

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

MALIK TALEB, *Applicant*

vs.

**EATALY USA LLC;
LIBERTY MUTUAL INSURANCE, *Defendants***

**Adjudication Number: ADJ17194766
Van Nuys District Office**

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

Applicant, in pro per, seeks reconsideration of the Findings, Award, and Orders (F&A) issued by the workers' compensation administrative law judge (WCJ) on December 29, 2025. The WCJ found, in relevant part, that on January 16, 2018, while employed by defendant as a prep cook, applicant sustained injury arising out of and in the course of employment (AOE/COE) to his right index finger, causing permanent partial disability (PD) of four percent (4%), equivalent to 18 weeks of indemnity payable at the rate of \$290.00 per week, in the total sum of \$5,220, payable starting January 15, 2019, less credit for amounts paid by defendant on account therefor, and less possible reasonable attorney fees up to \$793.00, to be determined in further proceedings or by agreement. Applicant was further found to be in need of future medical treatment to cure or relieve from the effects of the injury. The WCJ issued an Award for permanent disability, further medical treatment, and potential attorney fees, to be withheld by defendant

Applicant contends that the WCJ's F&A is based on an incorrect PD rating, which is not supported by substantial medical evidence. Applicant further contends that the WCJ failed to consider all the medical evidence, including from the primary treating physician (PTP), and instead improperly relied on the panel qualified medical evaluator (QME)'s opinion.

We have received an Answer from defendant.

The WCJ submitted a Report and Recommendation on Petition for Reconsideration (Report), recommending applicant's Petition be denied.

We have considered the Petition, the Answer, and the contents of the Report with respect thereto. Based on our review of the record and for the reasons discussed below, as well as the reasons stated in the WCJ's Report to the extent included below, we will grant reconsideration to amend Findings of Fact number six (6) to find that applicant sustained PD of 7% and that possible reasonable attorney fees of 15% will be held by defendant pending resolution of the lien for attorney's fees. We also amend Findings of Fact number eight (8) to find that the issue of the lien for applicant's attorney's fees is deferred. We amend the Order so that 15% of the award of permanent disability is to be held by defendant pending resolution of the lien for applicant's attorney's fees, with jurisdiction reserved to the WCJ in the event of a dispute. We otherwise affirm the WCJ's decision of December 29, 2025.

FACTS

On December 29, 2022, applicant filed an Application for Adjudication claiming an injury to his right index finger while employed by defendant as a cook on January 15, 2018.

On December 4, 2023, applicant was evaluated by hand surgery panel QME, Katherine Au, M.D., who found industrial causation for the right index finger, permanent and stationary as of January 15, 2019, no apportionment, and a 4% whole person impairment based on a right index finger range of motion. (Defendant's Exhibit #A, Report of Katherine Au, M.D., dated December 19, 2023, at pp. 19-20.) The QME recommended applicant be seen for an evaluation by a hand surgery for possible surgical reconstruction for his right index finger flexor tendon and the postoperative hand therapy as required. (*Id.* at p. 20.)

On November 8, 2024, applicant was also seen by PTP, Milan Stevanovic M.D., who opined that surgical intervention was the only treatment and there was no role for occupational therapy due to the tendon laceration. (Applicant's Exhibit #1, Report of Milan Stevanovic, M.D., dated November 8, 2024, at p. 2.) The PTP welcomed applicant to follow up when he is ready for surgical intervention. (*Id.*) Otherwise, the applicant was to follow up on an as-needed basis. (*Id.*)

On November 3, 2025, parties proceeded to trial on the issues of the permanent and stationary date as the applicant claimed he was still not permanent and stationary, permanent disability, need for further medical treatment, attorney fees, and the lien by applicant's former attorney.

DISCUSSION

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 January 20, 2026 and 60 days from the date of transmission is March 21, 2026, which is a Saturday. The next business day that is 60 days from the date of transmission is Monday, March 23, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision was issued by or on March 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 notified of the accurate date for the commencement of the 60-day period for the Appeals Board to

¹ All section references are to the Labor Code, unless otherwise indicated.

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.

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 January 20, 2026, and the case was transmitted to the Appeals Board on January 20, 2026. Service of the Report and transmission of the cases 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 January 20, 2026.

II.

Applicant contends that the QME's reporting does not constitute substantial medical evidence and that the WCJ erred in relying on the QME's findings when issuing the findings, award and orders. (Petition, at pp. 2-3.)

For the reasons stated in the WCJ's Report, we agree with the WCJ that the opinion of the QME is substantial medical evidence upon which the WCJ properly relied. To be considered substantial evidence, a medical opinion "must be predicated on reasonable medical probability." (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416-17, 419 [33 Cal.Comp.Cases 660].) A physician's report must also 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. (*Gatten, supra*, 145 Cal.App.4th at 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 612 (Appeals Board en banc), 70 Cal.Comp.Cases 1506 (writ den.)) We observe, moreover, it is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions in the record. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].)

It is well established that the WCJ and the Appeals Board are empowered to choose among conflicting medical reports and rely on that which is deemed most persuasive. (*Jones v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 476 [33 Cal.Comp.Cases 221]; see also *Nunes v. State of*

California, Dept. of Motor Vehicles (2023) 88 Cal.Comp.Cases 741 [2023 Cal. Wrk. Comp. LEXIS 30I] (Appeals Board en banc).

In the instant case, the WCJ has carefully reviewed the evidentiary record and determined that the reporting of the QME, Katherine Au, M.D., is the most thorough and persuasive based on the facts in evidence.

