

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

**FAVIAN GALVAN, *Applicant***

**vs.**

**BRAUN ELECTRIC COMPANY; ZURICH AMERICAN INSURANCE COMPANY,  
Adjusted By GALLAGHER BASSETT SERVICES, INC., *Defendants***

**Adjudication Numbers: ADJ16104988, ADJ21653825  
Bakersfield District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact & Award of and Order of January 2, 2026 in case ADJ16104988<sup>1</sup>, wherein it was found that while employed as a lineman during a cumulative period ending April 20, 2022, applicant sustained industrial injury to the left hand and left wrist causing temporary partial disability during the period "from April 17, 2022 to December 10, 2023. Suitable modified or alternative work was available to Applicant Favian Galvan from April 17, 2022 to April 20, 2022 and in September-October 2022."<sup>2</sup> It was found that applicant's injury caused permanent disability of 14%. In finding permanent disability of 14%, it was found that applicant's left-hand disability was 8% and his left wrist disability was 6%. Applicant's left wrist impairment of 2% WPI was determined exclusively based on a paid "add-on" even though applicant had no underlying ratable left wrist impairment.

Defendant contends that the WCJ erred in finding applicant entitled to compensable temporary disability until December 10, 2023, arguing that applicant returned to work much earlier

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<sup>1</sup> Although defendant has included case ADJ21653825 in the caption of its Petition, the WCJ's decision was issued only in case ADJ16104988 and defendant's Petition raises issues only related to that case. Case ADJ21653825 involves a different injury that has not yet been adjudicated.

<sup>2</sup> It is unclear if this is a typographical error given that in the Opinion on Decision, the WCJ recites the time worked by applicant as September-October 2023. In the Opinion on Decision, the WCJ cites to applicant's trial testimony that he worked in "September or October of 2023." (Minutes of Hearing a Summary of Evidence of September 16, 2025 trial at p. 6.)

and in finding permanent disability attributable to the left wrist, arguing that impairment for pain cannot be included without underlying ratable impairment to the same body part. We have received a response from applicant and the WCJ has issued a Report and Recommendation on Petition for Reconsideration (Report).

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant defendant's Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

## I.

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

Here, according to Events, the case was transmitted to the Appeals Board on February 17, 2026 and 60 days from the date of transmission is Saturday, April 18, 2026. The next business day that is 60 days from the date of transmission is Monday, April 20, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>3</sup> This decision is issued by or on April 20, 2026, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on February 17, 2026, and the case was transmitted to the Appeals Board on February 17, 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(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on February 17, 2026.

## II.

Turning to the merits, qualified medical evaluator orthopedist Stephan Sweet, M.D. opined that applicant's period of temporary total disability ended when applicant first returned to work. At his deposition the following exchange took place between applicant's counsel and Dr. Sweet:

Q: When would [the temporary total disability period] end?

A. Do you have a date when he – if he had returned to work?

Q. He did return to work. I don't have an exact date though.

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<sup>3</sup> 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.

A. Because when I saw him in August – on August 8, 2022, he had not returned to work. Then – and when I saw him on 12-11-23, he began employment December of 2022. So I would say until that time.

Defense counsel: I'm sorry. Can we confirm? That's April 2022 until December 2022?

A. Yes.

Q. And after that time was he temporarily totally disabled for any period of time after December of 2022?

A. No.

Q. Was there any period of temporary partial disability after the injury?

A. Not to my knowledge.

Q. All right. So, then, would his period of temporary disability be from the time he was laid off in April until December of 2022 when he went back to work?

A. I believe so, yes.

(March 26, 2024 deposition at pp. 17-18.)

At trial, applicant testified, “He worked for about a month in January of 2024 for Silver Fox Energy. He also had a job as a supervisor in Ohio in September or October of 2023. That was about a month. He has also worked as an inspector for Southern California Edison and Pacific Gas & Electric.” (Minutes of Hearing and Summary of Evidence of September 16, 2025 trial at p. 6.) However, at his deposition that took place on May 26, 2023, applicant testified that he had already worked for Silver Fox Energy doing “a few jobs around the country” and Southern California Edison. Additionally, defendant introduced a screenshot of applicant’s social media showing that applicant was on the job in Ohio on October 15, 2022. It thus appears that applicant confused 2022 for 2023 in his trial testimony regarding when he did his work in Ohio and that applicant returned to work, at the very latest, by October 15, 2022.

With regard to the issue of permanent disability, the WCJ found 14% permanent disability based on the Dr. Sweet’s opinion. In his May 21, 2024 report, Dr. Sweet wrote:

I have reviewed my prior 12/11/23 PQME report, the 3/26/24 deposition transcript, and Chapter 18 of the AMA Guidelines. I would continue to endorse that Mr. Galvan's left wrist warrants an additional 2% WPI for pain, to be added to the 0% WPI for his left wrist range of motion impairment. According to Section 18.3b on page 572,3 questions are posed. As described below, the answer to all 3 questions is YES. Per Section 18.3b, if the answer to all 3 questions is YES, the examiner should consider the individual's pain-related impairment ratable and should proceed according to the protocol described in Section 18.3d.

