

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

FEDERICO RAZO BECERRA, *Applicant*

vs.

**OAKRIDGE LANDSCAPE;
OAK RIVER INSURANCE COMPANY, administered by
BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ17320004
Goleta District Office**

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

Defendant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on February 11, 2026. The WCJ found, in relevant part, that on September 15, 2022, while employed by defendant as a gardener, applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to his right elbow, right hand, right shoulder, right wrist, right fingers, and right thumb causing permanent disability (PD) of forty-two percent (42%) payable at the rate of \$290.00 per week for 70 weeks, in the total sum of indemnity in the amount of \$20,445.00, less monies received and attorney fees. The WCJ further found applicant entitled to an additional eighteen weeks and one day of temporary disability, further medical treatment to cure or relieve from the effects of the industrial injury, and reimbursement for all out-of-pocket medical expenses to be adjusted by the parties.

Defendant contends that the WCJ erred in relying on the primary treating physician (PTP)'s opinions as the basis for his decision without a summary nor explanation as to why he rejected the panel qualified medical evaluator (QME)'s opinions as required by Labor Code section 5313¹. Defendant further contends that the WCJ found and awarded a PD rating inconsistent with the

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

proposed rating provided by applicant's attorney in the pre-trial conference statement without any explanation as to how he arrived at such rating.

We have not received an answer from applicant.

The WCJ submitted a Report and Recommendation on Petition for Reconsideration (Report), recommending applicant's Petition be granted in part as to the level of PD awarded, but otherwise be denied.

We have considered the Petition and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, as well as the reasons stated in the WCJ's Report to the extent quoted below, we will grant reconsideration to amend Findings of Fact number eight (8) to find that applicant sustained PD of 34% and is entitled to weekly payments at the rate of \$290.00 for 159 weeks, in the aggregate amount of \$46,110.00, less monies received and attorney fees. We also amend Findings of Fact number twelve (12) to find that applicant's attorney is entitled to \$6,916.50 in connection with the PD awarded, to be commuted from the far end of the award. We otherwise affirm the WCJ's decision of February 11, 2026.

FACTS

On February 15, 2023, applicant filed an Application for Adjudication of Claim claiming an injury to his right shoulder, right elbow, right arm, right hand, right fingers, and left hand while employed by defendant as a landscaper on September 15, 2022.

Applicant was evaluated by orthopedic surgery panel QME, Thor Gjerdrum, M.D., on August 16, 2023 and again on January 8, 2025. The QME found industrial causation for the right upper extremity and applicant to be permanent and stationary as of January 8, 2025, and in need of future medical care. The QME further found applicant sustained a 5% whole person impairment (WPI) for the upper extremity, and a 3% WPI add on for pain. (Defendant's Exhibit #C, Dr. Thor Gjerdrum., dated July 11, 2025, at pp. 2-4.)

On April 6, 2023, applicant was initially evaluated by Michael J. Behrman, M.D., as his PTP, received treatment due to the admitted injury to his right arm, and was found to be temporarily totally disabled. (Applicant's Exhibit #1, Report of Dr. Michael Behrman, dated April 6, 2023², at p. 1.) On July 28, 2025, PTP Dr. Behrman issued a report wherein he found industrial causation for the right upper extremity, that applicant was permanent and stationary as of July 28, 2025 with a need for future medical care, and an 18% WPI for the upper extremity.

² Applicant's Exhibit #1 was mistakenly marked as June 13, 2025.

(Applicant's Exhibit #2, Report of Dr. Michael Behrman, dated July 28, 2025, at p. 6.)

On December 23, 2025, the parties proceeded to trial on the issues of the parts of body injured, temporary disability, temporary disability overpayment, permanent and stationary date, permanent disability, apportionment, need for further medical treatment, liability for self-procured medical treatment, the supplemental job displacement voucher, and attorney fees.

DISCUSSION

I.

Former 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:

- (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 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 March 3, 2026 and 60 days from the date of transmission is May 2, 2026, which is a Saturday. The next business day that is 60 days from the date of transmission is Monday, May 4, 2026. (See Cal.

