

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

MATTHEW HARVEY, *Applicant*

vs.

**CALIFORNIA HIGHWAY PATROL;
LEGALLY UNINSURED, ADJUSTED BY STATE COMPENSATION INSURANCE
FUND/ STATE CONTRACT SERVICES, *Defendants***

**Adjudication Number: ADJ18574715
Santa Rosa District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the January 9, 2026 Findings and Award issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant sustained injury arising out of and in the course of employment to his psych and heart while employed as an officer during the period from October 18, 2022 through October 18, 2023 causing 56% permanent disability. No award of future medical treatment was made.

Defendant contends that the WCJ erred in finding 56% permanent disability arguing that the WCJ may not make a medical determination that is the physician's role; that qualified medical evaluator Raye Bellinger, M.D., found overlap in the activities of daily living between hypertension and coronary artery disease and the resulting impairment should, therefore, be combined and not added; and that the opinion of Richard Dorsey, M.D., is not substantial medical evidence.

We did not receive an answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant defendant's Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is

deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

I.

Preliminarily, we note that former Labor Code¹ 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 February 9, 2026 and 60 days from the date of transmission is Sunday, January 25, 2026. The next business day that is 60 days from the date of transmission is April 10, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on April 10, 2026, so that we have timely acted on the petition as required by Labor Code section 5909(a).

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

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.

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 February 9, 2026, and the case was transmitted to the Appeals Board on February 9, 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 February 9, 2026.

II.

The WCJ provided the following discussion in the Opinion on Decision:

The applicant sustained an industrial injury in the cumulative trauma period from October 18, 2022 through October 18, 2023 to his psych and heart during the course employment as an Officer for the California Highway Patrol. At issue for adjudication is the applicant's permanent disability.

At trial, the applicant credibly testified that he experienced PTSD symptoms of flashbacks, nightmares, withdrawing anxiety and stress. He lives in the area where he used to patrol and he gets triggered. (MOH/SOE, p. 4, lines 19-21.) When the applicant experiences a flashback, it is an intense feeling like something bad will happen. His body tenses up. (MOH/SOE, p. 5, lines 9-10.) The applicant experiences sadness and depression. (MOH/SOE, p. 5, line 15.)

On occasion, the applicant would have to make a death notification. (MOH/SOE, p. 5, lines 41-42.) Depending on the incident, the applicant can recall varying level of detail. Often times, the applicant goes back to the same flashback in a way. (MOH/SOE, p. 6, lines 9-11.)

PERMANENT DISABILITY

The parties utilized Raye Bellinger, M.D. as the Qualified Medical Evaluator (QME) in Internal Medicine. Dr. Bellinger apportioned 40% of the applicant's hypertension disability as nonindustrial. The internal medicine permanent disability is set forth below:

Coronary Artery Disease: 03.02.00.00-3-[1.4]4-490I-7-8

Hypertension: .60(04.01.00.00-5-[1.4]7-490I-11-12)7
(Jt. Exh. 4, Dr. Bellinger, 9/18/24.)

As for the applicant's psych injury, the psychiatric panel Qualified Medical Evaluator, E. Richard Dorsey, M.D. initially provided a whole person impairment of 8% in his report of August 8, 2024. (Jt. Exh. 7, Dr. Dorsey, 08/08/24.) Subsequently, Dr. Dorsey availed himself to a deposition on December 12, 2024. Regarding the applicant's GAF score, Dr. Dorsey testified as follows:

Q: Well, when you didn't know what your past rating was and you're basing your rating just upon the symptoms and the frequencies of the trigger rated at 55, assuming the hypothetical to be correct, so what relevance would your rating of August be?

A: Well, my rating of August of 65 was the definitive rating at that time based on my examination and the information that I had available to me. If what you say is true and accepted by the judge as true, there would be a lower rating. IT could be 50, at worst—correction. It could be 60, at worst 55.
(Jt. Exh. 9, Dr. Dempsey deposition, p. 29, lines 4-14.)

