

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

RIGOBERTO PICENO, *Applicant*

vs.

RIVERSIDE COUNTY SHERIFF'S DEPARTMENT; permissibly self-insured, *Defendants*

**Adjudication Numbers: ADJ18997271; ADJ18997303; ADJ18997325;
ADJ18997348; ADJ18997784; ADJ18997805
Riverside District Office**

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

Applicant seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on October 24, 2025, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and in the course of employment to the head, and in the form of COVID-19, while employed by defendant as a correctional officer during the period January 1, 2023 to February 23, 2024, but that applicant is not entitled to any permanent disability for this injury, "at this time."

Applicant contends that the WCJ disregarded applicant's credible testimony of ongoing post-COVID symptoms and functional limitations; and that the opinions of the independent medical evaluators (IMEs) were not substantial evidence.

We received an Answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will grant applicant's Petition, rescind the F&A, and we will return the matter to the WCJ for further proceedings consistent with this decision.

BACKGROUND

Applicant filed applications for adjudication for a variety of body parts while employed by defendant as a correctional officer, including but not limited to the following case numbers:

ADJ18997271; ADJ18997303; ADJ18997325; ADJ18997348; ADJ18997784; and ADJ18997805. As only ADJ18997271 is before us here, we will briefly review the relevant facts of this case.

Applicant claimed injury to his head, in the form of COVID-19 while employed by defendant as a correctional officer, during the period from January 1, 2023 to February 23, 2024.

Applicant was evaluated by Paul J. Grodan, M.D., and Bijan Zardouz, M.D., both of whom reported as IMEs under defendant's Alternative Dispute Resolution (ADR) program.

Applicant was evaluated by Dr. Grodan, IME in internal medicine and cardiology, on April 29, 2024. Dr. Grodan issued three reports: April 29, 2024 (Exhibit 1, IME Report of Dr. Grodan, dated 4/29/2024), July 28, 2024 (Exhibit 2, IME Report of Dr. Grodan, dated 7/28/2024), and January 20, 2025 (Exhibit 3, IME Report of Dr. Grodan, dated 1/20/2025).

Dr. Grodan took applicant's educational, occupational, and medical history (Exhibit 1, pp. 1-4), performed a basic physical examination and reviewed the results of blood work, but did not perform a treadmill test. (Exhibit 1, pp. 1-9.) However, results of a resting EKG revealed normal sinus rhythm rate of 82 (Exhibit 1, at p. 6) and a METS value of 1.0. (Attached to Exhibit 1, at p. 23 of PDF.) Dr. Grodan also reviewed and summarized medical records.

In his initial IME report, dated April 29, 2024, Dr. Grodan stated:

[Applicant] also noted having headaches since he had Covid. He gets short of breath. The claim for Covid was accepted. He had no hospitalization. No ER visits but treatment was via intravenous administration; he was treated with the Covid-19 monoclonal antibody injections and was off work 3 weeks. He noted his long term complaint of shortness of breath. He also claimed "brain fog". He has been off work actually since the low back injury that was February 25, 2024.

He also reported having cough on and off and fatigue. Headaches are occipital radiating to top of the head described as sharp pain throbbing. ... He continued working until he retired, last worked March 04, 2024 and low back injury was on February 25, 2024.

...

He returned to work after Covid working full time. He stated that he had some missed days due to Covid flare-ups.

...

He indicated that he was seen by IME Dr. Jeffrey Hirsch on April 22, 2024. He had EKG, echo, but no treadmill because of low back. He had pulmonary function test done previously.

His primary care physician is Dr. Marvin Lee in Redlands VA Clinic. He was followed for Covid noting 3-4 months apart. No chest x-rays were done since. He has shortness of breath with exertion, climbing stairs at home but does not do much exercise only in physical therapy and it is limited.

He reported weight gain having 30-40 lbs. that he gained. This is since Covid because he was tired, had a hard time to breathe and now also low back pain which limits his activities.

...

HEAD: Not examined due to Covid-19 precautions.

EYES: Not examined due to Covid-19 precautions.

ENT: Not examined due to Covid-19 precautions.

...

[applicant] indicated sleep greatly disturbed 3-5 hours of sleeplessness since the injury

...

