

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

**TIPP CHAFFIN, *Applicant***

**vs.**

**COUNTY OF RIVERSIDE; permissibly self-insured, *Defendant***

**Adjudication Number: ADJ11122058  
Riverside District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.<sup>1</sup>

Applicant seeks reconsideration of the Findings and Award (F&A) issued on April 11, 2022, by the workers' compensation administrative law judge (WCJ). The WCJ found in pertinent part that while employed as a building maintenance superintendent for the County of Riverside, applicant sustained injury arising out of and in the course of his employment during the period of January 1, 2001 to November 27, 2017 to both wrists, both shoulders, left elbow, both knees, cervical spine, lumbar spine, hypertension, and lymphoma; and that the injury caused 94% permanent disability.

Applicant contends that the WCJ erred in using the combined values chart (CVC) in the Permanent Disability Rating Schedule (PDRS) for the orthopedic and internal impairments and instead should have used addition, based on the medical evidence that there was "a synergistic overall effect on applicant's disability," resulting in a 100% permanent disability award.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

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<sup>1</sup> Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board. A new panel member has been appointed in her place.

We have considered the allegations in applicant's Petition and defendant's Answer, and the contents of the WCJ's Report with respect thereto. Based upon our review of the record, and for the reasons stated below, as our Decision After Reconsideration, we will amend the F&A to reflect that applicant's injury caused 100% permanent disability and that applicant is entitled to a 100% permanent disability award. We otherwise affirm the decision.

## **BACKGROUND**

Applicant, while employed during the period January 1, 2001 to November 27, 2017, as a building maintenance superintendent, sustained an industrial injury to his cervical spine, lumbar spine, bilateral shoulders, bilateral wrists, left elbow, bilateral knees and in the form of hypertension and lymphoma due to repetitive cumulative trauma.

The parties utilized Stanley Majcher, M.D., and Albert Simpkins, M.D., as agreed medical evaluators (AMEs), and each authored multiple medical reports in this case. (Joint Exs. 2-7.) AME Dr. Simpkins provided deposition testimony as well. (Joint Exs. 8, 9.)

On August 23, 2021, the parties proceeded to trial. Among the issues submitted was whether applicant's permanent disability award should be calculated using the CVC or by addition to aggregate the orthopedic and internal disabilities.

On September 8, 2021, the WCJ issued an order vacating submission to allow AME Dr. Simpkins to testify again by deposition to clarify the issue of how to aggregate the overall permanent disability.

On February 9, 2022, the parties appeared. The WCJ admitted the deposition transcript of Dr. Simpkin's testimony (Exhibit 9) and resubmitted the case for decision.

On April 11, 2022, the WCJ issued his F&A, awarding applicant 94% permanent disability based on the CVC.

Aggrieved by this decision, applicant filed his Petition for Reconsideration.

## **DISCUSSION**

It is axiomatic that substantial evidence must support the decisions by the Appeals Board. (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).) “Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board’s findings if it is based on surmise, speculation, conjecture or guess.” (*Hegglin v. Workmen’s Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

In *Department of Corrections and Rehabilitation v. Workers’ Comp. Appeals Bd. (Fitzpatrick)* (2018) 27 Cal.App.5th 607 [83 Cal.Comp.Cases 1680], the Court of Appeal found that permanent disability “are generally combined” using the CVC though the “scheduled rating [under the CVC] is not absolute” and other methodologies may be used to calculate permanent disability. (*Id.*, pp.613-614.) Thus, while the scheduled rating is prima facie evidence of an injured employee’s permanent disability, the scheduled rating is rebuttable. (*Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School Dist. (Almaraz-Guzman II)* (2009) 74 Cal.Comp.Cases 1084, 1106 (Appeals Board en banc); see *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613 (Appeals Board en banc); *City of Sacramento v. Workers’ Comp. Appeals Bd. (Cannon)* (2013) 222 Cal.App.4th 1360 [79 Cal.Comp.Cases 1].) The overarching goal of rating permanent impairment is to achieve accuracy. (*Milpitas Unified School Dist. v. Workers’ Comp. Appeals Bd. (Almaraz-Guzman III)* (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].) (*Almaraz-Guzman III, supra*, at p. 822.)

