WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ANA MONZON, *Applicant*

vs.

IHOP; TECHNOLOGY INSURANCE COMPANY, administered by AMTRUST NORTH AMERICA, INCORPORATED, *Defendants*

Adjudication Number: ADJ12202677
Anaheim District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the April 1, 2025 Findings, Awards and Order (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a waitress on December 30, 2018, sustained industrial injury to her head, cervical spine, right shoulder and psyche. The WCJ found in relevant part that applicant did not sustain injury to her eyes or internal systems.

Applicant contends that the WCJ erred in relying on the opinions of the ophthalmology Qualified Medical Evaluator (QME) over those of treating physicians, and that the WCJ should have developed the evidentiary record to address any deficiencies in the reporting.

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

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 discussed below, we will grant applicant's petition and amend the F&O to defer issues relating to permanent disability, apportionment, and attorney fees, and return this matter to the trial level for development of the record.

FACTS

Applicant claimed injury to her cervical spine, right shoulder, headaches, psyche, eyes, and internal systems, while employed as a waiter by defendant IHOP on December 30, 2018. Defendant admits injury to all claimed body parts except eyes and internal systems.

The parties have selected QMEs in multiple specialties, including Kenneth Nudleman, M.D., in neurology, Zan Ian Lewis, M.D., in orthopedic medicine, Jonathan Ellis, M.D., in internal medicine, and Davide Sami, M.D., in ophthalmology. Applicant has also been evaluated by Nelson Flores, Ph.D., in psychology. Notably, there is no medical-legal reporting by a QME in psychology or psychiatry.

On November 7, 2024, defendant filed a Declaration of Readiness (DOR) requesting a mandatory settlement conference on the issues of compensation rate, temporary disability, permanent disability, and future medical treatment.

On March 6, 2025, the parties proceeded to trial. Defendant stipulated that applicant sustained injury to her cervical spine, right shoulder, headaches, and psyche. Applicant claimed injury to her eyes and internal systems, and they also framed issues for decision of permanent disability, apportionment, need for further medical treatment and attorney fees. (Minutes of Hearing and Summary of Evidence (MOH), dated March 6, 2025, at p. 2:20.) Applicant testified in relevant part as follows:

> The applicant is currently employed by IHOP and was employed on the date of injury on December 30, 2018. She worked at this location since approximately 2015, as a waitress. Her job duties included taking orders, delivering food, delivering drinks.
>
> The injury occurred on December 30, 2018. The manager told her to go to lunch. She was walking by the refrigerator door when it swung out and hit her. It came out quickly, with a lot of force. It knocked the plates out of her hands, they fell and broke, and knocked her back. She felt pain, head pressure, blurred vision. She sat down. The manager came up to talk to her. She told him how she felt. He called the insurance company and took her to an urgent care called Marque.

(MOH, pp. 3:23 – 4:05.)

The WCJ ordered the matter submitted following service of ratings from the Disability Evaluation Unit.

On April 1, 2025, the WCJ issued the F&A, determining in relevant part that applicant sustained injury to her head, cervical spine, right shoulder and psyche, but not to the eyes or

internal system. (Finding of Fact Nos. 1 & 5.) The WCJ awarded 26 percent permanent partial disability and corresponding attorney fees.

The Opinion on Decision explained that the WCJ relied on the reports of ophthalmology QME David Sami, M.D., dated February 12, 2020 to determine that applicant did not sustain industrial injury to her eyes. (Opinion on Decision, at p. 1.) With respect to psychiatric disability, the WCJ stated that "there is no permanent disability for the psychiatric component of this case as set forth in Labor Code section 3208.3(d)." (*Ibid*.)

Applicant's Petition avers that the reports of treating physician Luis Chanes, M.D., establish that she suffers from small vessel ischemic disease, and that the WCJ had an affirmative duty to develop the evidentiary record with respect to applicant's eye condition. (Petition, at p. 2.)