DISCUSSION:

... [Applicant] provided detailed history about his Covid infection, he had the cardiac assessment by Dr. Hirsch and I was asked to address Covid.

Obviously during the Covid acute phase [applicant] was disabled with a temporary total disability. As soon as the Covid testing turned negative and his symptoms resolved, he was able to return to work and became permanent and stationary or MMI. I will not comment on the orthopedic aspects. Mr. Piceno's Covid infection occurred at work and was accepted as industrial. . .

...

His Covid infection was in September 2021 and as he directly stated was accepted as industrial; TTD was industrial. He was treated with monoclonal antibody and he recovered. But he claimed to have shortness of breath and brain fog since. He also claims having chronic cough but Covid infection may cause neurological residuals and that would have to be addressed by a neurology specialist including neuro-cognitive testing.

...

At my office he reported brain fog but that would require a neurocognitive assessment by a neuropsychologist. The neurocognitive assessment will establish the degree of impairment he may have.

From the direct history given by [applicant] it is evident that the only significant residuals are the brain fog, cough, and shortness of breath, as well as fatigue. Fatigue can be attributed to his obesity considering his current body mass index or BMI is 39 and that places him into the high end of the Class 2 morbid obesity.

...

Considering the fact that Covid-19 virus causes a systemic viremia it can impact the brain causing what is known as brain fog, it can also impact the sleep center in the brain therefore a sleep disorder may have central nervous system causation. This is the reason why the neurocognitive and neuropsychological assessment would be essential.

...

The Covid-19 was in 2021 generally recovery can take about a in year some individuals it can be longer if they are periodically reexposed.

...

Considering that he is currently working he does not have a residual physical disability.

(Exhibit 1, 4/29/2024 IME Report, pp. 1-11 [underline in original].)

In his IME report, dated July 28, 2024, Dr. Grodan stated that there were still numerous gaps in information, including the report of IME Dr. Hirsch and that he could not provide an opinion in regards to rating or apportionment until he reviewed all available evidence. (Exhibit 2, pp. 2-3.)

After he was provided additional information, Dr. Grodan stated in pertinent part in his January 20, 2025 report that:

Report of Dr. Jeffrey Hirsch dated May 17, 2024 was reviewed. The heading indicates it was an IME exam. He reviewed 61 pages of records. He provided details of employment, history of injury, noting diagnosis of chronic hypertension, and that [applicant] was unable to work due to low back pain due to his orthopedic injuries.

Dr. Hirsch noted that Mr. Piceno had episodes of shortness of breath occurring at rest as well as while walking, occasional palpitations but denied chest pain, pressure, tightness, squeezing, dizziness or syncope. He noted that Mr. Piceno had Covid-19 due to work related exposure and noted dyspnea on exertion and cough due to Covid.

...

[Dr. Hirsch's] report had appendix I and II, that reflected the records review, EKG, pulmonary function study but I do not recall finding any comment about the effort by the applicant during the study.

There appeared to be a reduction in some of the parameters with bronchodilators instead of increased volumes.

...

As far as Covid, Dr. Zardouz indicated that [applicant] was able to return to work and was able to perform his usual and customary work activities. This suggests that the claim of “brain fog” was not significant, but it would help to obtain a neurocognitive assessment with appropriate testing to assess if there are any residuals. It is not always easy to evaluate grossly by talking to the applicant. The cerebral function assessment via psychological test panels should be obtained.

...

As far as Covid-19, he did have the infection according to the direct history and what I gathered from the records I reviewed. However, he fully recovered.

...

As [applicant] reported, his Covid-19 infection was accepted as industrial and the temporary disability associated with the illness would be occupational. His treatment involved the monoclonal antibody, which was quite successful. I indicated that to assess the claim of brain fog and neurological residuals he should have the neurology assessment with neurocognitive testing.

...

In summary, I did not find a ratable impairment that can be attributed to the Covid-19 infection. At the time of the infection, he had temporary disability due to the infection and considering he reported the infection was acquired at work therefore it will be compensable, if the history is accurate.

