

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JOSIE FLORES, *Applicant*

vs.

COUNTY OF LOS ANGELES SHERIFF, permissibly self-insured, administered by
SEDGWICK PASADENA, *Defendants*

Adjudication Numbers: ADJ15105320; ADJ16781110
Van Nuys District Office

OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION

Applicant seeks reconsideration of the Joint Findings, Awards and Orders (FA&O) issued by the workers' compensation administrative law judge (WCJ) on October 1, 2025 in case number ADJ15105320, wherein the WCJ found, in relevant part, that applicant, while employed by defendant on January 15, 2021 as an evidence property custodian, occupational group number 250, sustained injury arising out of and in the course of employment (AOE/COE) to her cervical spine and psyche; that applicant did not have additional periods of total temporary disability; that there are grounds for apportionment; and that applicant is entitled to an award of permanent partial disability of twenty-three percent (23%).

Applicant contends that the WCJ erred in finding her occupational group number to be 250 rather than group 390; that the WCJ erred in relying on the psychiatric rating from the Panel Qualified Medical Examiner (PQME) Sanjay Agarwal, M.D., to determine whole person impairment (WPI), rather than the rating by treating physician, M.A. Shamie, M.D.; that contrary to the findings of the WCJ, Dr. Shamie's reports constituted substantial medical evidence to support applicant's claim for additional temporary disability; and, that the WCJ failed to make any findings regarding applicant's neurological injuries, despite evidence from neurological PQME Martin Levine, M.D., of 21% WPI.

The WCJ issued a Report and Recommendation (Report) recommending that the Petition be granted, that findings one, six and eight in case number ADJ15105320 be amended to reflect increased disability in the form of cranial nerve injury resulting in headaches, as well as increased attorney fees.

We have received an Answer from Defendant.

We have considered the allegations of the Petition, the Answer, and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons set forth below, as well as the reasons set forth in the WCJ's Report, which we adopt and incorporate to the extent indicated herein, we will grant reconsideration, and amend the WCJ's October 1, 2025 decision by substituting new findings in case number ADJ15105320, that add headaches to Findings of Fact as originally stipulated by the parties in Finding 1; add cranial nerve injury to that Finding; amend Finding 6 to indicate that applicant's permanent partial disability award is increased to thirty-six percent, equivalent to 173 weeks of indemnity payable at the rate of \$290.00 per week, in the total sum of \$50,170.00, less credit for amounts paid by defendant and less reasonable attorney fees; amend Finding 8 to increase the amount of attorney's fees for applicant's attorneys to \$7,525.50, along with the Orders for same; and otherwise affirm the FA&O.

BACKGROUND

Applicant filed an Application for Adjudication of Claim (Application) on August 31, 2021, claiming a specific injury on January 15, 2021 to applicant's head, back, shoulders, upper extremities and nervous system/psyche, due to narcotics exposure, while employed by defendant as an evidence property custodian. (Case No. ADJ15105320.) On October 6, 2022, Applicant filed an Application claiming a specific injury on June 9, 2022 to applicant's upper extremities, hand and other body systems when she hit her hand on the desk while attempting to stop a falling object. (Case No. ADJ16781110.)

Applicant was evaluated by Dr. Levine, as a PQME in neurology (Joint Exhs. 1 and 2, in Case No. ADJ15105320¹); Parveen Ahmed, M.D., as a primary treating physician (PTP) (Applicant's Exh. 3); Dr. Shamie for psychiatry (Applicant's Exhs. 4 and 8); Scott L. Rosenzweig, M.D., as a PTP in orthopedics (Applicant's Exhs. 5 and 6); Dr. Agarwal, as a QME in psychiatry

¹ All cited documents are filed in Case No. ADJ150105320, unless otherwise indicated.

(Defendant's Exhs. A and B); and agreed medical evaluator (AME) Mark Ganjianpour, M.D., in orthopedic surgery. (Court's Exhs. Z1 and Z2.)

