

WORKERS' COMPENSATION APPEALS BOARD STATE OF CALIFORNIA

RAMON MONTIEL, *Applicant*

vs.

CITY OF LOS ANGELES; PERMISSIBLY SELF-INSURED, *Defendants*

**Adjudication Number: ADJ11705702
Marina Del Rey District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, and for the reasons we discuss below, we will deny reconsideration.

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.

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

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 2, 2025 and 60 days from the date of transmission is Saturday, January 31, 2026. The next business day that is 60 days from the date of transmission is Monday, February 2, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, February 2, 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 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 December 2, 2025, and the case was transmitted to the Appeals Board on December 2, 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 2, 2025.

We have given the WCJ’s credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*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

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.

determination. (*Id.*)

The WCJ properly relied on the substantial opinion of agreed medical examiners (AMEs) Peter Newton, M.D., who the parties presumably chose because of his expertise and neutrality. The WCJ was presented with no good reason to find the AME's opinion unpersuasive, and we also find none. (See *Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].)

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 2, 2026

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

**RAMON MONTIEL
BERKOWITZ AND COHEN
OFFICE OF LOS ANGELES CITY ATTORNEY**

PAG/mt

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION
NOTICE OF TRANSMITTAL TO THE WCAB

I

INTRODUCTION

- | | | |
|----|--|--|
| 1. | Applicant's Occupation
Applicant's Age
Date of Injury
Parts of Body Injured | Plumber
65
8/19/2018
Cervical spine, Lumbar spine, Right wrist,
Right ribs, Thoracic spine |
| 2. | Identity of Petitioner
Timeliness
Verification | <u>Defendant</u> filed the Petition.
The petition is timely.
The petition is verified. |
| 3. | Date of the Findings of Fact: | 11/3/2025 |

Petitioner's contention: 1. By the Order decision or Award the Board acted without or in excess of its powers. 2. The evidence does not justify the Finding of Facts and Order.

II

FACTS:

The Applicant sustained an injury on 8/19/2018 while in the course and scope of his employment with the City of Los Angeles. The injury occurred when he was involved in an automobile accident. On 11/14/2018 the Application for Adjudication of Claim was filed. Thereafter, the parties agree to Dr. Peter Newton as the Agreed Medical Examiner (AME). On 9/30/2020, after being presented with a Stipulation with Request for Award, this WCJ issued an Award at 49% WPI based on the report and opinions of AME Dr. Peter Newton dated 12/31/2019. At paragraph 9 of the Stipulation with Request for Award, the parties stipulated a rating of 49% WPI, and included the string rating for the cervical spine at 20%, the lumbar spine at 21%, and the right wrist at 19%. **The parties stipulated that 100% of the Applicant's injuries and WPI were solely related to the Date of Injury of 8/19/2018 based upon the AME Dr. Newton's reports that**

indicated 100% of the Applicant's disability and WPI was caused by the industrial accident on 8/19/2018.

The Applicant then filed on 10/22/2021 a timely Petition to Reopen for New and Further Disability/Good Cause per Labor Code 5410 and 5803 (See Exhibit AA).

The issues presented for trial were 1. Parts of Body: Thoracic spine. 2. Permanent Disability. 3. Apportionment. 4. Need for further medical treatment. 5. Exclusion of any opinions from AME after 10/19/2022. 6. Petition for New and Further Disability dated 10/22/2021. All other issues were deferred with the WCAB retaining jurisdiction.

After several days of trial and testimony, on 11/3/2025 this WCJ issued its Findings of Facts and Award and Opinion on Decision wherein the court found that the Applicant did sustain an injury to his thoracic spine. After doing rating instructions, objected to by the defendant, the DEU rated the Applicant's cervical spine, lumbar spine, thoracic spine, and right wrist for a combined rating of 76% WPI, and this WCJ issued the Award that included a 7% rating on the Applicant's thoracic spine that adjusted for age and occupation to 12% WPI for a combined rating of 76% WPI.

The court found that 100% of that WPI and disability was caused by the 8/19/2018 injury without apportionment and that the Applicant needs further medical treatment for his thoracic spine. The court did not exclude any opinions of the AME, and gave the opinions the due weight and consideration that the court felt was appropriate. The court also found that the Applicant did sustain new and further disability to his thoracic spine and that there was good cause for the petition to reopen dated 10/22/2021.

