

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

THERESA ROCHA, *Applicant*

vs.

**MAS LI, INC., dba MCDONALDS; SAFETY NATIONAL CASUALTY
CORPORATION, adjusted by BROADSPIRE, *Defendants***

**Adjudication Number: ADJ11672907
Salinas District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of our Opinion and Decision After Reconsideration (O&D) dated August 6, 2026, wherein we found, in pertinent part, that “there is good cause for the issuance of an additional QME panel to address applicant’s psyche claim[.]” defendant is liable for “reasonable costs related to the preparation of the April 13, 2021 report by vocational expert Frank Diaz,” and all other issues, including “injury to the psyche, as well as whether applicant has sustained new and further disability thereby establishing a right to reopen her case, are deferred.” (O&D, p. 12.)

Defendant contends that the WCAB’s delay in the issuance of the O&D was “unreasonable, prejudicial, and violated defendants’ right to due process[.]” (Petition for Reconsideration (Petition), p. 7.) Defendant further contends that the WCAB “erred in ordering an additional psychiatric QME panel because the order is not supported by substantial evidence” and “defendants should not be required to pay applicant’s vocational expert fees because the report was neither reasonable nor necessary[.]” (*Id.* at pp. 9, 15.)

We have received an Answer from applicant.

We have considered the allegations in the Petition and Answer, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petition.

FACTS

On November 5, 2018, applicant filed an Application for Adjudication of Claim (Application) alleging that while employed by defendant as a cashier on February 14, 2017, she sustained injury arising out of and occurring in the course of employment (AOE/COE) to her right ankle and foot.

Thereafter, on August 7, 2019, applicant filed an amended Application adding claimed injuries to the left foot and leg. On December 11, 2019, applicant filed another amended Application adding a claimed injury to the psyche.

The parties proceeded with discovery and retained Steven Feinberg, M.D. as the orthopedic Agreed Medical Evaluator (AME). Dr. Feinberg evaluated applicant on January 20, 2020, and issued a corresponding report as well as an April 20, 2020 supplemental report. (Exhibits D3-D4.)

In his January 20, 2020 report, Dr. Feinberg confirmed injury AOE/COE to the right ankle and foot, and noted the following with respect to applicant's psyche issues:

The results of the present assessment suggest that psychological variables may be affecting her experience of pain and treatment response to a moderate to severe degree. Of particular concern are reported symptoms of depression and anxiety. It should be noted that while she provided a valid profile, there were discrepancies observed between the level of anxiety reported on the P-3 and MBMD assessment instruments. She may present with a degree of anxiety that is somewhat typical for pain patients under most circumstances; however under stress or when physical conditions worsen, she may be prone to experiencing increased levels of anxiety. She reported high levels of depression symptoms. This level may impact her experience of pain and response to treatment. Due to vary [sic] levels of anxiety symptoms reported, it is recommended that other clinical data be used in conjunction with the assessment results to determine the level of impairment secondary to anxiety. Continued follow up may help decrease exaggerated negative reactions to stressful or invasive medical procedures. Referral to a mental health professional is recommended.

(Exhibit D4, p. 11.)

In his April 20, 2020 report, Dr. Feinberg reviewed medical records relating to applicant's injury, and noted that on January 2, 2018, applicant underwent a "right ankle lateral collateral and medial collateral ligament repair, both borders[.]" and on February 13, 2019, was evaluated by Maliheh Massih, M.D. who diagnosed her with "ongoing chronic right foot pain with hypersensitivity consistent with complex regional pain syndrome (CRPS)." On February 21, 2019,

Barry Meskin, D.P.M. evaluated applicant and similarly diagnosed her with “possible chronic regional pain syndrome.” (Exhibit D3, p. 4.)

On May 27, 2020, the parties submitted Stipulations with Request for Award (Stipulations) based upon a forty-six percent (46%) permanent disability to the “right ankle and foot only” per the reports of Dr. Feinberg. (Stipulations, pp. 5, 7.) The WCJ issued a corresponding Award on June 4, 2020.