At trial on July 7, 2025, in case ADJ15105320, the parties stipulated that while employed by defendant on January 15, 2021, applicant sustained injury AOE/COE to her cervical spine, left hand and headaches and claimed to sustain injury to her psyche. (7/7/25 Minutes of Hearing and Order of Consolidation, at p. 2.) The parties also stipulated that defendant was permissibly self-insured; that at the time of injury, applicant's earnings were \$1,272.82 per week, warranting indemnity rates of \$848.55 for temporary disability (TD) and per statute for permanent disability (PD); that defendant had paid \$1,265.91 for lost wages for January 31, 2021 through February 9, 2021; that defendant had furnished some medical treatment; that the PTP is Dr. Ahmed; that no attorney fees were paid; that applicant was permanent and stationary on May 14, 2024; and that PD is to start on that date. Issues for decision included parts of body injured, TD, PD, apportionment, occupational group number, need for further medical treatment, liability for self-procured treatment, and attorney fees. (*Id.* at pp. 2-3.)

In case number ADJ16781110, the parties stipulated that applicant sustained injury AOE/COE to her left hand on June 9, 2022, with a permanent and stationary date of May 14, 2024, that PD is to start on that date, and that applicant's permanent disability rating in 10%. (*Id.* at pp. 3-4.) The only issue for decision was attorney fees. (*Id.* at p. 4)

The two cases were consolidated for trial, and the exhibits were admitted. (*Id.* at pp. 2, 4-5.)

At the continued trial on July 28, 2025, applicant testified, and the matter was submitted. (7/28/25 MOH, at pp. 1-5.)

On October 1, 2025, the WCJ issued the Joint Findings, Awards and Orders in the consolidated cases, in which the WCJ:

[F]ound psychological injury based on the reporting by panel qualified medical examiner Sanjay Agarwal, M.D. and found overlap between the finding of panel qualified medical examiner Martin D. Levine, M.D. and agreed medical examiner Mark Ganjianpour, M.D. regarding the cervical spine and left hand. The ... WCJ also found no periods of additional temporary disability indemnity. It is from these findings that Applicant seeks relief.

(Report, at p. 2.)

I.

Former Labor Code section 5909² 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 November 5, 2025 and 60 days from the date of transmission is Sunday, January 4, 2026. The next business day that is 60 days from the date of transmission is Monday, January 5, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on Monday, January 5, 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

² All section references are to the Labor Code, unless otherwise indicated.

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.

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 November 5, 2025, and the case was transmitted to the Appeals Board on November 5, 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 November 5, 2025.

II.

In his Report, the WCJ addressed applicant's contentions, as follows:

APPLICANT'S OCCUPATIONAL GROUP NUMBER IS 250

Applicant contends her occupational group number is 390, the same as that of a bodyguard, bouncer, and bounty hunter. The occupation includes inside and outside work requiring significant walking, some uneven ground and climbing. (Schedule for rating permanent disabilities, January 2005.) These jobs have a physical confrontation aspect to them and people in this group may have to physically restrain someone. Applicant's job does not have a physical confrontation component and she does not belong in this group.

Defendant contends the Applicant's occupational group number is 250, the same as a courier, floral arrangement deliverer, pizza deliver[er], shuttle bus driver and coin machine collector. The occupation includes operating light automotive equipment over public thoroughfares. (Schedule for rating permanent disabilities, January 2005.)

Applicant's job was to check the seal and that the paperwork matched her route. (Minutes of Hearing (Further) and Summary of Evidence dated July 28, 2025, hereinafter MOH, at 2:18.) The majority of Applicant's time was spent driving between different facilities. (MOH at 3:21.) At the undersigned WCJ's age, he is starting to attend quite a few funerals and the delivered flower arrangements can be large. Applicant did not testify as to the weight of the items she had to lift at work. Applicant testified she took bagged evidence she put in a box and carried to the van assigned to her. (MOH at 2:19.) The petition for reconsideration states she carried bags weighing between 30 and 50 pounds. (Petition for reconsideration at 2:23.) The report by agreed medical examiner Mark Ganjianpour, M.D. states Applicant lifted and carried over 50 pounds. (Exhibit Z2 at page 3.) There are conflicting double hearsay statements on how much Applicant had to carry. The

undersigned WCJ imagines the heaviest items carried were equivalent to the heaviest items carried by a floral deliver[y] driver delivering to a funeral parlor.