The court also admitted into evidence, over Applicant's attorney's objection, the sub rosa video taken on 2/16/2025, originally marked for identification purposes only, and noted that after a review of the video, that it had no probative value, and did not change any opinion expressed in this WCJ's Finding and Award and Opinions on Decision.

The Defendant filed the Petition for Reconsideration indicting that the evidence does not justify

the Finding of Fact with respect to the lumbar spine apportionment and the thoracic spine impairment only.

None of the other court's Findings of Facts and Orders are raised in the Petition for Reconsideration.

III

DISCUSSION:

Under California Labor Code Section 5410 an injured worker can file a Petition for New and Further Disability if they can prove that their condition has worsened or changed *since the date of the original Award* and that the *original injury has caused the new and further disability*. (italics added). (See California Highway Patrol v WCAB (Griffin) 75 Cal. Comp. Cases 1241).

Dr. Peter Newton, acting in his capacity as the Agreed Medical Examiner (AME) opined in his report dated 4/19/2022 that the Applicant sustained injury to his cervical spine, right ribs, right wrist, and lumbar spine on 8/19/2018 and has developed a compensable injury to his thoracic spine. He also opined that the increased and additional symptoms are a “natural sequela and deterioration of his original injury”. The AME also opined that to a reasonable degree of medical probability, 100% of the Applicant's cervical spine, right wrist, thoracic spine and lumbar spine condition/disability/impairment is apportioned to the 8/19/2018 injury. (See Exhibit CC at page 18).

Petitioners contend that AME Dr. Newton's opinion, expressed in cross examination, that only 80% of the Applicant's increase in lumbar spine impairment is attributable to the 8/19/2018 Date of Injury. (See Petition for Reconsideration on page 3, lines 25-28). However, in the AME's cross examination on 4/24/2024 he testified to an error in his original report issued prior to the Award and stated that he should have rated the Applicant in the higher DRE 3 category when he saw the Applicant in 2018 but did not. He then amended his original opinion regarding the impairment to the Applicant's lumbar spine to 12% WPI. This court does not believe that this represents a new and further disability as it is simply a correction by the AME based on his evaluation of the Applicant in 2018. (See Exhibit EE on page 40, lines 6-21).

In the case of Nicky Blair's Restaurant v WCAB (1980 109 Cal. App.3rd 941,955,165 Cal Rptr.516 the court concluded that if the Applicant's condition is unchanged from the time of the original decision, there is no new and further disability within the meaning of section 5410 to permit the petition to reopening of the case. In this case, the AME only corrected his error and this does not amount to new and further disability to the Applicant's lumbar spine, which could be subjected to apportionment.

Although the court does not find that the Applicant's lumbar spine disability is subject to apportionment as the parties stipulated that 100% of the Applicant's lumbar spine injury was due to the 8/19/2018 Date of Injury, and that there is no new and further disability, the sole basis for the AME's opinion on possible apportionment to the Applicant's lumbar spine is discussed in one of the AME's cross examinations. His opinion was based only on the pathology he recently reviewed on the two MRI's which were taken 6 years before the specific injury of 8/19/2018, and 8 years before the Award on 9/30/2020, and 12 years before the AME's re-examination of the Applicant in March of 2022. It should be noted that the Defendant never sent these MRIs to AME Dr. Newton prior to the issuance of the Award on 9/30/2020, despite receiving these documents before the Award was issued.

The records from the Applicant's employment prior to working for Defendant and medical reports and MRIs were received by the City of Los Angeles as a direct result of the SDT that the Defendant issued for the records of Community Medical Group of Riverside.

The present claims adjuster, Vanessa Marrero, testified that these reports and records were received by Defendant around March of 2019. (See MOH and Summary of Evidence dated 3/26/2025 on page 5, lines 18-22). She also testified that the records were included in the Medical Services Division records received by the City of Los Angeles on 2/6/2019. (See MOH and Summary of Evidence dated 3/26/2025 on page 6, lines 7-9.)