On August 31, 2020, applicant filed a Petition to Reopen for New and Further Disability (Petition to Reopen).

Dr. Feinberg reevaluated applicant on November 5, 2020, and issued a corresponding report as well as a March 18, 2021 supplemental report. (Exhibits D1-D2.)

On March 11, 2021, Dr. Feinberg was deposed by the parties. During his deposition, he testified, in relevant part, as follows:

Q: And there is a psychological component of CRPS, is that correct?

A: I wouldn't say it that way. I would say that patients who have chronic pain, including CRPS, often are emotionally distressed about it.

Q: Well, I guess that's what I don't understand about the disorder. I mean it's a very weird disorder. I—I mean I had a client once who had a routine carpal tunnel surgery, and her whole arm just blew up like, you know, something that is abnormal. So I guess I don't understand CRPS I always thought there was some sort of psychological component to it, but you're saying that's not exactly true?

A: There's no evidence that because you have a certain psychological makeup that you're going to get CRPS. I do a lot of civil cases. I'm probably the number one guy on the West Coast on CRPS. And you've got to be very careful with this because two—you've been around long enough, even though you're young, to realize that two people with the exact same problem can present totally differently in terms of their perceived disability. And so if you have someone with psychiatric comorbidity, a history of drug abuse, a history of childhood abuse, if they get CRPS they're probably not going to do as well as maybe you or I would do. You or I would probably just keep working, but we'd have the same CRPS [as] this other person has who's a basket case.

...

Q: So do you think it would be prudent for Ms. Rocha to have the opportunity to receive psychological or psychiatric treatment given the CRPS diagnosis?

A: As part of pain management I do.

...

Q: Can you remind me of your permanent work restrictions that you gave Ms. Rocha?

A: I mentioned sedentary work with minimum weight-bearing and allowance of use of an assistive device.

Q: Okay. Should she avoid bending?

A: Well, basically she needs to avoid anything that torques her back and pulls those wires out. So she can't play professional football or run. She should avoid excessive bending. That's certainly true.

Q: Okay. And should she avoid excessive kneeling and twisting?

A: I don't see her kneeling in a work environment or, you know, doing any excessive twisting.

Q: So no kneeling and no excessive twisting?

A: That's true.

Q: Do you think she would be off task for a certain percentage of the day due to pain?

A: Give me a moment to answer that question, please. I think we would have to get some input from a psychiatric evaluator, but I have a feeling that even though her pain is more manageable, she – given the way she presents herself and her difficulties sleeping, and her emotional state, I think – you know – she might well have trouble, you know, eight hours a day, five days a week.

(Exhibit X, pp. 9:14-10:19, 12:16-19, 13:5-14:6.)

Following Dr. Feinberg's deposition, applicant was evaluated by Mr. Diaz on March 24, 2021, who issued a corresponding report. (Exhibit A1.)

On November 12, 2021, defendant filed a Declaration of Readiness to Proceed (DOR) to a Mandatory Settlement Conference (MSC). The matter proceeded to multiple hearings and was ultimately set for trial on February 22, 2022.

At trial, issues set for determination included parts of body injury injured (psyche); permanent disability; apportionment; need for further medical treatment; attorney fees; whether applicant's petition for new and further injury should be dismissed; whether applicant is entitled

to a psyche panel; whether defendant is liable for the cost of the applicant's vocational expert's report; whether said report is substantial evidence and admissible; whether applicant waived the psyche issue; and if the report is found admissible and reasonable and necessary, whether defendant is entitled to their own vocational expert report. Applicant submitted into evidence the report of Mr. Diaz and defendant submitted into evidence the reports of Dr. Feinberg and a letter addressed to Ian McFarren and Seeta Ambati. The Court also admitted into evidence a transcript of Dr. Feinberg's deposition and reports from Victor Li, M.D. and Barry Meskin, D.P.M., dated February 2, 2022, and October 3, 2019, respectively.