Defendant's Answer observes that the reports of Dr. Chanes were not in evidence, and that the WCJ reasonably relied on the reporting in evidence to determine applicant's permanent disability levels. (Answer, at p. 2.)

DISCUSSION

I.

Former Labor Code[1] section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in

[1] All further references are to the Labor Code unless otherwise noted.

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 April 29, 2025, and 60 days from the date of transmission is Saturday, June 28, 2025. The next business day that is 60 days from the date of transmission is Monday, June 30, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on June 30, 2025, 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 April 29, 2025, and the case was transmitted to the Appeals Board on April 29, 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 April 29, 2025.

II.

We first address applicant's contentions with respect to claimed ophthalmic injury. Applicant asserts that treating physician Dr. Chanes identified "small vessel ischemic disease" of the eyes in reports dated June 10, 2020 and June 23, 2020. (Petition, at p. 2.) Applicant contends the WCJ should have ordered development of the medical record in response to these findings. (*Ibid*.)

[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.

The WCJ's Report responds:

> Here the applicant's eye condition was thoroughly evaluated by the PQMEs in ophthalmology and neurology. Dr. Sami, the PQME in ophthalmology, Court Exh. Xl took a complete history from the applicant and reviewed the MRI of the brain, cervical spine, the PTP reports and Dr. Nudleman the PQME in neurology. He noted in his report that Dr. Nudleman requested the ophthalmological evaluation. He evaluated her vision and found her vision completely within normal limits. The applicant in her petition contends the doctor did not evaluate her "small vessel ischemic disease." This, however, is an incorrect statement. Dr. Sami did address this issue on page 8 of his 2/12/20 report, Court Exh. Xl, where he specifically said this is most likely due to the migraine headaches and deferred the issue to a neurologist. In making this finding he reviewed the MRI dated 2/11/19 read by Glenda Romeo Urquhart MD. Dr. Nudleman, the PQME in Neurology issued three reports, Court Exh. X2. In those reports he thoroughly evaluated the applicant's condition also. The appearance of a finding, the small vessel ischemic disease, does not necessarily mean it is related to a work injury. The applicant was evaluated and the condition was reviewed and the doctors did not find it was related to her injury. Dr. Nudleman did opine she had a 6%WPI before adjustment for age and occupation related to her headaches. Based on this court's review of the record there is no basis to develop the record. The issued raised in the petition as to her eyes was adequately addressed by the PQMEs in this case. The medical records submitted in this case, the PQME reports of Dr. Sami, ophthalmology, Dr. Nudleman, neurology, Dr. Ellis, internal medicine, and Dr. Lewis, orthopedics, Court Exhs. Xl-X4, are substantial medical evidence and the court does not find they are deficient, inaccurate, inconsistent or incomplete, or that additional evidence is needed to complete the record. This court finds no reason to augment the record, the medical evidence is substantial on the issue.

(Report, at p. 3.)

It is well-established that the WCJ and the Appeals Board are empowered to choose among conflicting medical and vocational reports and rely on that which is deemed most persuasive. (*Jones v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 476 [33 Cal.Comp.Cases 221].) Here, we concur with the analysis and conclusions reached by the WCJ regarding the sufficiency of the record relating to applicant's ophthalmological injuries. We are further persuaded that the WCJ appropriately relied on the reporting of QME Dr. Sami in ophthalmology and Dr. Nudleman in neurology in determining the nature and extent of the claimed ophthalmic injury. Accordingly, we decline to disturb the WCJ's findings in this regard.

III.

