

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

JOSE VALENCIA, *Applicant*

vs.

ALOHA ISLAND GRILL, INC.; TRUCK INSURANCE EXCHANGE, *Defendants*

**Adjudication Number: ADJ16705157
San Jose District Office**

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

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of June 5, 2026, wherein it was found that while employed as a dishwasher on May 26, 2022, applicant sustained industrial injury to the upper back, neck, right shoulder and in the form of cervical headache causing temporary disability from November 9, 2022 to November 5, 2024, permanent disability of 46%, and the need for further medical treatment. As relevant to the instant petition, it was found that applicant did not sustain industrial injury to the right knee or, consequently, the need for medical treatment for the right knee on an industrial basis. At the April 27, 2026 trial, industrial injury was stipulated to upper back, neck, right shoulder and in the form of headaches, it was stipulated that defendant had already paid 104 weeks of temporary disability indemnity, and the parties stipulated to permanent disability of 46%. The only outstanding issues for determination at trial were the issues of industrial injury and further medical treatment to the right knee, and the issue of attorneys' fees. Applicant's counsel was awarded a fee of \$2,367.06 with regard to the temporary disability indemnity recovery and a fee of 15 percent of the permanent disability indemnity recovery.

Applicant contends that the WCJ erred in not finding industrial injury and the need for medical treatment with regard to the right knee. We have received an Answer from defendant and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

Applicant's Petition is skeletal, with the "Argument" section only one sentence long. The Petition does not "fairly state all of the material evidence relative to the point or points at issue" nor does it "support its evidentiary statements by specific references to the record" as required by Appeals Board Rule 10945 (Cal. Code Regs, tit. 8, § 10945.) Applicant's counsel is strongly admonished to follow Appeals Board rules or risk sanctions (Lab. Code, § 5813) or dismissal of skeletal petitions (Cal. Code Regs., tit. 8, § 10972).

As explained below, we will grant reconsideration and amend the WCJ's decision to defer the issues of industrial injury and further medical treatment with regard to the right knee.

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 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 14, 2026 and 60 days from the date of transmission is Saturday, September 12, 2026. The next business day

that is 60 days from the date of transmission is Monday, September 14, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Monday, September 14, 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 14, 2026, and the case was transmitted to the Appeals Board on July 14, 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 14, 2026.

II.

Turning to the merits, the evidentiary record in this matter consisted of a single PR-2 status report from treating physician Peter Abaci, M.D. and two reports from agreed medical evaluator neurologist Richard F. Gravina, M.D.

According to Dr. Abaci's report:

On the day of his injury, [applicant] notes that he was emptying food into the garbage and was lifting a heavy bag filled with food and was trying to lift it overhead into a container. While doing so the bag started to slip and he felt some discomfort around his upper back and base of his neck, by the next day he notes

¹ 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.

that he was experiencing severe pain in his neck and shoulders. He kept working, but symptoms got progressively worse over time.

(November 12, 2025 report at p. 5.)

Although Dr. Abaci noted that applicant complained of right knee pain (November 12, 2025 report at p. 3), there is no discussion of if or how these right knee symptoms were related to the industrial event in question. While the AME reports note in their review of medical records that applicant reported back pain radiating to the medical knee and had a “right knee meniscus tear” (July 28, 2023 report at p. 4), swelling of the right knee (July 28, 2023 report at p. 5), anterior right knee pain (July 28, 2023 report at p. 6), and “sharp pain in the right knee that hurts when squatting or walking” (December 29, 2024 report at p. 5), there is similarly no discussion of industrial causation of applicant’s right knee complaints.

While we note that applicant filed the Declaration of Readiness to Proceed in this matter and we agree with the WCJ that the current record does not support a finding of industrial injury to the right knee, we will nevertheless grant reconsideration and amend the WCJ’s decision to defer the issues of industrial injury and further medical treatment with regard to the right knee. 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).) 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 and defer the issues of industrial injury and medical treatment with regard to the right knee pending further development of the medical record and decision by the WCJ.

In granting reconsideration and deferring the issues of industrial injury and medical treatment to the right knee, we are mindful of the fact that “[t]he applicant for workers’ compensation benefits has the burden of establishing the ‘reasonable probability of industrial causation.’” (*LaTourette v. Workers’ Comp. Appeals Bd.* (1998) 17 Cal.App.4th 644, 650 [63

Cal.Comp.Cases 253] citing *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) Applicant is reminded that he will have the burden of establishing industrial injury to the right knee in the further proceedings.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings and Award of June 5, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of June 5, 2026 is **AMENDED** as follows:

FINDINGS OF FACT

1. Applicant, JOSE VALENCIA, age 58 on the date of injury, while employed on 5/26/2022 as a dishwasher, Occupational Group 322, at Santa Cruz, California, by Aloha Island Grill, Inc., sustained injury arising out of and in the course of employment to the upper back, neck, right shoulder, and cervical headache. The issue of industrial injury to the right knee is deferred, with jurisdiction reserved.

2. At the time of the injury, the employer's workers compensation carrier was Truck Insurance Exchange, administered by Farmers.

3. Applicant's earnings at the time of injury were \$702.09 per week, warranting an indemnity rate of \$468.06 for temporary disability and \$290.00 for permanent disability.

4. Carrier paid temporary disability benefits from 11/9/2022 through 11/5/2024 at a weekly rate of \$468.06 and permanent disability advances from 11/6/2024 and continuing at a weekly rate of \$290.00.

5. Applicant's injury caused permanent disability of 46%, entitling applicant to 243 weeks of permanent disability indemnity payable at the rate of \$290.00 per week commencing 11/6/2024.

6. Applicant is in need of further medical treatment to the upper back, neck, right shoulder, and cervical headache. The issue of the need for further medical treatment with regard to the right knee is deferred with jurisdiction reserved.

7. Reasonable value of services rendered by applicant's attorney to date is 15 % of the permanent disability award.

8. Attorney fee of \$2,367.06 for retroactive temporary disability benefits is to be paid from the permanent disability award.

9. Stipulations as set forth in the 4/27/2026 Minutes of Hearing.

AWARD

AWARD IS MADE in favor of Jose Valencia and against Truck Insurance Exchange as follows:

1. Permanent disability indemnity of 46% payable at the rate of \$290.00 per week, commencing 11/6/2024, less permanent disability advances to date, and less the award of attorney fees, pursuant to Findings of Fact No. 3, 4, and 5.

2. Medical care as set forth in Finding of Fact No. 6.

3. Attorney's fee as set forth in Finding of Fact No. 7 and 8, commuted from the end of the permanent disability award, if necessary.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 14, 2026

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

**JOSE VALENCIA
DAVID P. BONEMEYER
SCOTT STRATMAN
EMPLOYMENT DEVELOPMENT DEPARTMENT**

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