

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

JANICE JONES AUSTIN, *Applicant*

vs.

**CONTEMPORARY SERVICES CORPORATION;
ZURICH NORTH AMERICA, *Defendants***

**Adjudication Number: ADJ18246803
Los Angeles Office**

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

Defendant seeks reconsideration of the June 12, 2026 Findings and Order (F&O) issued by a workers' compensation administrative law judge (WCJ), wherein the WCJ found that applicant did not sustain injury with defendant on an industrial basis. Applicant claimed that during the period from June 4, 2021 through September 23, 2021 she sustained a cumulative trauma injury to her circulatory system, including a stroke, causing impaired sleep and injury to her brain, left leg, and left arm arising out of and occurring in the course of employment as a security guard.

Applicant contends that the evidence does not justify the findings of fact and that the findings of fact do not support the order that applicant take nothing in this matter. More specifically, applicant contends that the F&O is based on a material mistake of fact regarding the date of a stressful encounter between applicant and a supervisor that evidently occurred during roll call at 6:00 p.m. on September 22, 2021. Less than 12 hours later, applicant sustained a stroke at home, either when or shortly after she went to sleep at 3:00 a.m. The WCJ's summary of applicant's testimony erroneously indicates that applicant testified the encounter with her supervisor occurred a day earlier, on the 21st of September, and not on the 22nd. Applicant alleges that this misunderstanding of applicant's testimony was prejudicial, because the WCJ's causation

analysis relied heavily upon the perceived lapse of time between the workplace confrontation and the stroke.

Defendant has filed an Answer, and the WCJ has prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer thereto, and the contents of the WCJ's Report. Based on our review of the record, and for the reasons stated below, we will grant reconsideration, rescind the F&O, and return the matter to the trial level for further proceedings consistent with this opinion.

I.

Former Labor Code section 5909¹ 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 July 1, 2026, and 60 days from the date of transmission is Sunday, August 30, 2026. The next business day after 60 days from the date of transmission is Monday, August 31, 2026. (See Cal. Code Regs., tit. 8, §

¹ All further references are to the Labor Code unless otherwise noted.

10600(b).)² This decision is issued by or on August 31, 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 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 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 July 1, 2026.

II.

The F&O ordered that applicant take nothing based upon two findings of fact: (1) applicant "did not sustain injury... on an industrial basis," and (2) "[i]n light of Finding #1, all other issues are moot." (F&O, at p. 1.)

The Opinion on Decision in support of the F&O summarizes the basis for these findings and order as follows:

Applicant is a 38-year employee of the City of Los Angeles, not a defendant in this case, with a long history of hypertension and uncontrolled diabetes. She also worked concurrently for Defendant Contemporary Services Corporation for about four months between 06/04/2021 and 09/23/2021. MOH/SOE at p.5. Her claim is that harassment at work during those four months, and specifically following an incident at 6:00 pm on 09/21/2021, caused the stroke that she suffered at home in the early morning hours between 3 :00 and 5 :00 am on 09/23/2021, and that she also sustained orthopedic cumulative trauma injuries.

Applicant's testimony was that she had issues with supervisor Ashley Clay,

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.

including claimed harassment from Ashley on her daily field activity reports. Applicant testified that she reported the alleged harassment to Lajuana Hawkins, and she believed the report was confidential. ***Applicant testified that in retaliation for reporting the harassment, she was subsequently threatened by Ashley with termination in front of other employees at a roll call meeting at about 6:00 pm on the evening of 09/21/2021.*** The evidence is clear that she did have a stroke at home the next night, in the early morning hours of 09/23/2021.

There is an important discrepancy in the timing between the roll call meeting and the stroke. Applicant claims that the stroke was the same night as the roll call meeting, which would mean that the roll call meeting must have been at 6:00 pm on 9/22/2021. However, ***Applicant's testimony was that the meeting was at 6:00 pm on 9/21/2021,*** which would have been a full day earlier. The timing is a significant point, since Applicant relies on the close proximity in time between the roll call meeting and the stroke to support the conclusion that the stroke was industrial.

Dr. Zlotolow's reporting in this matter is not persuasive, as it contains significant errors regarding the timing of the stroke. Dr. Zlotolow reported several times [i.e., Applicant's Exhibit 1 at p. 4, Applicant's Exhibit 2 at p. 3] that the roll call meeting was at 6:00 pm on 09/23/2021. However, this would actually have been after the stroke, which is well-documented to have occurred in the early morning hours of 9/23/2021.