On June 14, 2022, the WCJ issued an F&O which held, in relevant part, that while employed by defendant as a cashier on February 14, 2017, applicant sustained injury AOE/COE to her right ankle and foot but did not sustain injury AOE/COE to her psyche or new and further disability establishing good cause to reopen her case; applicant is not entitled to a QME panel to address psyche complaints; and defendant is not liable for the cost of Mr. Diaz's April 13, 2021 report.

Thereafter, applicant sought reconsideration of the F&O, and we granted reconsideration via an Opinion and Order Granting Petition for Reconsideration (O&O).

On August 6, 2026, we issued an O&D wherein we found that "there is good cause for the issuance of an additional QME panel to address applicant's psyche claim[,] defendant is liable for "reasonable costs related to the preparation of the April 13, 2021 report by vocational expert[,] Frank Diaz," and all other issues, including "injury to the psyche, as well as whether applicant has sustained new and further disability thereby establishing a right to reopen her case, are deferred." (O&D, p. 12.) We thereafter ordered the issuance of an additional QME panel issue to address applicant's psyche claim. (*Id.* at pp. 12-13.)

It is from this O&D that defendant seeks reconsideration.

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to section 5909, which states 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 sixty (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 August 20, 2026, and 60 days from the date of transmission is October 19, 2026. This decision is issued by or on October 19, 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 our review of the record, we did not receive a Report by the WCJ. However, a notice of transmission was served by the district office on August 20, 2026, which is the same day as the transmission of the case to the Appeals Board on August 20, 2026. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1), and consequently they had actual notice as to the commencement of the 60-day period on August 20, 2026.

II.

Turning now to the merits of the Petition, defendant contends that the WCAB's delay in the issuance of the O&D was "unreasonable, prejudicial, and violated defendants' right to due process[.]" (Petition, p. 7.)

It is well established that all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158.) In performing its duties as a court, the Appeals Board is bound by the constitutional mandate that it "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character..." (Cal. Const., Art. XIV § 4.) Substantial justice requires that the Appeals Board protect the due process rights of every person seeking reconsideration. (See *San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936; and *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710.)

The Courts have *also* consistently found that "although workers' compensation matters are to be handled expeditiously by the Board and its trial judges, administrative efficiency at the expense of due process is not permissible." (*Fremont Indemnity Co. v. Workers' Comp. Appeals Bd. (Zepeda)* (1984) 153 Cal.App.3d 965, 971; see *Barri v. Workers' Comp. Appeals Bd.* (2018) 28 Cal.App.5th 428, 469; *Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [substantial justice creates a duty to develop an adequate record despite delay in proceedings].)

We observe that a decision on the merits of a petition protects every litigant's right to seek meaningful appellate review after receiving a final decision from the Appeals Board.

Thus, to the extent petitioner alleges that the decision of the Appeals Board was unreasonably delayed, we note that the O&O was acted upon within sixty (60) days from the date applicant filed her Petition, in accordance with section 5909. Accordingly, the O&O was timely. Further, "[d]ue process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 635, fn. 22 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) A fair hearing is "... one of 'the rudiments of fair play' assured to every litigant ..." (*Id.* at p. 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission ... must find facts and declare and

enforce rights and liabilities, -in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law.” (*Id.* at p. 577.) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses, introduce and inspect exhibits, and offer evidence in rebuttal. (See *Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157- 158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers’ Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Here, upon applicant’s filing of her Petition to Reopen for New and Further Disability, a reevaluation with Dr. Feinberg was scheduled and completed, followed by the issuance of a corresponding report as well as supplemental report by Dr. Feinberg. Dr. Feinberg was also deposed by the parties and following said deposition, defendant filed a DOR. Thereafter, the matter proceeded to multiple hearings until it was set for trial on February 22, 2022. At trial, defendant was given the opportunity to call and cross-examine witnesses, introduce and inspect exhibits, and offer evidence in rebuttal. Thus, based upon the foregoing and our review of the record, we see no evidence that defendant’s due process rights were violated at the trial level.