As stated in the Report:

The trier of fact is empowered to choose among conflicting medical reports and rely on that which he deems most persuasive (*Jones v. WCAB* (1968) 68 Cal. 2d 476). In this case, two reports were entered into evidence, the report by primary treating physician Milan Stevanovic, M.D. dated November 8, 2024 and the report by qualified medical examiner Katherine Au, M.D. dated December 19, 2023. Dr. Stevanovic's report states "* Final Report *" at the top but does not contain the necessary information to make it a Permanent & Stationary report (PR-4). The report does not give a whole person impairment, permanent and stationary date and allows the Applicant to follow up on an as needed basis. Dr. Stevanovic said Applicant is welcome to follow up when he is ready for surgical intervention, implying that whole person impairment is deferred. (Exhibit 1 at page 2.) The report of Katherine Au, M.D. has all the information required for a final qualified medical examiner report. The court found the report of Katherine Au, M.D. more persuasive than the report of Milan Stevanovic, M.D..

IF A QUALIFIED MEDICAL EVALUATOR REPORT CONFLICTS WITH THE TREATING PHYSICIAN'S FINDINGS THE REPORT MAY STILL BE SUBSTANTIAL MEDICAL EVIDENCE

The petition contends that qualified medical examiner Katherine Au, M.D., dated December 19, 2023, exhibit A, is not substantial evidence because: 1) it conflicts with the treating physician's findings; 2) Ignores surgical necessity; 3) minimizes permanent impairment; and, 4) fails to explain why treating-doctor opinions are rejected. The undersigned WCJ is unaware of any code, rule or legal precedent to support the contentions.

The undersigned WCJ does not see how Dr. Au's report conflicts with primary treating physician Milan Stevanovic, M.D.. Both doctors had the same diagnosis, find the cause of the injury was the January 15, 2018 finger trauma with laceration of flexor digitorum profundus and find future medical care should include possible surgical reconstruction. Dr. Stevanovic is silent on whole person impairment, making it an impossibility to conflict with Dr. Stevanovic's finding of whole person impairment. The doctors do not ignore surgical necessity, they recommend the surgery. The Applicant testified he does not want to proceed with the surgery. (Minutes of Hearing and Summary of Evidence, hereinafter MOH, at 3:18.)

(Report, at pp. 2-3.)

When a WCJ's findings are supported by solid, credible evidence, they are to be accorded great weight by the Board and rejected only on the basis of contrary evidence of considerable substantiality. (*Lamb v. Workers' 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]; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246 [54 Cal.Comp.Cases 349].)

Here, we are persuaded that the WCJ's findings are supported by solid, credible evidence. Because our independent review of the entire evidentiary record did not reveal "contrary evidence of considerable substantiality," we decline to disturb the WCJ's findings.

III.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it.

The en banc opinion in *Blackledge* explicitly states that "a WCJ may elect to independently rate an employee's permanent disability; however, a WCJ's rating still must be based on substantial evidence." (*Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 616 (Appeals Board en banc).)

Here, a review of the record has led us to conclude that the WCJ erred in finding PD at 4%. The WCJ does not describe how he identified the impairment number used in his rating. (Opinion on Decision, at p. 2.) However, we note that the QME assessed applicant's residual impairment based on "Right Index Finger ROM [Range of Motion]," using Tables 16-1 through 16-3 of the AMA Guides. (Defendant's Exhibit #A, at p. 19.) Accordingly, the appropriate impairment number for rating purposes would be 16.06.02.01, corresponding to "Index – Range of Motion." (2005 Schedule for Rating Permanent Disability, pp. 2-4.) Based on this impairment number, Dr. Au's December 19, 2023 report rates as follows:

16.06.02.01 - 4 - [1.4]6 - 322H - 8 - 7

In the decision, the WCJ found that defendant was to withhold \$793.00 as potential attorney's fees. Applicant's former attorneys have filed a lien for attorney's fees. Since the issue of attorney's fees is not yet before us, defendant should withhold 15% of the permanent disability indemnity pending resolution of the lien for attorney's fees. Applicant shall be included in any settlement of the attorney's fees, and if the issue of attorney's fees does not resolve, applicant shall be given notice and an opportunity to be heard at any further proceedings regarding the issue of the lien for attorney's fees.

We therefore grant reconsideration to amend Findings of Fact number six (6) to find that applicant sustained PD of 7% and that possible reasonable attorney fees of 15% will be held by defendant pending resolution of the lien for attorney's fees, Findings of Fact number eight (8) to find that the issue of the lien for applicant's attorney's fees is deferred, and the Order so that 15% of the award of permanent disability is to be held by defendant pending resolution of the lien for applicant's attorney's fees, with jurisdiction reserved to the WCJ in the event of a dispute. We otherwise affirm the WCJ's decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the decision of December 29, 2025 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the decision of December 29, 2025 is **AFFIRMED**, except that it is **AMENDED**, as follows:

FINDINGS OF FACT

6. Applicant is entitled to an award of permanent partial disability of seven percent (7%), equivalent to 21 weeks of indemnity payable at the rate of \$290.00 per week, in the total sum of \$6,090.00, payable starting January 15, 2019, less credit for amounts paid by defendant on account thereof, and less possible reasonable attorney fees of 15% to be held by defendant pending resolution of applicant's attorney's lien for attorney's fees.

8. The issue of the lien for applicant's attorney's fees is deferred.

ORDERS

IT IS HEREBY ORDERED that 15% of the award of permanent disability is to be held by defendant pending resolution of the lien for applicant's attorney's fees, with jurisdiction reserved to the WCJ in the event of a dispute. If insufficient funds for attorney fees have been withheld from any advances paid to applicant, defendants are to withhold said attorney fees in addition to sums paid.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 17, 2026

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

**MALIK TALEB
LAW OFFICES OF ANNABELLE KRISHEL
GODWIN RUBIN**

JL/abs

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