However, following our independent review of the entire evidentiary record occasioned by applicant's petition, we also observe that the basis for the WCJ's determination relating to psychiatric impairment is unclear. In our en banc decision in *Pasquotto v. Hayward Lumber* (2006) 71 Cal.Comp.Cases 223 [2006 Cal. Wrk. Comp. LEXIS 35, 51-17], we held:

> Based on [section 5906 and 5908], it is settled law that a grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com.* (*Savercool*) (1923) 191 Cal.724, 729 [218 P. 1009] [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com.* (*George*) (1954) 125 Cal.App.2d 201, 203 [270 P.2d 55] [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (*Ibid*.; e.g., also, *Tate v. Industrial Acc. Com.* (1953) 120 Cal.App.2d 657, 663 [261 P.2d 759] [18 Cal.Comp.Cases 246]; *Pacific Employers Ins. Co. v. Industrial Acc. Com.* (*Sowell*) (1943) 58 Cal.App.2d 262, 266–267 [136 P.2d 633] [8 Cal.Comp.Cases 79].)

(*Pasquotto, supra,* at 238, fn. 7.)

Thus, the granting of a Petition for Reconsideration has the effect of "throwing open the entire record for review," including the determination of the nature and extent of the injuries sustained and any corresponding permanent disability. (*George, supra,* 125 Cal.App.2d at p. 203.) Accordingly, upon the grant of reconsideration we may exercise our authority to "affirm, rescind, alter, or amend the order, decision, or award made and filed by the appeals board or the workers' compensation judge," in furtherance of our obligation to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Lab. Code, § 5906; Cal. Const., art. XIV, § 4.)

Section 4061(i) states that:

> No issue relating to a dispute over the existence or extent of permanent impairment and limitations resulting from the injury may be the subject of a declaration of readiness to proceed unless there has first been a medical evaluation by a treating physician ***and by either an agreed or qualified medical evaluator.*** With the exception of an evaluation or evaluations prepared by the treating physician or physicians, no evaluation of permanent impairment and limitations resulting from the injury shall be obtained, except in accordance with Section 4062.1 or 4062.2.

> Evaluations obtained in violation of this prohibition shall not be admissible in any proceeding before the appeals board.

(Lab. Code, § 4061(i).)

A decision must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) To constitute substantial evidence ". . . a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "[T]he medical cause of an ailment is usually a scientific question, requiring a judgment based upon scientific knowledge and inaccessible to the unguided rudimentary capacities of lay arbiters." (*Peter Kiewit Sons v. Industrial Acci. Com.* (*McLaughlin*) (1965) 234 Cal.App.2d 831, 839 [30 Cal.Comp.Cases 188] ["[i]n a field which forces the experts into hypothesis, unaided lay judgment amounts to nothing more than speculation"].) The requirement for expert medical evidence exists throughout workers' compensation proceedings, including determination of temporary disability, permanent disability, apportionment, and causation of injury.[3]

Here, applicant has sustained admitted injury to her psyche. (MOH, at p. 2:7; Findings of Fact No. 1.) Applicant has been evaluated by Dr. Flores in psychology, and the resulting "Doctor's First Report of Occupational Injury or Illness" is in evidence. (Ex. 2, Report of Nelson Flores, Ph.D., dated September 24, 2024.) Therein, Dr. Flores reviews applicant's subjective complaints, objective findings, and clinical presentation, and arrives at a diagnosis of Major Depressive Disorder and Generalized Anxiety Disorder. (*Id.* at p. 2.) Dr. Flores requests authorization for

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[3] See e.g., *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998, 1005 [59 Cal.Comp.Cases 579] (*Rodarte*); *County of San Bernardino v. W.C.A.B.* (*Nelson-Watkins*) (2018) 83 Cal.Comp.Cases 1282, 12830-1286 [2018 Cal. Wrk. Comp. LEXIS 46] (writ denied) [applicant's correlation of symptoms with work exposures insufficient to establish knowledge her condition was caused by employment]; *Hughes Aircraft Company v. Workers' Comp. Appeals Bd.* (*Zimmerman*) (1993) 58 Cal.Comp.Cases 220 [1993 Cal. Wrk. Comp. LEXIS 2853] (writ den.) [general medical advice that work stress was depleting applicant's immune system insufficient to confer knowledge for purposes of section 5412]; see also *Zenith Insurance Co. v. Workers' Comp. Appeals Bd.* (*Yanos*) (2010) 75 Cal.Comp.Cases 1303, 1305-1306 (writ denied) [2010 Cal. Wrk. Comp. LEXIS 208] [statute of limitations does not begin to run prior to applicant's knowledge she had sustained a cumulative trauma and that injury was work-related].

various treatment modalities along with the submission of applicant's medical records. (*Id.* at p. 1.)