Defendant also asserts that laches applies herein. While it is true that the Appeals Board has broad equitable powers with respect to matters within its jurisdiction (*Dyer v. Workers’ Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [28 Cal. Rptr. 2d 30]) and that equitable doctrines such as laches are applicable in workers’ compensation proceedings (See *Truck Ins. Exchange v. Workers’ Comp. Appeals Bd.* (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685]), the defense of laches, “requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay.” (*Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.App.3d 351, 359, 360.) As such, in addition to establishing unreasonable delay, the party claiming laches must also provide evidence of prejudice due to the alleged unreasonable delay. (*Ragan v. City of Hawthorne* (1989) 212 Cal.App.3d 1361, 1367.) Prejudice is never presumed. Rather, it must be affirmatively demonstrated by the party asserting the defense for the party to sustain its burden of proof. (Lab. Code, § 5705(b); *Piscioneri v. City of Ontario* (2002) 95 Cal.App.4th 1037, 1050.) Further, each fact supporting the claim of laches must be proven by a preponderance of the evidence. (Lab. Code, § 3202.5.) As explained in section 3202.5:

“Preponderance of the evidence” means that evidence that when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence.

Here, defendant has failed to prove both elements of laches—ie. that said delay was unreasonable and that prejudice was suffered because of said delay. As such, there are insufficient findings of fact and evidence in support of laches. (*Vasquez v. Pers. Plus, Inc.* (April 17, 2018, ADJ8239530 and ADJ481462) [2018 Cal. Wrk. Comp. P.D. LEXIS 15].)

III.

Additionally, defendant avers that the WCAB’s decision to order an additional QME panel is not supported by substantial evidence. (Petition, p. 9.)

As discussed previously in our O&D, applicant was diagnosed with CRPS and orthopedic AME Dr. Feinberg testified that CRPS can affect people in a variety of ways depending upon each person’s specific background. (Exhibit X, pp. 9:14-10:19.) Given this variability, he recommended psyche treatment as well as input from a psyche evaluator. (*Id.* at pp. 12:16-19, 14:14-22.)

Where the record requires further development, the preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. L.A. County Metro. Transit Authority, supra*, 67 Cal.Comp.Cases at p. 142.) If the supplemental opinions of previously reporting physicians do not or cannot cure the need for development of the medical record, the parties may proceed with the selection of an AME or proceed with the panel QME process pursuant to subdivision (b) of A.D. Rule 31.7, which states, in relevant part, that if a panel QME in a different specialty is needed, the Medical Director shall issue an additional panel upon a showing of good cause. Good cause includes:

- (1) A written agreement by the parties in a represented case that there is a need for an additional comprehensive medical-legal report by an evaluator in a different specialty and the specialty that the parties have agreed upon for the additional evaluation; or

...

- (3) An order by a Workers' Compensation Administrative Law Judge for a panel of QME physicians that also either designates a party to select the specialty or states the specialty to be selected and the residential or employment-based zip code from which to randomly select evaluators;

...

(Cal. Code Regs., tit. 8, § 31.7(b).)

Here, there is no written agreement between the represented parties for an additional panel and the WCJ held that applicant is not entitled to a panel to address her psyche complaints. (Findings and Order (F&O), June 14, 2022, p. 1.) The WCJ's rationale was that per Dr. Feinberg, applicant did not sustain new and further disability or additional impairment because applicant's condition "improved" due to decreased pain upon implantation of the spinal cord stimulator. (F&O and Opinion on Decision (OOD), p. 3.) As discussed in our O&D, this rationale is problematic as Dr. Feinberg is not a psyche AME or PQME. For this reason, Dr. Feinberg recommended a psyche evaluation. The WCJ, however, proceeded with a final decision on the issue of applicant's psyche claim without the benefit of said evaluation.

