

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

**JOHN SARVISS, *Applicant***

**vs.**

**CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER,  
permissibly self-insured, *Defendants***

**Adjudication Number: ADJ8666280  
Van Nuys District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Applicant seeks reconsideration of the Finding of Fact and Order (F&O) issued on November 24, 2025 by the workers' compensation administrative law judge (WCJ), which found, in pertinent part and based on the parties' stipulations, that applicant, while employed by defendant as a helicopter pilot, sustained injury arising out of and in the course of employment (AOE/COE) to his lumbar and cervical spine and lower extremities. The WCJ further found that "[t]here is no substantial evidence to show periods of temporary disability, permanent disability, the nature and extent of the injuries, or need for further medical treatment," that the unwillingness of applicant to be forthright about his prior injuries makes further development of the record futile, and that there is no award from which attorney fees can be awarded. Based on these findings, the WCJ ordered this matter off calendar.

Applicant contends that the WCJ erred in finding no benefits were warranted as due applicant, as there is substantial medical evidence confirming applicant sustained industrial injury, and further, that the May 7, 2013, Stipulated Award and/or Order wherein defendant stipulated to accept applicant's industrial injury and defer the nature and extent of same justified the basis for benefits in this case.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on the Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons stated by the WCJ in the portions of the Report quoted below, and for the additional reasons set forth below, we will deny applicant's Petition.

### FACTS

Applicant filed an Application for Adjudication of Claim (Application) alleging he sustained injury AOE/COE while employed by defendant as a helicopter pilot during the period July 21, 2008 to July 9, 2012, to his back and bilateral lower extremities. (Application, July 23, 2012, at p. 4.)

On May 7, 2013, the parties entered a stipulation approved by a WCJ as follows:

Defendant stipulates to accept applicant's cumulative trauma claim of 7/21/2008 to 7/9/2012 as an industrial injury. Further issues to be determined by AME/PQME.

(Stipulation and Award and/or Order, May 7, 2013.)

Thereafter, defendant provided medical and indemnity benefits to applicant. (Applicant's Exhibit 6; Defendant's Exhibit B.)

On March 30, 2022, Agreed Medical Evaluator (AME) Steven Silbart, M.D., issued a supplemental report after reviewing the applicant's May 24, 2021, deposition transcript and his entire medical file. (Court's Exhibit Z, at pp. 1-3.) Regarding the applicant's credibility and his medical history, Dr. Silbart observed:

I have reviewed Mr. Sarviss' 27 page May 24, 2021 deposition transcript as well as the patient's entire medical file in preparation of this report.

Having had an opportunity to review the voluminous medical records forwarded, the extensive deposition testimony of Mr. Sarviss as well as Dr. Sohn, and having interviewed the patient in person, it is clear that significant credibility issues exist in this case.

The patient completely omitted the history of the nonindustrial speaker incident with herniated disc requiring surgery in 2011, to prior orthopedic Agreed Medical Examiner, Dr. Sohn.

The patient testified (5/24/21 deposition, pp. 9-10) that Dr. Moldawer advised him that his herniated disc does not "... have anything to do with any cabinet ... you don't get vertical trauma from any kind of lateral impact." In actual fact, the [Dr.] Moldawer reporting exclusively links Mr. Sarviss' 2011 lumbar herniated disk to "back pain after lifting a heavy cabinet" (5/3/11 report).

In addition, inexplicably, in his deposition (p. 23) Mr. Sarviss recanted his history to me (9/17/18, p. 9) that he first injured his low back in a service-connected helicopter crash in the Army in 1971.

(*Id.* at pp. 1-2.)

The matter was set for trial on May 25, 2023, at which the WCJ noted that “[a]fter discussions with the parties, the undersigned will appoint an IME to replace several expired AMEs and Dr. Silbart, who the parties have lost confidence in.” (Minutes of Hearing, May 25, 2023.) Thereafter on May 26, 2023, an Order issued by the WCJ appointing Kenneth R. Sabbag, M.D., as a regular physician pursuant to Labor Code<sup>1</sup> section 5701. (Order Appointing Regular Physician, May 26, 2023.)

On August 18, 2023, Dr. Sabbag evaluated the applicant. Regarding the applicant’s credibility, medical history and employment history, Dr. Sabbag observed:

In regard to his orthopedic diagnoses, the analysis is relatively medically straight forward. However, the documentation and social issues are complex and are not concretely resolved on my examination today or during my obtaining a history from Mr. Sarviss.

...

In the deposition, defense counsel states that Mr. Sarviss completed the form and wrote that an April 21, 2011 injury occurred when he was injured lifting a 160 pound speaker. The speaker fell and landed on his back. On this form, apparently Mr. Sarviss specifically checked that the injury was not an occupational injury.

Mr. Sarviss received care with Dr. Moldawer, Dr. Bloze, and Dr. Hymes as a result of the supposed April 21, 2011 injury. Once again, there is no mention of an injury that occurred during the course of employment with the LADWP prior to July 2, 2012.

