesses testified that the applicant's job was stressful. They testified he was upset about possibly losing the Las Vegas territory. He did not complain of work stress, but all three testified sales jobs are stressful, meeting sales goals, meeting quotas, developing new product placement. Ms. Marcon testified,

"There was always pressure to get market share and get sales. All sales jobs have stress. She believes it would be considered normal stress for a sales job. There is pressure to meet quotas, yes.", see SOE/MOH page 12 lines 14-16.

Mr. Ontiveros testified,

"They did talk about work stress and how the day-to-day work is stressful. Sales jobs are stressful. But the applicant never really said that he was overwhelmed or stressed. There was always the issue of stress of meeting your goals and doing your job well." See SOE/MOH page 13-14 lines 24 2.

"He never mentioned that he was stressed out. Mr. Berrios was unhappy they were trying to take Las Vegas away from him.

Mr. Berrios never covered Mexico. It was brought up in a team meeting. They needed a presence there, but it was not set in stone. He was not aware if the applicant was told to cover Mexico." See SOE/MOH page 14 lines 6-10.

On Cross-examination Mr. Ontiveros testified,

“The applicant did not complain of stress to him, but it was unspoken. He said the job is stressful trying to make sure you get the market share, trying to meet your sales quotas, sales calls. Sales jobs are stressful. He never said he was stressed, it was more unspoken.” See MOH/SOE page 14 lines 22-25.

“He felt pressure from management to make sure that you got things done, met your sales goals. They would have sales blitzes where they would bring people in from all over the country to work your area to saturate the field to get as many sales in as possible. Sales were down company wide. He believes they were down everywhere.” See MPH/SOE page 15 lines 3-6.

Whether an applicant has stress is up to the doctors to determine. Just because a person does not outwardly show signs of stress or does not complain of stress, does not mean there is no stress. Just as Mr. D’Angelo, Mr. Ontiveros and Ms. Marcon testified there was stress on the job. Some people wear the emotions on their sleeves other people keep it pent up inside them. In *City of Fresno v. Workers’ Comp. Appeals Bd. (Johnson) (1985)* 163 Cal.App.3d 467, [50 Cal.Comp.Cases 53] the Court of Appeals in §5412, an applicant’s suspicions of heart trouble were not susceptible to lay diagnosis. Here we must rely on the expert medical opinion of Dr. Fischer, who in his four medical reports and three depositions made his determination on causation. Dr. Fischer’s reporting was unchanged by his depositions. Dr. Fischer’s position remained unchanged, he found the stress of the employment contributed to Mr. Berrios death, 60% industrial and 40% to non-industrial factors, See Bd. Exh X1 reports dated 9/10/24 page 6 and 7/7/25 page 7 where Dr. Fischer reiterates his findings after deposition and review of additional medical evidence. Mr. Berrios death was predominantly (60%) caused by the stress of his employment with defendant,

Defendant’s petition in Statement 17 talks about the death of Mr. Berrios mother when she died at 34 years of age due to heart attack. They submitted no facts to support this. The death certificate was never filed with the court as evidence. Any reference

to it is pure speculation. They also referred to Mr. Berrios father as having hypertension, that may be true, but these are red hearings. Just because a family member may have a medical condition does not mean the applicant did. Here Dr. Fischer reviewed the applicant's personal physicians' records for the last three years, and it was clear to the doctor, Mr. Berrios had normal blood pressure, was not hypertensive and was not on any hypertensive medications see Joint Exh. X1, 7/7/25 report page 7.

Defendant also contends in Statements #s 12 and 14 that the applicant did not handle any lawsuits for the company see MOH/SOE page 9, lines 10-12. When confronted with the Small Claims lawsuit they had no answers why he had it, other than Mr. D'Angelo testifying that it appeared to be served on an employee Mr. Berrios replaced and it was served on the warehouse. He also testified he believed the lawsuit was given to Mr. Berrios by the warehouse see MOH/SOE page 10 lines 5-10. This contradicts Mr. D'Angelo's direct testimony and supports the widow's testimony.

Defendant contends in Section II of the Petition for Reconsideration on page 4 lines 18-22, that this case relied on documentary evidence rather than witness testimony. This statement is incorrect; this case involves both witness testimony and medical reporting and the three depositions of the doctor, which is done in lieu of testimony at trial by the doctor. On page 5 lines 5-9, defendant contends the doctor based his conclusions entirely on the statements of the widow. This is incorrect that the doctor based his reports on the totality of the evidence, the coroner's report and the three defense witness depositions. Further, on page 5 lines 17 – page 6 line 2, again the defendant challenges the veracity of the widow. This court found her testimony credible and controlling. She is not the only "interested party" the doctor utilized in writing his reports, he reviewed the defense witnesses who also are interested

parties. The doctor was aware of all the alleged marital issues as they were referenced in reports in his review of the defense witness depositions.