To summarize, I reviewed the 56 pages currently submitted, I reviewed my two reports that I prepared previously and the question about when he became permanent and stationary - the Covid was in September 2021. He had low back injury February 25, 2024. However, he reported at my office that he was off work since the low back injury in February 2024. He could not provide directly the accurate history as to when he had Covid and had to go off work and when he returned to work. The day he returned to work after Covid would be the day he became permanent and stationary, he had no internal medical limitations.

I obtained testing such as myeloperoxidase as well as the clotting panel and there was no indication that he had systemic involvement with the Covid viremia.

If the neurocognitive testing is performed, I will review the results and issue a supplemental report.

...

Clearly, he became permanent and stationary when he returned to work after Covid-19 infection. As I noted, there is no Whole-Person impairment percentage that I can attribute to the Covid infection since the recovery. He had temporary disability at that time. The causation clearly was Covid-19 virus.

(Exhibit 3, pp. 3-7 [underline in original].)

Applicant was evaluated by Dr. Zardouz, IME in neurology, on July 3, 2024. Dr. Zardouz issued two reports: July 26, 2024 (Exhibit 4, IME Report of Dr. Zardouz, dated 7/26/2024) and September 25, 2024 (Exhibit 5, IME Report of Dr. Zardouz, dated 9/25/2024).

Dr. Zardouz performed a basic examination (Exhibit 4, 7/26/2024 IME Report, pp. 7-10), took a medical, occupational, and family history (*Id.* at 2-7), and reviewed applicant's deposition transcript and 15 pages of medical records (*Id.* at 11).

In pertinent part, applicant reported the following to Dr. Zardouz:

The applicant states that he got Covid in about 2021. He states he was attending a class at the training center and another deputy was sick, which caused him to get sick. He had fatigue, shortness of breath and "brain fog." The applicant states he was tested for Covid, and the test was positive. For that reason, he stayed home for about three weeks, and then he was cleared to return to work.

The applicant states that since then, he has been left with a certain degree of difficulty with conversations, such as inability to say the words he wants to say. He still feels tired and fatigued, and he gets dryness in his throat with a dry cough.

The applicant states he has not been seen by any doctors for his ongoing symptoms related to Covid since he returned to work, except by an IME doctor in internal medicine in the past two months. He states he has a family doctor, who he sees about once every six months.

The applicant states he had MRI studies of the brain and lower back in the past two months.

At the present time, the applicant complains of headaches, which vary in location. He also gets pulsating behind either his right eye or left eye. The headaches happen about two to three times per week, at different times of the day. The headaches are better with medication and an ice pack/cold compress, and they are worse with light and noise. The applicant states the headaches started four to five years ago, but they worsened after he got Covid.

The applicant has been complaining of "brain fog," fatigue and a cough since he got Covid.

(Exhibit 4, 7/26/2024 IME Report, pp. 2-3.)

With respect to permanent disability, Dr. Zardouz opined that the only factor of permanent disability is low back pain. He opined that applicant's headaches are pre-existing in nature and

thus are not a factor of permanent disability. (Exhibit 4, p. 13.) He offered no opinion as to brain fog, fatigue, or other possible sequelae of COVID.

In response to a letter from defendant, Dr. Zardouz issued a supplemental report on September 25, 2024. It does not appear that he reviewed any additional records. He stated in pertinent part:

I should state that when the applicant got Covid in 2021, he was released to work after three weeks. However, at times Covid can cause encephalopathy or a vascular insult to the brain. In this case, his complete neurological examination failed to show any evidence of a vascular insult to the brain, and his memory tests (Mini-Mental Status Exam) was also within normal limits. In other words, from a neurological standpoint, his Covid infection did not cause any neurological deficit, and it has not caused any restriction in his working ability.

(Exhibit 5, IME Report of Dr. Zardouz, dated 9/25/2024, p. 2.)

On August 25, 2025, the matter proceeded to trial on the following issues: 1. Permanent disability; 2. Need for further medical treatment; and 3. Attorney fees. (Amended Minutes of Hearing and Summary of Evidence (MOH/SOE), August 25, 2025 trial, p. 2.) The parties stipulated that during the period of January 1, 2023 through February 23, 2024, applicant sustained injury arising out of and in the course of employment to the head and in the form of COVID-19.

DISCUSSION

I.

Former Labor Code section¹ 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 statutory references are to the Labor Code unless otherwise stated.