Considering the record as a whole, including the applicant's testimony which the court finds credible, a GAF score of 55, with a corresponding Whole Person Impairment of 23 is appropriate. Dr. Dorsey apportioned 10% of applicant's psych disability to his residual back pain. (Jt. Exh. 7, Dr. Dorsey, 8/8/24.)

Psych: .90(14.01.00.00-23-[1.4]32-490J-44-46)41

KITE

Under *Kite*, impairments may be added if substantial medical evidence supports a physician's opinion that adding impairments will result in a more accurate rating of the applicant's level of disability than the rating that results from the use of the CVC. (*Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal. Comp. Cases 213.) Specifically, in *Kite*, the QME recommended the addition of the separate ratings for the right and left hips as the best way to combine impairments, rather than using the Combined Values Chart (CVC), which would reduce the overall rating. The QME went on to state that there was a "synergistic effect of the injury to the same body parts bilaterally versus body parts from different regions of the body" that warranted addition rather than combining under the CVC.

In *Vigil v. County of Kern* (2024) 89 CCC 686 (appeals board en banc), the board issued an en banc decision explaining the evidence necessary to support rebuttal of the CVC. The WCAB held that the CVC in the permanent disability ratings schedule (PDRS) can be rebutted and impairments can be added when an applicant establishes the impact of each impairment on the activities of daily living (ADLs) and that either:

- a. There is no overlap between the effects on ADLs for the body parts rated or
- b. There is overlap, but it increases or amplifies the impact on the overlapping ADLs.

Here, according to QME Dr. Bellinger,

“In looking at Vigil and its effect on ADLs post-traumatic stress disorder/psychiatric injury is substantially different from the clinical symptoms arising from either hypertension or coronary artery disease. Moderate difficulty with social and occupational interactions is a common feature of PTSD. Anxiety is another feature. Patients who have coronary artery disease may have chest discomfort or fatigue with exercise. Patients with hypertension may present with headaches or difficulty with fatigue and weakness but from the perspective of a change in heart function....

...

At this point, the symptoms and alteration of life’s activities are different between PTSD, hypertension, and non-obstructive coronary artery disease. Adding all three together would provide greater accuracy for the level of injury.”

(Jt. Exh. 2, Dr. Bellinger, 1/27/25.)

Taking into consideration the *Kite* case and its progeny, Dr. Bellinger sufficiently describes the lack of overlap in the applicant’s ADLs to rebut the CVC and warrant adding impairments rather than combining them.

Addition method: $41 + 8 + 7 = 56$

It is found that applicant is entitled to a permanent disability award of 56%, equivalent to 319.25 weeks of indemnity payable at the rate of \$290.00 per week, in the total sum of \$92,582.50, less credit for amounts previously paid and less attorney’s fees.

(Report at pp. 1-3.)

III.

We highlight the following legal principles that may be relevant to our review of this matter:

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].) “The term ‘substantial evidence’ means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value.” (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Medical evidence is required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c)(d), 4061(i), 4062.3(l).) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. 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.” (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Here, it is unclear from our preliminary review that there is substantial medical evidence to support the WCJ’s decision regarding permanent disability without additional development of the record. 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).)

Based on our review, we are not persuaded that the record is properly developed. Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

IV.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

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. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal.2d 360, 364.) “[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied.”; see generally Lab. Code, § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”].)

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A “final” order has been defined as one that either “determines any

substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a “threshold” issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].)

Section 5901 states in relevant part that:

No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers’ compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. ...

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

V.

Accordingly, we grant defendant’s Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. ***While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board’s voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to WCABmediation@dir.ca.gov.***

For the foregoing reasons,

IT IS ORDERED that defendant’s Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 10, 2026

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

**MATTHEW HARVEY
JONES CLIFFORD
SCIF STATE EMPLOYEES**

PAG/mt

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