PTP Zlotolow further erroneously asserts that QME Engelberg did not mention any of the stress that the Applicant was under on the night of her stroke, specifically the roll call meeting. [Applicant's Exhibit 1 at p.4] However, QME Engelberg specifically described the incident on page 89 of his report dated 04/18/2025 [Joint Exhibit 3] and further mentioned "an altercation with her supervisor" as the questionable cause for the stroke [Joint Exhibit 3 at p. 94³].

QME Engelberg has thoroughly reviewed the Applicant's medical history, described the pre-existing factors that were the probable cause for the stroke, and determined that it is not medically probable that alleged stress from employment with Defendant caused the Applicant's stroke. The Court is persuaded by the reporting of QME Engelberg that the Applicant's stroke was non-industrial.

(Opinion on Decision, June 12, 2026, pp. 2-3 (emphasis added).)

The WCJ's Report added that based on personnel records, it seemed more likely that the encounter between applicant and her supervisor took place at roll call on the evening of September 22, 2021 and not on September 21. However, the report maintained that applicant had testified that her supervisor harassed her on the evening of September 21, 2021, and asserted that "[a]pplicant's testimony regarding the date was erroneous." (Report, at p. 3.)

Applicant requested a transcript of applicant's trial testimony, which was filed herein after

³ The referenced quote can be found at page 92 of Dr. Engelberg's report, not page 94.

the Petition, Answer, and Report. The transcript shows that applicant did in fact testify that her encounter with her supervisor at roll call took place on the evening of September 22, 2021 and not on September 21, contrary to the WCJ's summary and description in the Opinion on Decision and Report:

Q. Do you recall what day that was?

A. I had my stroke on the twenty- -- I talked to [HR Director] Mrs. Hawkins on the 22nd. On the 21st I did of September and *I went to work on the 22nd*, and I had my stroke on the 23rd.

Q. Okay. Hold on. What happened when you came to work *on September 22nd, 2021*?

A. We had roll call around 6:00 o'clock. And during that time [Supervisor] Ashley threatened me. She embarrassed me. She humiliated me because of the fact that I had spoken to the director of HR concerning her behavior.

(Transcript, pp. 8-9 (emphasis added).)

Thus, the Transcript shows that applicant testified that she reported the supervisor to the Human Resources (HR) Director on September 21, 2021, then went to work the next evening, on September 22, 2021, where she felt that she was harassed by the supervisor at roll call. She kept working until the next day, September 23, 2021, at 2:00 a.m. :

Q. So you went home on the morning of the 23rd; correct?

A. 22nd.

Q. 22nd is when you started working. 23rd is when you went to bed at 3 a.m?

A. Yes, you're correct.

Q. Okay. Then the next morning some clarification I want. You said you woke up and your leg was dragging and you drove yourself to the Torrance Memorial; is that correct?

A. Yes.

(Transcript, pp. 25-26.)

Upon further cross-examination, applicant once again confirmed her testimony that her supervisor had threatened, embarrassed, and humiliated her on September 22, 2021, not September 21:

Q. I'm sorry. My question wasn't clear. On *September 22nd*, the day you checked in at 6:00 o'clock, and that's roll call?

A. P.M., yes .

Q. That's when Ashley made her comment about those who

reported to HR I should write-up; correct?

A. She directly looked at me and said that those that those who reported me at HR I'll send you there now and you can lose your job and you will lose your jobs.

(Transcript, pp. 36-37 (emphasis added).)

Like the WCJ, Primary Treating Physician (PTP) Ronald Zlotolow, M.D. reported the wrong date for the encounter between applicant and her supervisor. Dr. Zlotolow's reports indicate that this encounter took place on September 23, 2021, not September 22, 2021. (Applicant's Exhibit 1, Report of Dr. Zlotolow dated June 23, 2025, at p. 7, line 5.; Applicant's Exhibit 4, Report of Dr. Zlotolow dated November 27, 2024, at p. 4, lines 1 ff.) The WCJ identifies this error as a reason for not finding Dr. Zlotolow's reports persuasive. (Opinion on Decision, at p. 3; Report, at p. 3.)

The WCJ is correct that Dr. Engelberg mentioned the incident between applicant and her supervisor at roll call, but it appears only in the context of summarizing a report by Dr. Zlotolow:

On November 27, 2024, she had a medical-legal report from a Dr. Zlotolow, who said that she had sustained an embarrassment on the job during a roll call. Her supervisor, Ashley Clay, had yelled at her in front of coworkers, upsetting the patient. The following morning, she had stroke symptoms. Dr. Zlotolow opined that the stroke was therefore industrial in causation.