THE REPORTS BY PANEL QUALIFIED MEDICAL EXAMINER SANJAY AGARWAL, M.D. ARE MORE PERSUASIVE THAN THE REPORT BY M.A. SHAMIE, M.D.

Any defect contained in the Opinion on Decision under Labor Code section 5313 is cured by the herein WCJ's Report and Recommendation on Reconsideration. (*Smales v. Workers' Comp. Appeals Bd.* (1980) 45 Cal. Comp. Cases 1026 (writ denied)). In this case, the court found that the report by M.A. Shamie, M.D. was internally inconsistent and not substantial medical evidence. In this case, there is the treating psychiatrist and a panel qualified medical examiner in psychiatry. The undersigned WCJ need not find one of the reports to be not substantial medical evidence to find one of the doctors more persuasive than the other. (*Jones v. WCAB* (1968) 68 Cal. 2d 476)

There is no compensable injury when the subsequent psychiatric injury occurred as a result of the litigation process and not the original injury. (*Brock v. Workers Compensation Appeals Bd.*, (1999) 64 Cal. Comp. Cases 86, 88.) In this case, Dr. Shamie, in the body of his report repeated that Applicant was not sent any disability or payments of any sort, which led to panic, anxiety and depression. In the apportionment section this is not mentioned. The report by panel qualified medical examiner Sanjay Agarwal, M.D. dated June 10, 2024, the doctor notes the Applicant had financial strain causing her increased stress level. Unlike, Dr. Shamie, Dr. Agarwal articulates why he did not apportion to financial strain. Dr. Sanjay [Agarwal] states "she experienced a great deal of financial hardship as she had to leave her apartment due to not being able to pay rent and necessitating that she move-in with a co-worker; however, she was able to eventually secure a more affordable apartment that she was happier with at the time of the initial evaluation than her previous apartment." (Exhibit A at page 11.) Dr. Sanjay [Agarwal] was able to articulate and explain his decisions making his report more persuasive.

THE APPLICANT IS NOT ENTITLED TO ADDITIONAL PERIODS OF TEMPORARY DISABILITY INDEMNITY

Pursuant to the record review in the report of panel qualified medical examiner Sanjay Agarwal, M.D. dated December 6, 2022, Applicant was taken off work by Dr. Mitizyan (psychiatry) from October 25, 2021 for three months. (Exhibit B at page 11, 1st paragraph and at page 4.) Applicant was off work up to and including December 23, 2021.

Applicant was off work on a psychological basis from January 20, 2022 until February 20, 2022. (Exhibit 8.) Panel qualified medical examiner Sanjay Agarwal, M.D. found Applicant did not have any periods of Temporary Total Disability from a psychiatric perspective at any time during her claim. (Exhibit A

at page 3.) Since both additional periods of temporary disability where [sic] on a psychiatric basis, temporary disability indemnity is denied based on the findings of the panel qualified medical examiner.

THE FINDING OF PERMANENT DISABILITY OMITTED THE CRANIAL NERVE IMPAIRMENT

Panel qualified medical examiner Martin D. Levine, M.D. found Applicant's headaches qualify for Cranial Nerve V impairment, class 1, equal to 10% whole person impairment. (Exhibit 1 at page 24.) Dr. Levine found the headaches related to the January [1]5, 2021 claim. The undersigned WCJ mistakenly thought the cranial nerve impairment overlapped with the cervical impairment, upon review, that is not so and the permanent disability should be rated as follows:

Cervical Spine	100% (15.01.01.00-7-[1.4]10- 250F-10-11%)11%	11%
Psyche	85.5%(14.01.00.00-8-[1.4]11-250H-14-16%)14%	14%
Cranial Nerve	100%(13.07.04.00-10-[1.4]14-250F-14-16%)16%	16%
Combined value:		36%

For the specific injury on January 15, 2025 [sic], it is found that applicant is entitled to a permanent disability award of thirty-six percent (36%), equivalent to 173 weeks of indemnity payable at the rate of \$290.00 per week, in the total sum of \$50,170.00, payable starting May 14, 2024, less credit for amounts paid by defendant on account thereof, and less reasonable attorney fees of \$7,525.50.