However, defendant filed a DOR on November 7, 2024. At trial, the issue of permanent disability was submitted. Yet, there is no QME or agreed medical evaluator (AME) in psychology or psychiatry in violation of section 4061(i). Although the dissenting panelist appears to place responsibility for the failure to obtain such medical-legal reporting on applicant, ***it is defendant who filed the DOR*** without proceeding to a QME or AME and without a stipulation by applicant that she was not claiming permanent disability. Section 4061(i) clearly requires that the parties proceed to a medical-legal evaluation before a DOR is filed, and a defendant may not use an applicant's lack of diligence as an excuse to circumvent this statutory requirement.

Moreover, the WCJ should not have proceeded with trial before ascertaining whether applicant was claiming any permanent disability as a result of her injury to psyche, and if she was claiming permanent disability, the WCJ should have ordered that she proceed to a QME. Instead, the record reflects no determination of any kind as to whether applicant's admitted industrial injury to the psyche resulted in temporary or permanent disability. Accordingly, we will grant applicant's petition and defer the issues of permanent disability, apportionment and attorney's fees.

We note that the WCJ's Opinion on Decision states that there is no permanent disability for the psychiatric component of this case under section 3208.3(d). However, this subdivision refers to a minimum of six-months of employment necessary for compensability in psychiatric claims. (Lab. Code, § 3208.3(d) ["no compensation shall be paid … for a psychiatric injury related to a claim against an employer unless the employee has been employed by that employer for at least six months … [t]he six months of employment need not be continuous"].) Given applicant's undisputed trial testimony that when she sustained injury on December 30, 2018, she had worked for defendant since approximately 2015, and that she continued to work for IHOP as of March, 2025, the basis for the WCJ's citation to section 3208.3(d) as the reason for non-compensability of applicant's claim of psychiatric disability is unclear. Thus, upon return, the WCJ must clarify the basis for the WCJ's determination that no psychiatric impairment is available to applicant. (See *Gangwish v. Workers' Comp. Appeals Bd.* (*Gangwish*) (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584; *Katzin v. Workers' Comp. Appeals Bd.* (*Katzin*) (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

We emphasize that absent a determination that applicant was employed less than six months as provided in section 3208.3(d), *the decision as to whether there is psychiatric impairment must be based on substantial medical evidence*. We further note that in the event the WCJ was referring to section 4660.1, which provides that for injuries occurring on or after January 1, 2013, "impairment ratings for sleep dysfunction, sexual dysfunction, or psychiatric disorder, or any combination thereof, arising out of a compensable physical injury shall not increase," development of the record may be necessary. (Lab. Code, §§ 4660.1(c)(1); 5701; *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Board en banc).) This is because the issue of whether applicant has sustained *compensable* psychiatric permanent disability requires a multi-step analysis, including an initial determination of whether applicant sustained permanent impairment and whether that impairment arose directly out of industrial exposures or was a consequence of otherwise compensable physical injuries. (See, e.g., *Wilson v. State of CA Cal Fire* (2019) 84 Cal.Comp.Cases 620 [2019 Cal. Wrk. Comp. LEXIS 58] (Appeals Board en banc).)