Code Regs., tit. 8, § 10600(b).)³ 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 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 March 3, 2026, and the case was transmitted to the Appeals Board on March 3, 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 March 3, 2026.

II.

We now turn to the merits of the Petition. Defendant contends that the WCJ erred in relying on the PTP's reports without summarizing the QME's reports or providing further explanation as to why the QME's reports were rejected. (Petition, at p. 2.)

It is well established that the WCJ and the Appeals Board are empowered to choose among conflicting medical reports and rely on that which is deemed most persuasive. (*Jones v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 476 [33 Cal.Comp.Cases 221]; see also *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741 [2023 Cal. Wrk. Comp. LEXIS 30I] (Appeals Board en banc).)

Here, the WCJ has carefully reviewed the evidentiary record and determined that the reporting of PTP Dr. Behrman is the most thorough and persuasive based on the facts in evidence.

³ 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.

As stated in the Report:

The WCJ relied on the PTP based on a variety of factors. The PTP is a well-known upper extremity specialist physician in the Santa Barbara area and is often used as an Agreed Medical Examiner (AME).

He diagnosed, treated and to an extent healed the injured worker. He performed right elbow surgery on Applicant and managed the ongoing day to day care and progress.

Dr. Gjerdrum wrote in his January 8, 2025, final report on page 4 under the heading of:

“REVIEW OF MEDICAL RECORDS

Unfortunately, treatment and other records were not provided at the time of this evaluation. Nevertheless, I am required by the Labor Code to submit a timely report. Therefore, the report is being submitted without the review of records. The anticipation of completing this evaluation once the records are available for review in the form of a supplemental report.”

There were no supplemental or additional reports authored by Dr. Gjerdrum. Dr. Gjerdrum also did not review Dr. Behrman’s final report dated July 28, 2025. The lack of reviewing Dr. Behrman’s final report together with the paragraph documenting there are medical and treatment records he wanted to review, but was not provided, also lend credence to the finding that Dr. Gjerdrum’s report does not constitute substantial medical evidence, and that the WCJ was correct in relying on the medical reporting of Dr. Behrman.

(Report, at pp. 2-3.)

We are persuaded that the WCJ appropriately relied on the reporting of PTP Dr. Behrman. Accordingly, we decline to disturb the WCJ’s findings in this regard.

III.

Defendant further contends the WCJ found and awarded a PD rating inconsistent with the rating provided by applicant’s attorney in the pre-trial conference statement without any explanation as to how he arrived at the rating. (Petition, at p. 2.) In the Report, the WCJ conceded that he made an error in the PD rating by using the “J” modifier and agrees that the final rating string should have been found to be 16.02.02.00 – 18 – [1.4]25 – 491G – 28 – 34%, which reflects permanent disability of 34% rather than 42%. (Report, at p. 3.)

We have reviewed the reports of PTP Dr. Behrman, the WCJ's recommended revised rating, and the rating defendant identifies as applicant attorney's rating, and agree that the correct modifier to be used in rating the upper extremity is "G".

Accordingly, we grant defendant's Petition for the limited purpose of amending the permanent disability to reflect a 34% rather than 42% permanent disability with corresponding changes to attorney's fees, but otherwise affirm the WCJ's F&A.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the F&A of the WCJ dated February 11, 2026 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the F&A of the decision of February 11, 2026 by the WCJ is **AFFIRMED**, except that it is **AMENDED**, as follows:

FINDINGS OF FACT

8. It is found the injury herein caused 34% permanent disability. It is also found Applicant is entitled to weekly payments at the rate of \$290.00 for 159 weeks in the aggregate amount of \$46,110.00 less monies received on account thereof and attorney fees.

12. It is found Applicant's attorney is entitled to 15% of the additional temporary disability awarded hereinabove. It is also found Applicant's attorney is entitled to \$6,916.50 in connection with the permanent disability awarded hereinabove, to be commuted off of the far end of the award.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 1, 2026

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

**FEDERICO RAZO BECERRA
WOLFF-WALKER LAW FIRM
COLEMAN CHAVEZ & ASSOCIATES**

JL/abs

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