I asked Mr. Sarviss directly about this. His answer was, to paraphrase, that he “did not know that he had an industrial exposure when he completed that form”. I asked him how he would not know, and his answer was that Dr. Moldawer had not told him yet that he had an industrial injury. Furthermore, Mr. Sarviss denies that he was ever injured lifting a cabinet or lifting a cabinet that weighed 160 pounds. He states that there were two 20-pound speakers that fell while he was loading a trailer. However, he denies being injured.

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<sup>1</sup> All further references are to the Labor Code, unless otherwise stated.

I cannot reconcile this discrepancy. The answer clearly lies in Mr. Sarviss' veracity. However, I am more inclined to believe the medical records, the information on the disability form, and the lack of any documentation of a causal connection to his work exposure. Mr. Sarviss sought care through private insurance for his back and underwent surgical care with Dr. Moldawer on November 30, 2011 through his private insurance. Dr. Moldawer is well versed in treating Workers' Compensation injuries. The lack of any discussion of a work injury prior to July 2, 2012 in Dr. Moldawer's reports stands out.

Clearly, I defer the issue of Mr. Sarviss' veracity to the parties and to the trier of fact. I have listed the medical facts here as they are presented to me.

...

The fourth injury is Mr. Sarviss' nonindustrial work activities over many years. He flew a helicopter from 1972 through 2012. His employment history is described above. Furthermore, he worked as a freelance pilot for the motion picture industry. He helped with commercials, music videos, television, and film production. He also worked as a producer and a camera man. He performed stunts.

I asked Mr. Sarviss about this work. He states he was not injured in any of these roles prior to initiating employment with the LADWP. Nonetheless, the nature of the work described is arduous. It is at least as arduous as the work that he did for LADWP. The problems that he has in his neck and back are longstanding slowly progressive degenerative processes. The work that he did from 1972 through 2008 must be considered as well. From the physicality of the work during that time as described is similar or more physical than the work that he did for LADWP.

...

I asked him to specifically help clarify the above noted discrepancies. However, the answers to me were not clear, not direct, or did not make sense. Once again, while I clearly defer to the trier of fact, there remain discrepancies that I cannot rectify.

...

*In regard to his hands*, Mr. Sarviss reports having pain in the base of the right thumb. He attributes the pain in the right hand to using a cane. He uses a cane because of his foot pain and imbalance.

Mr. Sarviss did not have a cane with him today. He states TSA would not allow him to take a cane on an airplane. However, this is not true. Canes are allowed on planes as long as they are considered mobility devices. He ambulated in my

office; into my office, and out of my office without using a cane. Once again, veracity is an issue.

(Joint Exhibit 1, at pp. 53-57.)

On March 4, 2024, Dr. Sabbag, M.D., was deposed and he acknowledged conflicting data in this case bringing into question applicant's credibility, but he deferred credibility to the trier-of-fact as follows:

MR. TENNENHOUSE: Correct. And I think [Dr.] Sohn specifically stated in his exam that he had credibility issues at that point.

THE WITNESS: Yeah. You know, I think if I see conflict that may question someone's credibility, I try to point it out without being the one who actually passes the final judgment on that; right?

So I think there's some conflicting data here, clearly, and someone other than me may have to sort that out because I tried but didn't get very far.

(Joint Exhibit 2, at p. 32:6-15.)

On September 15, 2025, the matter proceeded to trial on multiple issues. Applicant testified that his symptoms began on January 11, 2011, while working for defendant employer. (Minutes of Hearing and Summary of Evidence (MOH/SOE), September 15, 2015, at pp. 4:20-23; 5:1-3.) Applicant denied being injured before working for defendant employer. (*Id.* at pp. 5:22; 6:1-4.)

On November 24, 2025, the WCJ issued his F&O in which it was found that applicant suffered injury arising out of and in the course of employment (AOE/COE) to lumbar spine, cervical spine and lower extremities, but there is no substantial evidence to show periods of temporary disability, permanent disability, the nature and extent of injuries, or need for further medical treatment.

The WCJ stated the following in the Opinion on Decision (Opinion):

The undersigned WCJ agrees with Dr. Silbart that significant credibility issues exist, leaving questions of how much more the Applicant has omitted to the doctors. None of the medical reports are substantial medical evidence because of an incomplete history. Applicant has failed to meet his burden of showing periods of temporary disability, permanent disability, the nature and extent of the injury, and need for future medical care.

(Opinion, November 24, 2025, at p. 4.)

It is from this decision that applicant seeks reconsideration.

## I.

Preliminarily, we note that 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 December 23, 2025 and 60 days from the date of transmission is Saturday, February 21, 2026, a weekend. (See Cal. Code Regs., tit. 8 § 10600(b).)<sup>2</sup> The next business day that is 60 days from the date of transmission is Monday, February 23, 2026. This decision was issued by or on February 23, 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

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<sup>2</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.