1. Do the individual's symptoms and/or physical findings match any known medical condition? Yes. Mr. Galvan's history, symptoms, and objective findings are consistent with a left scaphoid bone fracture, left first carpometacarpal (CMC) joint osteoarthritis, and partial tear of the triangular fibrocartilage complex (TFCC).

2. Is the individual's presentation typical of the diagnosed condition? Yes. He had a fracture of the scaphoid, a bone that supports and stabilizes articulation of the wrist. He has osteoarthritis of the first carpometacarpal joint, an articulating joint that links the wrist to the base of the thumb, which in turn permits thumb opposition and grip. He had a tear of the triangular fibrocartilage complex (TFCC), a network of ligaments that stabilizes the wrist and transmits load during pronation and supination of the wrist. Injury, degeneration, or trauma to these body parts would reasonably impair their respective function. Mr. Galvan's presentation was notable for painful tenderness in the wrist, decreased opposition and grip strength, TFCC grinding, and difficulty making a fist. This presentation would be typical of the 3 above-mentioned conditions.

3. Is the diagnosed condition one that is widely accepted by physicians as having a well- defined pathophysiological basis? Yes. Fractures, osteoarthritis, and ligamental tears are well-established in medical literature. The functions of the scaphoid bone, first carpometacarpal (CMC) joint, and triangular fibrocartilage complex (TFCC) are well-understood. Injury, degeneration, or trauma to these body parts would reasonably impair their respective function.

### **ALMARAZ / GUZMAN II**

I have reviewed my prior 12/11/23 PQME report, the 3/26/24 deposition transcript, and Chapter 18 of the AMA Guidelines. Having reviewed the above, I would not change any of my prior opinions regarding the applicability of the Almaraz Guzman II decision. As stated in my prior 12/11/23 PQME report, Almaraz Guzman II was applied since Mr. Galvan's left wrist disabilities were not accurately reflected by strict use of the AMA Guidelines. His wrist injuries extended to the bone (scaphoid), joints (CMC), and ligaments (TFCC), resulting in pain and dysfunction of these body parts. While not accurately reflected by strict use of the AMA Guidelines, his impairment is ratable, as described in

detail above. Therefore, I would continue to endorse that Mr. Galvan's left wrist warrants an additional 2% WPI for pain, to be added on the 0% WPI for his left wrist range of motion impairment.

### III.

We highlight the following legal principles that may be relevant to our review of this matter.

In *v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 631 [Appeals Bd. en banc]), we held that "Because this pain add-on can be assessed only to 'increase' other ratable impairment [citation], there can be no pain add-on if there is no underlying WPI for a particular body part or system."

However, in *Portee v. State of California* (2018) 2018 Cal. Wrk. Comp. P.D. LEXIS 291 (Appeals Bd. Panel), an Appeals Board panel allowed a pain add-on even though there was no underlying impairment to the same body part. In *Portee*, the add-on was allowed based on substantial medical evidence that including the add-on was the best reflection of the applicant's impairment. In so finding, the panel followed *Almaraz v. Environmental Recovery Services* (2009) 74 Cal.Comp.Cases 1127 (Appeals Board en banc) (commonly known as *Almaraz II*), where we held that a "scheduled permanent disability rating may be rebutted by successfully challenging the component element of that rating relating to the employee's WPI under the AMA Guides ... by establishing that another chapter, table, or method within the four corners of the Guides most accurately reflects the injured employee's impairment." (*Almaraz II*, 74 Cal.Comp.Cases at pp. 1095-1096.) *Portee* also followed *City of Sacramento v. Workers' Comp. Appeals Bd. (Cannon)* (2013) 222 Cal. App. 4th 1360 [79 Cal.Comp.Cases 1] where an alternative *Guzman* rating was allowed based only on applicant's subjective complaints of pain.

It is well established that decisions by the Appeals Board 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]; *Garza, supra*; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal. Comp. Cases 16].) "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 Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis

removed and citations omitted.) To constitute substantial evidence “... 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 v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Here, it is unclear from our preliminary review that there is substantial medical evidence to support the WCJ’s decision without additional development of the record. Where the medical evidence or opinion on an issue is incomplete, stale, and no longer germane, or is based on an inaccurate history, or speculation, it does not constitute substantial evidence. (*Place v. Workers’ Comp. Appeals Bd.* (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Based on our review, we are not persuaded that the record is properly developed. Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

#### IV.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal.2d 360, 364.) “[t]here is no provision in chapter 7, dealing with

proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied.”]; see generally Lab. Code, § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”].)

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a “threshold” issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].)

Section 5901 states in relevant part that:

No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers’ compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. . . .

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision

is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

**V.**

Accordingly, we grant defendant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration is **GRANTED**.

**IT IS FURTHER ORDERED** that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

I CONCUR,

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**April 20, 2026**

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

**FAVIAN GALVAN  
EMPLOYEES FIRST LABOR LAW  
JOSEPH PLUTA  
LUNA LEVERING  
EDD SDI BAKERSFIELD  
KERN COUNTY DCSS**

**DW/oo**

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