If applicant's psychiatric impairment is determined to be a consequence of her physical injuries, the court must further determine whether the exceptions described in section 4660.1(c)(2)(A) and (B) relating to violent acts or catastrophic injuries have been met, a determination that again must be based on substantial medical evidence. (Lab. Code, § 4660.1(c)(2); see, generally, *Greenbrae Mgmt. v. Workers' Comp. Appeals Bd.* (2017) 82 Cal.Comp.Cases 1494 [2017 Cal. Wrk. Comp. LEXIS 130] (writ den.); *Wilson, supra,* 84 Cal.Comp.Cases 620.) In *Larsen v. Securitas Security Services* (2016) 81 Cal.Comp.Cases 770 [2016 Cal. Wrk. Comp. P.D. LEXIS 237], a security guard was struck by a car from behind while on a walking patrol causing her to fall, hit her head and lose consciousness. The applicant reported hitting her head so hard when she was hit by the car that she thought she was going to die. She was taken by ambulance to the emergency room. The panel in *Larsen* defined a "violent act" for purposes of section 4660.1 as an act that is characterized by either strong physical force, extreme or intense force, or an act that is vehemently or passionately threatening. (*Id.* at pp. 774-775.)

Applying this definition, the panel concluded that "[b]eing hit by a car under these circumstances constitutes a violent act" and thus, applicant was entitled to additional permanent disability for her psyche injury as an exception to section 4660.1(c). (*Larsen*, *supra*, 81 Cal.Comp.Cases at p. 775; see also *Madson v. Michael J. Cavaletto Ranches* (February 22, 2017,

ADJ9914916) [2017 Cal. Wrk. Comp. P.D. LEXIS 95] [a truck driver pinned and crushed in his vehicle for approximately 35-40 minutes with a fractured neck while fearing that the truck would catch fire before he was extricated qualified as a violent act outlined in *Larsen*].)

Subsequent decisions since *Larsen* and *Madson* have followed the definition of a "violent act" for purposes of section 4660.1 as an act that is characterized by either strong physical force, extreme or intense force, or an act that is vehemently or passionately threatening. (See *Lopez v. General Wax Co., Inc.* (June 19, 2017, ADJ9365173) [2017 Cal. Wrk. Comp. P.D. LEXIS 291] [candle maker's partial finger amputation in a machine was a violent act]; *Allen v. Carmax* (July 10, 2017, ADJ9487575) [2017 Cal. Wrk. Comp. P.D. LEXIS 303] [accident after car brakes failed when the applicant attempted to avoid hitting a pedestrian resulting in collision with a cement pillar was a violent act]; *Greenbrae Mgmt. v. Workers' Comp. Appeals Bd.* (*Torres*) (2017) 82 Cal.Comp.Cases 1494 (writ den.)] [landscaper's fall from a tree hitting his head multiple times and losing consciousness was a violent act].)

The Appeals Board 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].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) Accordingly, the Appeals Board has the discretionary 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; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that "[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record…the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete." (*McDuffie, supra*, at p. 141.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*Ibid*.) However, since here the parties failed to proceed to a medical-legal evaluation, and if applicant is claiming permanent disability for her injury to psyche, the best course is to proceed to a QME as is required by section 4061(i).

Here, the present record is insufficient to determine whether applicant sustained psychiatric impairment or whether any such impairment is compensable. If the WCJ's determination is based on the six-month employment threshold described in section 3208.3(d), the WCJ should explicate the legal and factual grounds for that determination with appropriate citations to the evidentiary record. If, on the other hand, the WCJ's decision was based on section 4660.1 or any other statutory or regulatory basis, the WCJ should describe the corresponding legal analysis and should further determine whether the existing evidentiary record is sufficient to allow for a just and reasoned decision based on the entire record. (*Lamb*, *supra*, 11 Cal.3d at p. 281.)

We will grant applicant's petition, accordingly, and defer the issues of permanent disability, apportionment, and attorney fees. We will then return this matter to the WCJ for further proceedings and decision as may be required, consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of the April 1, 2025 Findings, Award and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of April 1, 2025 is **RESCINDED**, with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Ana Monzon, while employed on December 30, 2018 as a waitress, occupational group number 322, at Rancho Santa Margarita, California, by IHOP, whose workers' compensation insurance carrier was Technology Insurance Company, sustained injury arising out of and occurring in the course of employment to her head, cervical spine, right shoulder and psyche.
2. The issue of permanent disability is deferred.
3. The issue of apportionment is deferred.
4. The issue of attorney's fees is deferred.
5. Applicant will require further medical treatment to cure or relieve from the effects of this injury.
6. The applicant did not sustain injuries arising out of or in the course of employment to her eyes or internal systems.