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 13, 2025, and 60 days from the date of transmission is January 12, 2026. This decision is issued by or on January 12, 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 shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on November 13, 2025, and the case was transmitted to the Appeals Board on November 13, 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 13, 2025.

II.

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc).) “[T]he WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at 475; see Lab. Code, § 5313 and *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).) “The opinion enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton, supra*, at 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350].)

For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record. (*Hamilton, supra*, at 476.) A WCJ's decision must be supported by substantial evidence in light of the entire record. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].)

A medical evaluation is required where there is a dispute over limitations, if any, resulting from an injury, or the existence or extent of permanent impairment. (Lab. Code, §§ 4060, et seq.) When deciding a medical issue, the WCJ must utilize expert medical opinion. (See *Insurance Company of North America v. Workers' Comp. Appeals Bd. (Kemp)* (1981) 122 Cal.App.3d 905 [46 Cal.Comp.Cases 913].) The number and nature of the injuries sustained are questions of fact for the WCJ. (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323].)

Here, we first begin with the date of injury.

As set forth in section 3208.1,

An injury may be either: (a) "specific," occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) "cumulative," occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative injury shall be the date determined under Section 5412.

Section 5411 states that:

The date of injury, except in cases of occupational disease or cumulative injury, is that date during the employment on which occurred the alleged incident or exposure, for the consequences of which compensation is claimed.

Section 5412 states that:

The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment.

We note that while the parties may stipulate to the facts in controversy, the WCJ is not bound by the parties' stipulations and may make further inquiry into the matter "to enable it to determine the matter in controversy." (Lab. Code, § 5702; see also *County of Sacramento v.*

Workers' Comp. Appeals Bd. (Weatherall) (2000) 77 Cal.App.4th 1114, 1119 [65 Cal.Comp.Cases 1]; *Turner Gas Co. v. Workers' Comp. Appeals Bd. (Kinney)* (1975) 47 Cal.App.3d 286 [40 Cal.Comp.Cases 253].) Moreover, the WCJ's findings must be supported by substantial evidence and the WCJ should not accept stipulations that conflict with the record or are legally incorrect.

Here, the medical evidence suggests that applicant sustained his COVID infection in September 2021, and it is undisputed that applicant received temporary disability indemnity immediately thereafter. However, there is no further evidence as to whether the exposure was on a specific date, rendering it a specific injury, or whether it was sustained during a period of exposure. Yet, the parties stipulated that applicant sustained a cumulative injury to his head, in the form of COVID, during the period from January 1, 2023 to February 23, 2024. In any case, if applicant was positive for COVID in September 2021, the stipulated period of exposure is not based on the evidence and must be disregarded. Thus, upon return, further medical evidence and / or testimony is appropriate to determine the correct date of injury.

Turning to the medical evidence, to be substantial evidence, a medical opinion must be well-reasoned, based on an adequate history and examination, and it must disclose a solid underlying basis for the opinion. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc); see also *E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687].) A medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, and not merely their conclusions. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Granado v. Workmen's Comp. Appeals Bd.* (1970) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *Escobedo, supra*.) A medical opinion is also not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (*Hegglin, supra*, at 169; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525]; *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 798.) The chief value of an expert's testimony rests upon the material from which his or her opinion is fashioned and the reasoning by which they progress from the material to the conclusion, and it does not lie in the mere expression of the conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based. (*Escobedo, supra*, at 621; *County of Sacramento v. Workers' Comp. Appeals Bd. (Brooks)* (2013) 215 Cal.App.4th 785,

797 [78 Cal.Comp.Cases 379], quoting *Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 923.)

Here, Dr. Zardouz references applicant's complaints of brain fog, fatigue, worsening headaches, and a cough since he got COVID. (Exhibit 4, 7/26/2024 IME Report, p. 3.) Dr. Zardouz performed basic neurological testing and mentions the results of a brain MRI, but does not explain the reasoning by which he progresses from the results to his conclusions. (Exhibit 4, 7/26/2024 IME Report, pp. 3, 21 (p. 4 of record review).) Dr. Zardouz provided a cursory opinion that applicant's headaches are pre-existing in nature and thus are not a factor of permanent disability. (Exhibit 4, 7/26/2024 IME Report, p. 13.) With respect to permanent disability, Dr. Zardouz opined that the only factor of permanent disability is low back pain, but stating that he declined to rate it without the results of an MRI of the lumbar spine. (*Id.* at p. 14.) He offered no opinion as to brain fog, fatigue, or other possible sequelae of COVID-19. Dr. Zardouz's opinions are conclusory at best and are not substantial medical evidence.