(Report, at pp. 2-5.)

The WCJ concluded that Findings 1, 6, and 8, in case number ADJ15105320, should be amended to conform to the discussion above. (*Id.* at p. 5.)

We agree with the WCJ's reasoning, above, and agree that the WCJ's suggested amendments to Findings 1, 6 and 8 are required. In addition, we note that in case number ADJ15105320, the parties stipulated at trial that applicant sustained injury AOE/COE to "her cervical spine, left hand, and headaches," but the FA&O only found injury to the cervical spine and psyche. Thus, we will further correct Finding 1, to add headaches, as stipulated.⁴ We will also

⁴ However, we will not add the injury to applicant's left hand to finding Number 1 in case ADJ15105310. Although the parties stipulated to that injury, that stipulation appears to be a typographical error in the July 7, 2025 Minutes of Hearing. The hand injury was alleged in applicant's October 6, 2022 application, in case number ADJ16781110, was stipulated to in that case number, in the July 7, 2025 minutes, and a corresponding finding was made. (See 10/6/22 Application, case number ADJ16781110, at pp. 1 and 9; 7/7/25 MOH at p. 3; FA&O at p. 3, Finding 1.) The hand injury was not alleged in case number ADJ15105310.

amend the order regarding attorney fees in case ADJ15105320 to conform to the changes made in Finding 8.

Accordingly, we grant reconsideration and amend the WCJ's October 1, 2025 decision by substituting new findings in case number ADJ15105320, that add cranial nerve in the form of headaches to Finding 1; amend Finding 6 to indicate that applicant's permanent partial disability award is increased to thirty-six percent, equivalent to 173 weeks of indemnity payable at the rate of \$290.00 per week, in the total sum of \$50,170.00, less credit for amounts paid by defendant and less reasonable attorney fees; and, amend Finding 8 to increase the amount of attorney fees for applicant's attorneys to \$7,525.50, along with the Orders for same; and otherwise affirm the FA&O.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of October 1, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings, Award and Order of October 1, 2025, is **AFFIRMED** except that it is **AMENDED** as follows:

IN CASE ADJ15105320 (MF):

FINDINGS OF FACT

1. Applicant Josie Flores, born [], while employed on January 15, 2021, as an Evidence Property Custodian, occupational group number 250, at Los Angeles, California, by the County of Los Angeles Sheriff, sustained injury arising out of and in the course of employment to her cervical spine, cranial nerve in the form of headaches, and psyche.

...

6. The applicant is entitled to an award of permanent partial disability of thirty-six percent (36%), equivalent to 173 weeks of indemnity payable at the rate of \$290.00 per week, in the total sum of \$50,170.00, payable starting May 14, 2024, less credit for amounts paid by defendant on account thereof, and less reasonable attorney fees of \$7,525.50.

...

8. Applicant's attorneys have performed reasonable services relating to applicant's award of permanent disability in the amount of \$7,525.50 to be commuted from the far end of the award as necessary.

...

ORDERS

IT IS HEREBY ORDERED that the sum of \$7,525.50 be deducted from permanent disability due and owing applicant as reasonable attorney fees and paid forthwith to Glauber Berenson Vego. If insufficient funds for attorney fees have been withheld from any advances paid to applicant, defendants are to pay said attorney fees in addition to sums paid.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 5, 2026

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

JOSIE FLORES
GLAUBER BERENSON LAW FIRM
COLEMAN CHAVEZ LAW FIRM

MB/pm

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