AWARD

AWARD IS MADE in favor of ANA MONZON against IHOP of:

a. Future medical treatment reasonably required to cure or relieve from the effects of the injuries herein.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I DISSENT (See Dissenting Opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 18, 2025

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

ANA MONZON
LAW OFFICES OF WINTERS AND BANKS
SHEFFIELD & RICHARDS

SAR/abs

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

CONCURRING AND DISSENTING OPINION OF COMMISSIONER RAZO

I concur with my colleagues that the WCJ appropriately reviewed and weighed the medical reporting and testimony in evidence with respect to applicant's eye injury. However, I disagree that the record requires development with respect to potential impairment arising out of applicant's psychiatric injury. For the reasons stated in the WCJ's report, which I adopt and incorporate, and for the reasons below, I would deny the petition for reconsideration.

It is worth observing at the outset that applicant's petition does not take issue with the WCJ's determination that although applicant sustained injury to her psyche, no permanent disability arose therefrom. (Finding of Fact No. 1; Opinion on Decision, at p. 1.) Applicant's petition is limited to the issue of claimed ophthalmologic injury and does not raise issues relating to claimed psychiatric disability. (Petition, at p. 1.) Moreover, applicant offers no evidence of permanent psychiatric impairment in the evidentiary record, nor has she engaged the medical-legal dispute resolution process under either sections 4062.1 or 4062.2 to resolve a dispute in this regard. The record reflects no attempt by applicant to obtain a psychiatric QME evaluation despite obtaining collateral QME evaluations in neurology, internal medicine, orthopedic medicine, and ophthalmology. (Exs. X1-X4, QME Reporting, various dates.)

The only evidence of psychiatric treatment close in time to the industrial injury is not the report of treating psychiatric specialist, but rather the record review accomplished by physicians in collateral specialties. The record review accomplished by Dr. Ellis in internal medicine notes a one-time evaluation on October 30, 2019 by Richard Dorsey, M.D., wherein applicant was diagnosed with an adjustment disorder, and moderate symptoms and impairment. (Ex. X4, Report of Jonathan Ellis, M.D., dated September 18, 2024, at p. 9.) The underlying report from Dr. Dorsey has not been admitted in evidence. Thereafter, the evidentiary record is silent with respect to psychiatric sequelae for nearly five years, until psychologist Dr. Flores prepared a Doctor's First Report of Occupational Injury or Illness on September 24, 2024. Therein, Dr. Flores noted that "due to [applicant's] chronic pain from her orthopedic injuries and her persistent visual difficulties, she developed increasing anxious and depressive symptoms and sleeping difficulties." (Ex. 2, Report of Nelson Flores, Ph.D., dated September 24, 2024, at p. 2.)

Defendant has accepted liability for applicant's claim of psychiatric injury, and notwithstanding the WCJ's determination that the psychiatric claim resulted in no permanent impairment, the F&A offers specific provision for future medical treatment.

In addition, I observe that to the extent that record is silent as to claimed psychiatric impairment between the original date of injury in 2018 and the "Doctor's First Report" authored by Dr. Flores some six years later, the passage of time is prejudicial to defendant's ability to identify potential witnesses and marshal evidence responsive to the issue.

For the foregoing reasons, I discern no good cause to develop the record or further delay final adjudication of this matter. The parties have jointly submitted the relevant issues for decision and the WCJ has appropriately decided those issues. Accordingly, I would deny applicant's petition for the reasons set forth in the WCJ's Report.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 18, 2025

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

ANA MONZON
LAW OFFICES OF WINTERS AND BANKS
SHEFFIELD & RICHARDS

SAR/abs

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