As the parties are well aware, decisions of the Appeals Board "must be based on admitted evidence in the record" and as noted above, the Appeals Board has a constitutional mandate to ensure substantial justice. (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc); *Kuykendall, supra*, at p. 403.) The WCJ and the Appeals Board also have a duty to further develop the record where there is insufficient evidence on an issue and may not leave matters undeveloped where it is clear additional discovery is needed. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Kuykendall, supra*, at p. 404.) It has long been recognized that medical proof is required when issues of diagnosis, prognosis, and treatment are beyond the bounds of ordinary knowledge. (*City & County of San Francisco v. Industrial Acc. Com. (Murdock)* (1953) 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103]; *Bstandig v. Workers' Comp. Appeals Bd.* (1977) 68 Cal.App.3d 988 [42 Cal.Comp.Cases 114].) Although the number and nature of the injuries suffered are questions of fact for the WCJ or the Appeals Board, those facts are to be determined by considering the events leading to the injury, the medical history of the claimant, and the medical reporting received. (*Aetna Cas. & Surety Co. v. Workmen's Comp. Appeals Bd. (Coltharp)* (1973) 35 Cal.App.3d 329 341 [38 Cal.Comp.Cases 720]; *Western Growers Ins. Co. v. Workers' Comp Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 234-235 [58 Cal.Comp.Cases 323].)

Taking all the above into consideration and given that the medical record is lacking with respect to the issue of applicant's psyche claim, we continue to believe that good cause exists for the issuance of an additional QME panel.

IV.

Lastly, defendant contends that they should not be required to pay applicant's vocational expert fees "because the report [of Frank Diaz] was neither reasonable nor necessary[.]" (Petition, p. 15.)

We reiterate the rationale provided in our O&D wherein we discussed the en banc cases of *Costa I* and *Costa II*. In *Costa II*, we held that costs related to vocational evidence must be reasonable and necessary at the time they were incurred, and such determinations are made on a case-by-case basis. (*Costa II*, *supra*, at p. 1498.) We further held that as with medical-legal costs, which may be reimbursable even though the applicant is unsuccessful in his or her claim (see *Subsequent Injuries Fund v. Industrial Acc. Com. (Roberson)* (1963) 59 Cal.2d 842, 844 [28 Cal.Comp.Cases 139, 140]; *Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd. (Pinkney)* (1994) 26 Cal.App.4th 789, 802 [59 Cal.Comp.Cases 461, 471]), the vocational expert evidence offered by an applicant need not successfully affect the permanent disability rating in order to be found reimbursable. (*Costa II*, *supra*, at p. 1498.) Similarly, in the case of *Barr v. Workers' Comp. Appeals Bd.* (2008) 164 Cal.App.4th 173 [73 Cal.Comp.Cases 763], the Court held that admissibility is not a prerequisite to a determination that a vocational expert report was reasonably and necessarily incurred, and thus reimbursable, pursuant to section 5811. The Court in that case further observed that:

[R]eports that are inadmissible for any number of reasons might be valuable in preparing for a hearing or to further settlement negotiations. Given that the WCAB is accorded generous flexibility by sections 5708 and 5709 to achieve substantial justice with relaxed rules of procedure and evidence and that SIF concedes the use of vocational rehabilitation experts is unregulated, we can find nothing in the Labor Code or general principles of due process to limit the WCAB's discretion to award costs in accord with the broad language used in section 5811.

(*Id.* at p. 179.)

Here, Dr. Feinberg testified that his original work restrictions for applicant included "sedentary work with minimum weight-bearing and allowance of use of an assistive device." (Exhibit X, p. 13:7-9.) He further testified that applicant should avoid excessive bending, torquing

her back, kneeling, and excessive twisting. (*Id.* at p. 13:10-20.) When questioned about whether applicant would be off task a certain percentage of the day, he ultimately deferred to a psyche evaluator but estimated that applicant would have trouble “eight hours a day, five days a week.” (*Id.* at pp. 13:21-14:6.) Given this additional information, it was reasonable for applicant to believe that expert reporting was necessary to determine whether the said restrictions affected her vocational prospects.

Accordingly, we deny defendant’s Petition.

For the foregoing reasons,

IT IS ORDERED that defendant’s Petition for Reconsideration of our August 6, 2026 Opinion and Decision After Reconsideration, is **DENIED**.

WORKERS’ COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 24, 2026

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

**THERESA ROCHA
RUCKA, O'BOYLE, LOMBARDO & MCKENNA
LAUGHLIN, FALBO, LEVY & MORESI**

RL/cs

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