WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SINDY SETO, *Applicant*

vs.

PINE GROVE HEALTHCARE AND WELLNESS CENTRE; XL SPECIALTY INSURANCE COMPANY, Administered By INTERCARE HOLDINGS INSURANCE, INC., *Defendants*

Adjudication Numbers: ADJ16445262, ADJ18616858
Pomona District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Joint Findings and Order of October 3, 2025, wherein it was found that applicant did not sustain industrial injury to her head, brain and neck while employed on June 28, 2022 as a licensed vocational nurse in case ADJ18616858. It was also found that applicant did not sustain industrial injury to the right arm, right wrist, right fingers, back, right shoulder, hips, legs, knees, feet, right ankle, brain, and psyche during a cumulative period from February 1, 2022 through July 7, 2022 in case ADJ16445262. However, the issue of cumulative injury to the circulatory system in case ADJ16445262 was deferred pending further development of the medical record. With regard to the allegation of cumulative injury to the psyche, it was found that applicant's claim was barred pursuant to Labor Code section 3208.3(d) because applicant's employment lasted less than the requisite six months. In finding no industrial injury in the specific injury case (ADJ18616858), the WCJ found that applicant's claim that she fell backwards and hit her head against the wall while at work was not credible.

Applicant contends that the WCJ erred in not finding specific industrial injury in case ADJ18616858, arguing that applicant's claim of injury was corroborated by the testimony of her husband and by the medical reporting of qualified medical evaluator neurologist Jacobo

Chodakiewitz, M.D. We have received an answer from the defendant and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will grant reconsideration, rescind the WCJ's decision, and return these matters to the trial level for further development of the record, analysis and decision.

Preliminarily, we note that former Labor Code 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, Labor Code 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 Labor Code 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).)[1] This decision is issued by or on January 5, 2026, so we have timely acted on the petition as required by Labor Code section 5909(a).

[1] 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.

Labor Code 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. Labor Code 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on November 5, 2025.

Turning to the merits, applicant testified at trial that on the late evening of June 28, 2022, she was leaning on a cart counting medications when the cart started wheeling away. She testified that she lost her balance and fell, with the back of her head hitting the wall. She claims to have fallen on the ground, lost consciousness momentarily, and was dizzy upon waking. She said that the incident produced a bump on her head.

She testified that a nurse colleague "told her to stand up" and that other coworkers "were aware of the incident." She says she was helped up by two nurses, one that was still there from the previous shift, and another that worked the same shift with her. She also testified that "she believes the surveillance footage recorded the incident." She testified that the unnamed nurse from the other shift and the nurse from her shift, who she identified as "Ruby," saw the bump on her head. She testified that the certified nursing assistants that worked with her also saw the bump. (Minutes of Hearing and Summary of Evidence of July 8, 2025 trial at pp. 6-7, 9, 11.)

Applicant testified that she did not report the injury to her supervisor, but that she considered her co-worker Ruby as a kind of superior. Instead of requesting traditional medical care, applicant testified that she called her husband, who lived with her near the worksite, and asked him to bring a Chinese herbal ointment. (Minutes of Hearing and Summary of Evidence of July 8, 2025 trial at p. 7.)

Applicant's husband testified that he received a call from the applicant, drove to the job site, and told the receptionists that applicant had suffered a fall, and that he went there to provide treatment. He testified that applicant came out to the lobby of the job site where the husband noticed a bump and broken skin and applied the herbal ointment. He testified that he was in the lobby with his wife for about 30 minutes. (Minutes of Hearing and Summary of Evidence of August 7, 2025 trial at pp. 3-5.)

Luke Magsila, who had the role of "licensed administrator" at the time of applicant's employment, testified on behalf of defendant. Mr. Magsila testified that he was never notified of the alleged injury by applicant or by any other source prior to terminating the applicant. However, he testified that he did not review any surveillance footage from June 28, 2022 and did not specify what kind of investigation he undertook regarding applicant's claim of specific injury, if any. Mr. Magsila testified that applicant was terminated for incorrect record-keeping. (Minutes of Hearing and Summary of Evidence of August 7, 2025 trial at pp. 5-8.)

The WCJ explained in the Opinion on Decision that he did not find the applicant's testimony credible because of her failure to report the injury, giving inconsistent accounts regarding her motivations for not reporting the injury, and the fact that the fall was not reflected in contemporaneous medical records. (Opinion on Decision at pp. 6-12.) However, the Opinion on Decision does not discuss the testimony of applicant's husband, who stated that he was told of the fall soon after it supposedly took place, witnessed a bump that had not been there previously, and applied ointment on the bump and wound. In the Report, the WCJ states that he considered the husband's testimony, but does not directly comment on the husband's credibility or state why he did not rely on this testimony.

