

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

GENOVEVA RIVERA, *Applicant*

vs.

**SODEXO, INC.; XL INSURANCE AMERICA, INC., Administered By GALLAGHER
BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ10837798
Oakland District Office**

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

Applicant and defendant each seek reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of May 28, 2026, wherein it was found that while employed as a housekeeper during a cumulative period ending April 24, 2017, applicant sustained industrial injury to her cervical and lumbar spine causing permanent disability of 38%. In finding permanent disability of 38%, it was found that apportionment of permanent disability was indicated to previous injuries, but not to applicant's diabetes condition (Opinion on Decision at p. 13). Additionally, despite agreed medical evaluator orthopedist Peter Mandell's opinion that applicant's lumbar permanent disability and cervical permanent disability be added rather than combined utilizing the combined values chart (CVC) of the 2005 Schedule for Rating Permanent Disabilities, the WCJ utilized the CVC to rate the applicant's permanent disability (Opinion on Decision at p. 12). Finally, it was found that applicant's vocational rehabilitation evidence did not successfully rebut the scheduled permanent disability rating (Opinion on Decision at pp. 13-15).

Applicant contends that the WCJ erred in finding permanent disability of only 38%. Applicant argues that the WCJ relied upon insubstantial evidence because the reporting of AME Dr. Mandell was stale, based upon an evaluation that took place in 2018, and that the medical and vocational evidence did not consider new developments in the law regarding rebuttal of the CVC and vocational rebuttal. Applicant argues that the matter should be returned to the trial level for

further discovery. Defendant contends in its Petition that the WCJ erred in not following Dr. Mandell's opinion regarding apportionment to applicant's non-industrial diabetes condition. We have not received answers to the petitions, although defendant's Petition does address the contentions made by applicant in her Petition. The WCJ has filed a Report and Recommendation on Petition for Reconsideration¹.

As explained below, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further development of the medical and vocational record and decision on all outstanding issues.

I.

Up 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(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

¹ In the Report, in addition to evaluating the petitions on the merits, the WCJ states that applicant's Petition is subject to dismissal because it did not serve all "parties" and that the Petition did not include applicant's counsel's state bar number. When a party is represented by counsel, service is made on the party's counsel of record. (Cal. Code Regs., tit. 8, § 10625, subd. (a).) Thus, there was no requirement that applicant serve its Petition on the insurer, third party administrator, or employer (who pursuant to Labor Code section 3757 is generally not a party to the action). The WCJ is correct that an attorney is obligated to include their state bar number in pleadings filed with the Appeals Board. However, we decline to dismiss the applicant's Petition on this basis. Applicant's counsel is reminded that failure to follow Appeals Board rules and regulations may lead to sanctions.

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 July 1, 2026 and 60 days from the date of transmission is Sunday, August 30, 2026. The next business day that is 60 days from the date of transmission is Monday, August 31, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, August 31, 2026, so that we have timely acted on the petition as required by Labor Code section 5909(a) (in effect from July 2, 2024 through June 30, 2026).

Labor Code section 5909(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(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 July 1, 2026, and the case was transmitted to the Appeals Board on July 1, 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) (in effect from July 2, 2024 through June 30, 2026), because service of the Report in compliance with Labor Code section 5909(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 July 1, 2026.

II.

Applicant was evaluated by AME Dr. Mandell on April 11, 2018. This was the only time applicant was examined by Dr. Mandell, although Dr. Mandell issued various supplemental reports

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.

and sat for deposition through late 2021. Afterwards, applicant was evaluated by a neurologist and internist, who did not find that applicant sustained industrial injury, underwent a functional capacity evaluation, and was evaluated by vocational experts. After a final supplemental report was issued by the internist on May 29, 2025, defendant filed a Declaration of Readiness to Proceed (DOR) on September 29, 2025. On October 14, 2025, applicant objected to the DOR, stating in its objection that discovery was ongoing.

A hearing took place on November 10, 2025. The case was taken off calendar but in the Minutes of the hearing the WCJ overseeing the hearing wrote “Applicant to contact Dr. Mandell by 1/5/26 or defendant will re-file DOR to close discovery.”

Applicant apparently did not reach out to Dr. Mandell to schedule a new evaluation and on January 7, 2026, defendant again filed a DOR seeking a trial on the existing record. Applicant did not object to the DOR. At the February 10, 2026 settlement conference, applicant argued for further discovery, but the WCJ closed discovery and set the matter for trial, writing:

Applicant did not schedule AME re-exam with Dr. Mandell until after the DOR was filed, and shortly before the 2/9 MSC, despite being allotted until 1/5/26 to contact Dr. Mandell to schedule any re-evaluation. The parties were also sent an email on 11/10/25 with the Minutes of Hearing which stated, “Deadline for AA to contact Dr. Mandell regarding re-evaluation is 1/5/26.” No due diligence shown by applicant in scheduling the Dr. Mandell exam, so discovery is closed.

At the April 8, 2026 trial, applicant again asked for further discovery on the basis that she had not been evaluated by the AME since 2018 and that his reporting and deposition testimony did not reflect her current condition. Applicant also said that she was unable to complete vocational discovery because her vocational expert had retired. (Minutes of Hearing and Summary of Evidence of April 8, 2026 trial at p. 3.) However, the trial WCJ declined to take the matter off calendar for further discovery and issued the decision that applicant and defendant now challenge by way of their respective petitions.

III.

While we are highly sympathetic to the settlement judge and the trial judge’s frustrations with applicant’s counsel’s dilatory conduct, and we are disturbed that applicant’s petition evinced no contrition for applicant’s counsel’s litigation conduct, we nevertheless will grant reconsideration, rescind the WCJ’s decision, and return this matter to the trial level for further

development of the record and decision. 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).)

Additionally, since the AME and the vocational experts last issued reports in this case, new case law has developed regarding issues that may be relevant to their reporting in this matter. (See, e.g., *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 [Appeals Bd. en banc]; *Nunes v. State of California* (20223) 88 Cal.Comp.Cases 741 [Appeals Bd. en banc].) We note that the WCJ found the AME's discussion of apportionment to applicant's non-industrial diabetes condition inadequate, a finding challenged by defendant in its Petition. Further development of the record affords defendant the opportunity to seek further discovery on this issue.

In granting reconsideration and returning this matter to the trial level for further proceedings and decision, we are mindful of the fact that applicant has the burden of proof in regarding permanent disability and in rebutting the scheduled permanent disability rating. Nevertheless, we afford the parties one more opportunity to meet their respective burdens of proof. Other remedies are available to the WCJ when faced with bad faith or dilatory conduct. (See, e.g., Labor Code, § 5813.)

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) medical evidence on an issue. The WCAB has a constitutional mandate to ensure "substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) In accordance with that mandate, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further development of the record and decision on all outstanding issues. We express no opinion on the ultimate resolution of any issue in this case.

For the foregoing reasons,

IT IS ORDERED that Applicant's and Defendant's respective Petitions for Reconsideration of the Findings and Award of May 28, 2026 are **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of May 28, 2026 is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 31, 2026

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

**GENOVEVA RIVERA
KNOPP & PISTIOLAS
KARLIN, HIURA & LaSOTA**

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*