Dr. Grodan did not perform a treadmill test or any other METS testing, despite applicant's complaints of fatigue. (Exhibit 1, 4/29/2024 IME Report, p. 9.) The results of a resting EKG conducted on April 29, 2024, revealed normal sinus rhythm rate of 82 (Exhibit 1, at p. 6) and a METS value of 1.0. (Attached to Exhibit 1, at p. 23 of PDF.) However, Dr. Grodan did not discuss the significance of the results, if any. Dr. Grodan references a report by a Dr. Hirsch which includes the results of a pulmonary function study (PFT). According to Dr. Grodan, there "appeared to be a reduction in some of the parameters with bronchodilators instead of increased volumes." (Exhibit 3, 1/20/2025 IME Report, p. 4.) Dr. Hirsch's report is not in evidence and Dr. Grodan did not request a PFT in this case.

Dr. Grodan recommended multiple additional evaluations, including neurocognitive testing, with "appropriate testing to assess if there are any residuals," and a neuropsychological assessment, including cerebral function assessment via psychological test panels. (Exhibit 1, 4/29/2024 IME Report, p. 10; Exhibit 3, 1/20/2025 IME Report, p. 5.) Dr. Grodan went so far as to state "that to assess the claim of brain fog and neurological residuals he should have the neurology assessment with neurocognitive testing." (Exhibit 3, 1/20/2025 IME Report, p. 5.)

Despite the absence of PFTs, METS testing, or the results of the other assessments that Dr. Grodan recommended, he nonetheless opined that applicant had no ratable impairment. As the medical knowledge about the residual impairments from COVID-19 is still developing, this area

of medicine may not fit neatly in the existing chapters of the AMA Guides. Still, shortness of breath and fatigue are successfully evaluated in other contexts and Dr. Grodan did not set forth what chapter(s) of the AMA Guides he consulted in determining that applicant has no permanent impairment. Based on the foregoing, Dr. Grodan's opinions are not substantial medical evidence.

With respect to the parts of body that were injured, based on the parties' stipulations, applicant sustained COVID, but the only identified body part is head. As discussed above, the medical evidence suggests that applicant may be claiming injury in the form of headaches; injury due to brain fog, which could be an injury to the brain and require neuropsychological evaluation; and cough, which could indicate an injury to the lungs/pulmonary. Moreover, there is an indication that applicant's hypertension and sleep disorder may have been impacted by his infection. Upon return, the parties shall obtain medical reporting to determine which body parts are claimed to be injured as a result of the COVID infection.

The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) The Appeals Board has the authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141 (Appeals Bd. en banc); see also *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924].) The "Board may act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately applied in favor of the employee." (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 937-938 [64 Cal.Comp.Cases 986].)

To the extent that applicant sustained a specific injury rather than a cumulative injury, WCAB Rule 10517 permits the WCJ to amend the pleadings to conform to proof. However, given the record before us, we are unable to determine whether this is a specific injury or a cumulative injury. To the extent that the WCJ determines that applicant sustained a cumulative injury, the date

of injury must be supported by substantial medical evidence notwithstanding the parties' stipulations. Finally, the injured body parts must supported by the record.

Accordingly, we grant applicant's Petition, rescind the Findings and Award issued on October 24, 2025, and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return to the trial level, we recommend that the WCJ consider what further development of the record is appropriate with respect to applicant's claims. If Drs. Grodan and Zardouz are unable to "cure the need for development of the medical record," the parties may wish to select an agreed medical evaluator, or it may be in the parties' interest for the WCJ to appoint a regular physician. (Lab. Code, § 5701.)

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award issued by the WCJ on October 24, 2025 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings by the WCJ consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 12, 2026

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

**RIGOBERTO PICENO
PEREZ LAW FIRM
PARKER & IRWIN**

JB/pm

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