Mrs. Marrero testified that she does not know why the prior Defendant's attorney, who executed the Stipulation with Request for Award that led to the Award issued on 9/30/2020, did not issue subpoenas or obtain the records from the Applicant's prior employers that came into the Defendant's possession before the Award was issued. (See MOH and Summary of Evidence dated 3/26/2025 on page 11, lines 1 – 9.)

As far as any possible apportionment to the Applicant's thoracic spine disability, the AME, in one of his many cross examinations, testified that "just the fact that there is a pathology issue in the adjacent area, I don't think warrants apportionment as a compensable consequence. There were no symptoms of the thoracic spine for many years despite prior documentation of the neck and low back symptoms until the significant injury in 2018, which has rendered him unable to work." (See Exhibit FF on page 53, lines 19-25). The AME goes on to opine that "Had it not been for the 2018 injury, I cannot say that he would have developed pain in the thoracic region because for many years he was working full despite the neck and low back condition without the onset of mid-back pain." (See Exhibit EE on page 54, lines 3 – 7). Therefore, the court found that there was new and further disability to the Applicant's thoracic spine, not subject to any apportionment.

The Petition for Reconsideration appears to take issue with thoracic spine impairment. Per AME Dr. Newton's 4/19/2022 report, the Applicant has a 7% WPI for the thoracic spine (See Exhibit

CC on page 19). Per the DEU rating, that was issued pursuant to this court's rating instructions, that 7% adjusted for age and occupation to 20%. AME Dr. Newton substantially explained his impairment finding regarding the thoracic spine, indicating that "Due to the ongoing symptoms of pain, DRE II is the most accurate choice for rating as there continues to be abnormal physical exam findings (noted in the report) and ongoing symptoms." (See Exhibit CC on page 20).

The Petition for Reconsideration indicated that the basis for the thoracic spine impairment is that it is based on Applicant's subjective complaints and based on a lack of objective findings and the sub rosa video taken in 2025. (See Petition for Reconsideration on page 4, lines 6-24).

The court does not agree with those assertions. The court found that the Applicant's testimony regarding his pain was credible. (See MOH and Summary of Evidence dated 6/11/2025 on page 6, lines 2-8 and on page 7, lines 6-9). As the AME indicated, as discussed above, there were objective findings to justify thoracic spine impairment.

Regarding the sub rosa video, the Petitioner contends that this video rebuts the finding that the Applicant suffered a compensable consequence injury to his thoracic spine. (See Petition for Reconsideration on page 4, lines 6-24). The court disagrees with that contention. Petitioners seem to contend that this video is in contradiction to the limitations provided by the AME in his 4/19/2022 report. That report in 2022 gave Applicant **work** restrictions for the lumbar spine and the thoracic spine of no heavy lifting (15 pounds), no repetitive bending, stooping, twisting, squatting or turning. This video does not contradict these work restrictions in any way. The Applicant is not working in the video, and the court reviewed the video and noted that it is only approximately 18 minutes and 15 seconds with the Applicant only seen for 5 minutes and 36 seconds. (See MOH and Summary of Evidence 6/11/2025 on page 3, lines 3- 20). The video does not depict the Applicant doing any prolonged or repetitive movements or extended driving. The Applicant credibly testified that the items in the grocery bags shown in the video consisted of vegetables, fruits, snacks and milk. The Applicant credibly testified that he did not have an estimate as to their weight but that they were light and that he did not believe that any of the bags depicted in the video weighed more than 15 pounds. (See MOH and Summary of Evidence dated 6/11/2025 on page 6, lines -14).

The Petitioner's contention that the Applicant's alleged thoracic spine limitations are exaggerated, if not manufactured entirely (See Petition for Reconsideration on page 4, lines 22-24) is unfounded and not supported by any medical evidence or the credible testimony of the Applicant. It was for

this reason that the court did not give any weight to the sub rosa video.

IV

RECOMMENDATION:

Defendant has failed to show that this court's Order, decision or Award was in excess of its power and that the evidence did not justify the Finding of Fact and Order. It is respectfully recommended that Defendant's Petition for Reconsideration be denied.

DATED: 12/2/2025

HON. ELLIOT F. BORSKA
Workers' Compensation Judge