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 WCJ, the Report was served on December 23, 2025, and the case was transmitted to the Appeals Board on December 23, 2025. 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 December 23, 2025.

## II. DISCUSSION

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 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].) 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).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

At trial, the parties stipulated that applicant sustained injury AOE/COE to his lumbar and cervical spine and lower extremities. (MOH/SOE, September 15, 2025, at p. 2:5-8.) Accordingly, the WCJ found injury AOE/COE to these body parts. However, applicant argues there is substantial medical evidence of injury based on the medical reporting in this case warranting a provision of medical and indemnity benefits.

As stated by the WCJ in his Report:

In this case, the applicant is not credible and never provided a complete medical history to any of the doctors. In the record review by agreed medical examiner Steven B. Silbart, M.D., the doctor discusses multiple reports by Donald Wiss, M.D. from 1993, where Applicant had a serious injury to his feet, legs, knees, and thoracic spine. He had multiple operations. (Exhibit Z at page 1.) Applicant was involved in a 1993 helicopter crash with severe thoracic compression fracture and lower extremity injuries, the latter requiring approximately 20 reconstructive surgeries. (Exhibit Z at page 2.) On September 15, 2025, the Applicant testified he was never injured before working for DWP, he made the statement under oath three times. (MOH at 5:22, 6:1 and 6:4.) The medical reports do have a history of the injury, but they do not have information on a crash during Vietnam where applicant injured his back. (MOH at 5:20; Exhibit Z at page 2; Exhibit Z, report dated September 17, 2018 at page 9.) Applicant went as far as recanting his history of a service-connected helicopter crash reported to Dr. Silbert on September 17, 2018 in his deposition at page 23. (Exhibit Z at page 2.) Independent medical examiner Kenneth Sabbag, M.D. in his deposition dated March 4, 2024, states “I think there's some conflicting data here, clearly, and someone other than me may have to sort that out because I tried but didn't get very far.” (Exhibit 2 at 32:10.) This is an admission that the doctor’s reporting has a poor or incomplete history, as do all the medical reports in this case.

The agreed medical examiner Steven B. Silbart, M.D. stated:

“Having had an opportunity to review the voluminous medical records forwarded, the extensive deposition testimony of Mr. Sarviss as well as Dr. Sohn, and having interviewed the patient in person, it is clear that significant credibility issues exist in this case.

The patient completely omitted the history of the nonindustrial speaker incident with herniated disc requiring surgery in 2011, to prior orthopedic Agreed Medical Examiner, Dr. Sohn.” (Exhibit Z at page 1.)

Significant credibility issues exist, leaving questions of how much more the Applicant has omitted to the doctors. None of the medical reports are substantial medical evidence because of an incomplete history.

#### THE APPLICANT FAILED TO MEET HIS BURDEN OF PROOF

The burden of proof rests on the party holding the affirmative of an issue. (Labor Code §5705.) To meet his burden, applicant was required to prove each fact supporting his claim by a preponderance of the evidence. “Preponderance of the evidence’ means that evidence that when weighed with that opposed to it, has more convincing force and the greater probability of truth.” (Lab. Code, §3202.5.) In this case the affirmative on the issues of periods of temporary

disability, permanent disability, and need for further medical treatment rested with the Applicant. Applicant failed to testify credibly and did not give the doctors a complete medical history.

(Report, at pp. 2-3.)

Applicant further argues that there is a Stipulation and Order accepting his continuous trauma injury during the period July 21, 2008 to July 9, 2012 as industrial, and in this case warrants ongoing provision of medical and indemnity benefits. It is noteworthy, although the Stipulation and Order accepts applicant's claimed injury, all further issues, were to be determined by an AME or PQME.

Section 4909 states in pertinent part:

Any payment, allowance, or benefit received by the injured employee during the period of his incapacity...which by the terms of this division was not then due and payable or when there is any dispute or question concerning the right to compensation, shall not, in the absence of any agreement, be an admission of liability for compensation on the part of the employer...

(Lab. Code section § 4909.)

As observed by the WCJ, there are disputes in this case regarding periods of temporary disability, permanent disability and further medical care. (Report, at pp. 3-4.) Accordingly, the provision of any benefits provided by defendant after the Stipulation and Order cannot be considered an admission of liability for compensation. (*Id.* at p. 4.)

Lastly, we have given the WCJ's credibility determination(s) great weight because the WCJ had the opportunity to observe the demeanor of the witness(es). (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination(s). (*Id.*) As the applicant repeatedly testified that his low back symptoms and injury began with employment at defendant employer and considering his failure to acknowledge his significant medical history, we are persuaded that the applicant did not meet his burden of proof on any of the issues raised at this time.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

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

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



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

**February 23, 2026**

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

**JOHN SARVISS  
LEWIS, MARENSTEIN, WICKE, SHERWIN & LEE  
TENNENHOUSE, MINASSIAN & ADHAM**

**SL/abs**

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