

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

**WILLIAM VALDEZ, *Applicant***

**vs.**

**ORANGE COUNTY FIRE AUTHORITY, Permissibly Self-Insured, *Defendant***

**Adjudication Number: ADJ11323413  
Santa Ana District Office**

**OPINION AND ORDER  
DENYING PETITION FOR RECONSIDERATION**

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of January 4, 2022 wherein it was found that, while employed as a firefighter during a cumulative period ending March 30, 2018, applicant sustained industrial injury in the form of hypertension, coronary artery disease, hands including thumbs, shoulders, feet including toes, and to the upper digestive tract in the form of a hiatal hernia causing permanent disability of 89%. In finding permanent disability of 89%, applicant's right and left thumb disabilities were added together rather than combined utilizing the Combined Values Chart in the 2005 Schedule for Rating Permanent Disabilities, as were applicant's right and left foot disabilities. The disabilities were otherwise combined utilizing the Combined Values Chart. (2005 Schedule at pp. 8-1 – 8-4.)

Applicant contends that the WCJ erred in combining applicant's orthopedic disabilities with his internal medicine disabilities by way of the CVC rather than adding the percentages of permanent disability. We have not received an answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

Applicant argues that the orthopedic disabilities should be added to the internal medicine disabilities based on the June 23, 2021 deposition testimony of orthopedist Mitchel Silverman, M.D. Dr. Silverman opined that applicant's orthopedic impairments did not "overlap" with the internal medicine impairments. (June 23, 2021 deposition at p. 7.) Dr. Silverman opined that the impairments affected different activities of daily living and work restrictions, although the activities of daily living and work restrictions were not specified. (June 23, 2021 deposition at p.

9.) Explaining why the orthopedic disability should be added to the internal medicine disability, Dr. Silverman testified, “I understand the CVC, but the courts have decided. I haven’t decided, the courts have decided, that there’s a way to look at this in terms of adding them, and I agree in this particular case.” (June 23, 2021 deposition at p. 11.)

Dr. Silverman’s report is not substantial medical evidence sufficient to rebut the use of the Combined Values Chart. An overlapping or duplicative disability is not included in a permanent disability rating, and is usually not pertinent to the issue of whether permanent disabilities should be combined or added. Under the 2005 Schedule and the AMA Guides, impairments that are used as a basis for ratings are tied to a specific condition or body part, and thus do not usually overlap with any other condition or body part. The Guides contain instructions regarding which impairments overlap with others, and these duplicative impairments are generally not utilized unless a medical evaluator states that they do not overlap in a particular case.

In *Athens Administrators v. Workers’ Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ den.), we held that adding, rather than combining, two different impairments better reflected a worker’s impairment when substantial medical evidence supported the notion that the two impairments had a synergistic effect where, in effect, the resultant impairment was more than the sum of the two impairments. In *Kite*, the evaluator explained why the disparate impairments were not actually disparate, and the impairments in question were all under the physician’s expertise.<sup>1</sup> In contrast, here one specialist is suggesting that we add impairments found by him in his own specialty to impairments in completely different body systems found by a different specialist. As an orthopedist, it was Dr. Silverman’s role to describe and give a whole person impairment with regard to the orthopedic impairment. Dr. Silverman did not give any compelling reason why the orthopedic and internal medicine impairments should be added, and questions beyond applicant’s orthopedic impairment, including applicant’s overall impairment or the operation of the CVC, are beyond Dr. Silverman’s expertise. (*Applied Materials v. Workers’ Comp. Appeals Bd. (D.C.)* (2021) 64 Cal.App.5th 1042, 1097 [86 Cal.Comp.Cases 331].)

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<sup>1</sup> Similarly, in this case Dr. Silverman opined that applicant’s disparate thumb disabilities and toes disabilities should be added rather than combined utilizing the CVC. Dr. Silverman’s opinions in this regard were accepted by the WCJ, and the overall permanent disability was arrived at by adding the toes disabilities to one another and by adding the thumbs disabilities to one another.

Accordingly, we will deny the applicant's Petition.

For the foregoing reasons,

**IT IS ORDERED** that Applicant's Petition for Reconsideration of the Findings and Award of January 4, 2022 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

**I CONCUR,**

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ DEIDRA E. LOWE, COMMISSIONER



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**March 30, 2022**

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

**WILLIAM VALDEZ  
WHITING, COTTER & HURLIMAN  
STACEY TOKUNAGA**

**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*