(Joint Exhibit 3, Report of Dr. Engelberg dated April 18, 2025, at p. 89.)

Thereafter, Dr. Engelberg did refer to this incident twice, but both times he mischaracterized it as an "altercation," which suggests that it was a two-way argument between applicant and her supervisor, and not the veiled unilateral threat from the supervisor described in applicant's testimony. (*Id.*, at pp. 90, 92.)

Thus, it appears that Dr. Engelberg's understanding of both the timing and nature of the incident that took place on September 22, 2021 is limited to that which Dr. Zlotolow reported.

Any 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 v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) Substantial evidence must be based upon an adequate history that includes all germane facts. (*Escobedo v. Marshalls* (2007) 70 Cal.Comp.Cases 604, 620 (Appeals Board en banc); *Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases

525]; *Zemke v. Workmen's Comp. Appeals Bd.*, 68 Cal.2d 794, 798 [33 Cal.Comp.Cases 358].)

In this case, none of the physicians has correctly identified September 22, 2021 as the date on which applicant testified that her supervisor harassed her in retaliation for reporting the supervisor to the HR Director. Although the WCJ's Report downplayed the importance of the timing of this incident, the Opinion on Decision correctly emphasized its significance as a potential industrial cause of applicant's stroke during the early morning hours of September 23, 2021.

The Workers' Compensation Appeals Board "may not leave undeveloped matters which its acquired specialized knowledge should identify requiring further evidence." (*Raymond Plastering v. Workmen's Comp. Appeals Bd.* (1967) 252 Cal.App.2d 748, 753 [32 Cal.Comp.Cases 287, 291].) Because substantial evidence requires an adequate history that includes all germane facts, the record must be developed in this case in order to obtain a substantial medical opinion that uses correct dates to determine the relationship between applicant's industrial exposure and her injury. Such supplemental medical opinions should be obtained from evaluators who have already reported in the case, as required by *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board en banc).

Once Dr. Engelberg and Dr. Zlotolow are aware of the correct date of applicant's stressful encounter with her supervisor, they must apply that information to a detailed description of the mechanism of injury by explaining how and why the incident—and any other alleged causes of injury—did or did not contribute to the occurrence of applicant's stroke on September 23, 2021.

Dr. Zlotolow has asserted that the temporal proximity of the stroke to applicant's stressful encounter with her supervisor means that the two are causally connected, but he used an incorrect date. Once he has the correct sequence of events, he can explain how or why it is medically probable that such an incident would cause physiological changes contributing to the occurrence of applicant's stroke. Mere assertion of the causal relationship is insufficient without an explanation of the mechanism of injury.

Similarly, Dr. Engelberg's assertion that "[m]y opinion is that the altercations with her supervisor were not the cause of her stroke" cannot constitute substantial medical evidence without correctly identifying both the nature of what happened and when it occurred. (Joint Exhibit 3, Report of Dr. Engelberg dated April 18, 2025, at p. 90.) It appears that Dr. Engelberg only obtained secondhand knowledge of this incident through a review of Dr. Zlotolow's report dated November 27, 2024. (*Id.*, at p. 89.) Dr. Engelberg should also demonstrate that he

understands that he is not legally required to find “the cause” of applicant’s stroke, but *all causes* of the stroke, unless it is his expert opinion that as a matter of reasonable medical probability there was only one cause, in which case he should explain in detail why other causes did not contribute in any way to the occurrence of the injury.

The lack of a correct timeline in both Dr. Engelberg’s and Dr. Zlotolow’s reporting leaves unanswered questions. Does the kind of stroke sustained by applicant happen only from the long-term effects of hypertension on blood vessels, or can it also be brought on by a single stressful incident or transient blood pressure at the time of the stroke? Both physicians seem to suggest that transient blood pressure levels did play a role in causing applicant’s stroke, because Dr. Zlotolow emphasized that the stroke happened after a stressful day at work, and Dr. Engelberg emphasized that it happened while applicant was asleep, when blood pressure levels are typically lower. These comments underscore the importance of providing an accurate history with correct dates to the medical evaluators.

Accordingly, we will grant the Petition for Reconsideration, rescind the June 12, 2026 F&O, and return the matter to the trial level for further proceedings to develop the record.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the June 12, 2026 F&O is **RESCINDED**, and the matter is **RETURNED** to the trial level for further proceedings consistent with this Opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 28, 2026

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

**JANICE JONES AUSTIN
YOUSEFI LAW GROUP
FLOYD SKEREN MANUKIAN & LANGEVIN, LLP**

CWF/cs

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