The defendant's contention in Section III -2 is a flat-out misstatement of the facts. All three witnesses testified the job was stressful, whether or not the applicant complained to them is irrelevant. As set forth above, the fact that someone internalizes stress does not mean that person is not suffering from stress. Section III – 3 the defendant contends the doctor used the wrong standard to assess causation. He found 60% industrially related. He also said for death cases only one percent is needed to find the death industrial. If the stress caused, contributed or hastened the applicant's death it is industrially related. That occurred here. Dr. Fischer addresses all the defendants' contention that the death was not industrially related, smoking, family history, marital issues. This is a physical injury case. Mr. Berrios suffered a sudden cardiac arrest. This is not a psychiatric claim. Defendant attempts to rely on *Camargo v Cox Petro. Transport (2017)* 2017 Ca. Wrk. Comp. P.D LEXIS 277. This is a panel decision from the board and not cited in the Cal.Comp.Cases. This case cannot be cited as binding legal precedent in other proceedings with the WCAB. Irrespective of that, this case says the doctor must look at all physical and mental stressors. Here Dr. Fischer did look at all the evidence, both the mental and the physical stressors.

The court's opinion was based on substantial medical and testimonial evidence in light of the entire record. *Le Vesque v. WCAB (1970)* 1 CAL.3d 627. Substantiality of the record is based on the entire record not just on one piece of the evidence as defendant would have the court believe. Dr. Fischer's reports are based on the record as whole. Evidence that is reasonable and credible can be used to support the conclusions of the court,

Braewood Convalescent Hospital v. WCAB (1983) 34 Cal. 3d 159, *Garza v. WCAB* (1970) 34 Cal. 3d 312, **Bassett McGregor v. WCAB** (1988) 205 Cal.App. 3d 1102.

The court did meet the test as set forth in **McCallister v. WCAB** (1968) 69 Cal. 2d 408, the record as a whole shows the applicant's sudden cardiac arrest and death was caused by stress on the job based on Dr. Fischer's reports and his depositions.

Defendant challenges the courts citing of ***Wehr v. WCAB*** (1985) 165 Cal.App.3d 188, 50 Cal.Comp.Cases 165, 169. In the Wehr case, the Court of Appeals stated, "it was incumbent upon the applicant to at least produce prima facie evidence that Mr. Wehr's death arose out of employment.' They also said, "Applicants had the initial burden of proving by a preponderance of the evidence that Mr. Wehr's death arose out of his employment.", further stating that the "Preponderance of the evidence' means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth." "Labor Code §3202.5." "When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence.' Here the evidence submitted by all parties support the finding Mr. Berrios death was industrially related. Once the applicant establishes a prima facie case the death was industrially related the burden shifts to the defendant to provide evidence to rebut this. Here the defendants did not support any evidence to rebut that the stress on the job was a contributing factor to the applicant's death. In **Clemmens v. Workmen's Compensation Appeals Board** (1968) 261 Cal. App. 2d 1, 33 Cal.Comp.Cases 186 the Court of Appeals said "In a case where the employment appears to be the cause. The burden is placed on the employer to prove otherwise. In a case where disease appears to be the cause. The burden is placed on the applicant to prove the employment *contributed*." (emphasis added). Here there is no disease process. The applicant

did have one artery that was partially occluded. There is no proof that the applicant had hypertension, high blood pressure or was taking any hypertensive medication. The doctor addressed all these issues in his reporting and depositions. He attributed that the stress of the job was 60% industrial and 40% to non-industrial factors. Therefore, the applicant sustained her burden to prove her husband's death was industrially related and defendant did not submit evidence to rebut this finding. The Clemmens case went on to further state that the applicant's "were entitled to the benefit of a presumption or inference that the death arose out of employment, since it is undisputed that his employment brought him to the place where his death occurred." No one has submitted any evidence to dispute the applicant was working at the time of his death. The Court of Appeals went on to further say, "The facts that experts may be divided in their opinions as to causation, or that different schools of thought exist in the medical profession, is not reason to deny liability if the commission finds on competent substantial medical evidence in accord with those doctors who honestly believe that the employment hastened or precipitated the injury." Citing Liberty Mut. Ins. Co. v. Industrial Acc. Com. 73 Cal.App.2d555. 559-560. Here there are no divided medical opinions just defendant's non-medical contention the doctor is not right. Finally, in the Clemmens case supra the Court of Appeals stated 'In resolving that conflict in order to determine whether there is any causal connection between the employment and the death, the board is bound, as are the courts "by the fundamental principle to effectuate the purposes of the compensation statute, all reasonable doubts as to whether an injury is compensable are to be resolved in favor of the employee.'" Here the medical evidence and the testimony of the defense witnesses state the applicant's job was stressful and Dr. Fischer opines this stress was a contributing factor in Mr. Berrios' death.

Therefore, this court requests the board uphold its Opinion on Decision and Findings, Award and Order finding that Mr. Berrios' death arose out of and occurred during his employment with defendant, LX HAUSYS AMERICA.

CONCLUSION

Therefore, this court requests the Board deny defendant's Petition for Reconsideration and uphold the findings and orders the applicant's death was related to his employment.

DATE: 6/26/2026

Alan Skelly
WORKERS' COMPENSATION JUDGE