We believe that the record in this matter needs further development and analysis. The WCJ must make a more direct analysis of the applicant's husband's credibility and give more in-depth explanation regarding why he believed or disbelieved the applicant's husband's testimony, independent of any questions regarding the applicant's credibility. Additionally, it may be helpful for the resolution of this issue to allow Dr. Chodakiewitz to complete his medical reporting, as it appears that he was waiting on several diagnostic studies and a reevaluation of the applicant to conclude whether applicant sustained neurological injury within the meaning of Labor Code section 3208.1(a). (October 9, 2024 deposition at pp. 17-19, 57-58, 70-73; March 31, 2025 report at pp. 9-10.) The parties may also find it helpful to obtain evidence from any of applicant's co-

workers on the evening of June 28, 2022 or surveillance evidence tending to support or refute applicant and her husband's testimony.

With regard to the cumulative injury claim, while qualified medical evaluator orthopedist Hamid U. Raman, M.D. concluded that part-time employment over five months could not have on its own developed carpal tunnel syndrome, the parties and the WCJ may wish to analyze whether concurrent or prior employment, in addition to the employment at Pinegrove, contributed to a compensable cumulative trauma pursuant to Labor Code section 5500.5. Additionally, Dr. Hamid should provide a more in-depth discussion of the positive electro-diagnostic studies, and why they should be followed or discounted. (October 24, 2023 deposition at pp. 29-31.)

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) evidence on an issue. The WCAB has a constitutional mandate to ensure "substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) In accordance with that mandate, we grant reconsideration and rescind the WCJ's decision so that these matters can be reanalyzed and decided on a more complete record. The parties and the WCJ may also reanalyze any further outstanding issue. We express no opinion on the ultimate resolution of any issue in these matters.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Joint Findings and Order of October 3, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings and Order of October 3, 2025 is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I DISSENT,

/s/ JOSÉ H. RAZO, 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.

SINDY SETO
DEFENDERS LAW CORP
ALVES LAW OFFICE

DW/oo

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

DISSENTING OPINION OF COMMISSIONER JOSÉ H. RAZO

I respectfully dissent. I would have denied the applicant's Petition and affirmed the take-nothing order in the specific injury case (ADJ18616858). Additionally, I would not have injected any issues sua sponte in the cumulative injury case (ADJ16445262) given that none of these issues were raised in applicant's Petition.

As the Court of Appeal has held:

> Venerable precedent holds that, in a bench trial, the trial court is the "sole judge" of witness credibility. (*Davis v. Kahn* (1970) 7 Cal.App.3d 868, 874.) **The trial judge may believe or disbelieve uncontradicted witnesses if there is any rational ground for doing so.** (*Ibid.*) The fact finder's determination of the veracity of a witness is final. (*People v. Bobeda* (1956) 143 Cal.App.2d 496, 500.) Credibility determinations thus are subject to extremely deferential review. (*La Jolla Casa deManana v. Hopkins* (1950) 98 Cal.App.2d 339, 345–346 ["[A] trial judge has an inherent right to disregard the testimony of any witness … . The trial judge is the arbiter of the credibility of the witnesses"].)

(*Schmidt v. Superior Court* (2020) 44 Cal.App.5th 570, 582 [emphasis added].)

Similarly, in workers' compensation proceedings, a WCJ's credibility determinations are "entitled to great weight because of the [WCJ's] 'opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand ….' [Citation.]" (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].)

Here, the WCJ did not believe the applicant's testimony that she fell and injured her head. Additionally, while the WCJ may have been diplomatic in his discussion of the husband's testimony, it is obvious that he did not find this credible either. (Report at p. 5, fn. 1.) Even though applicant's testimony was not directly contradicted by other testimony, the WCJ has the discretion to disbelieve testimony, even if it is unrebutted. The WCJ has offered several rational grounds for disbelieving applicant's testimony, including her inconsistent testimony, the fact that contemporaneous medical records were inconsistent with her testimony, and the fact that she alleged this specific injury months after filing her cumulative injury claim (which was asserted almost immediately after her termination.) Applicant did not carry her burden of proof, and we overstep our bounds in disturbing the WCJ's analysis. Although unnecessary to his decision because applicant did not make a prima facie showing, the WCJ stated that Mr. Magsila credibly testified to a business custom that injuries were to be reported to him and any witnessed injuries were to be given immediate medical treatment. "[E]vidence of habit or custom is admissible to

prove conduct on a specified occasion in conformity with the habit or custom." (Evid. Code, § 1105.)

"The applicant for workers' compensation benefits has the burden of establishing the 'reasonable probability of industrial causation'" (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.App.4th 644, 650 [63 Cal.Comp.Cases 253] citing *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660]; Lab. Code, §§ 3202.5, 5705.) Here, since her testimony was impeached and found not credible, applicant neither set forth a prima facie case, nor carried her ultimate burden of proof. Similarly, even if the reporting and testimony of Dr. Chodakiewitz is interpreted to conclude that applicant's fall contributed to a need for medical treatment or disability pursuant to Labor Code section 3208.1(a), it is based on applicant's incorrect history, and thus does not constitute substantial medical evidence. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 1993]; *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 801 [33 Cal.Comp.Cases 358].)

Accordingly, I would have denied the applicant's Petition. I therefore respectfully dissent.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, 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.

SINDY SETO
DEFENDERS LAW CORP
ALVES LAW OFFICE

DW/oo

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