For example, in *Athens Administrators v. Workers’ Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ denied) (*Kite*), the Appeals Board concluded that impairments resulting from cumulative injury to the bilateral hips may be added where substantial medical evidence supports a physician’s opinion that adding impairments will result in a more accurate rating of the level of disability than the rating that results from using the CVC. (See also *De La Cerda v. Martin Selko & Co.* (2017) 83 Cal.Comp.Cases 567 (writ denied) (requires following a physician’s opinion as to the most accurate rating method if they provide a reasonably articulated medical basis for doing so and does not require use of the term “synergistic”).)

In *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 (Appeals Board en banc) (*Vigil*), the Appeals Board held that an injured employee can rebut the CVC in the PDRS and add impairments where they can establish the impact of each impairment on the activities of daily living (ADLs). In addition, they must show either (a) there is no overlap between the effects on ADLs between the body parts rated, or (b) there is overlap but the overlap increases or amplifies the impact on the overlapping ADLs. The Board explained that medical expertise is required:

In determining whether the application of the CVC table has been rebutted in a case, an applicant must present evidence explaining what impact applicant's impairments have had upon their ADLs. Where the medical evidence demonstrates that the impact upon the ADLs overlaps, without more, an applicant has not rebutted the CVC table. Where the *medical evidence* demonstrates that there is effectively an absence of overlap, the CVC table is rebutted, and it need not be used.

(*Id.* at p. 692, italics added.)

Here, AME Dr. Majcher, in his initial report dated October 18, 2019, diagnosed applicant with gastroesophageal reflux disease, a sleep disorder, erectile dysfunction and lymphoma. (Joint Ex. 1, p. 7.) In AME Dr. Majcher's supplemental report dated March 12, 2020, he opined that applicant's lymphoma arose from his exposure to benzene resulting in whole person impairment of 40% based on Table 9-3, Class 3 on page 200 of the AMA Guides of Impairment (AMA Guides). (Joint Ex. 2 at pp.2-3.)

This resulted in a permanent disability string as follows:

LYMPHOMA: 09.01.00.00 - 40 - [1.4] 56 - 480F - 56 - 62

AME Dr. Simpkins, in his initial AME report dated November 26, 2019, diagnosed applicant with axial neck pain, bilateral posterior shoulder and mid-back pain with myofascial tenderness, bilateral shoulder impingement with bursitis and tendinitis and mechanical back pain with no evidence of nerve root tension and possible carpal tunnel syndrome, especially on the left. (Joint Ex. 4 at p. 25.)

In AME Dr. Simpkins' supplemental report dated February 20, 2020, in assessing permanent disability, he opined that, for the cervical spine, applicant had 5% whole person impairment based on Table 15-5, DRE Cervical Spine II, on page 392 on the AMA Guides. (Joint Ex. 5 at p. 7.) For the shoulders, applicant had 10% whole person impairment on the left shoulder and 12% whole person impairment on the right shoulder based on Figures 16-40, page 476; 16-43,

page 477; and 16-46 on page 479 of the AMA Guides. (*Id.* at pp.7-8.) For the wrists, applicant had 7% whole person impairment for the left wrist and 8% whole person for the right wrist based on Figures 16-28, page 467; and 16-31, page 469 of the AMA Guides. (*Id.* at p. 8.) With respect to the left wrist, AME Dr. Simpkins added 6% whole person impairment due to sensory loss to the left median nerve based on Tables 16-10 on page 482 and 16-15 on page 492 of the AMA Guides. (*Id.* at p. 8.) For the lumbar spine, applicant had 5% whole person impairment based on Table 15-3, DRE Lumbar Category II, on page 384 of the AMA Guides. (*Id.* at pp. 9-10.)

In AME Dr. Simpkin's supplemental report dated August 18, 2020, with respect to the knees, applicant had, for the left knee, 20% whole person impairment based on Table 17-31 on page 544 of the AMA Guides based on arthritically induced roentgenographically determined medial compartment cartilage with 50% lower extremity impairment. (Joint Ex. 6 at p. 2.) Applicant also had 8% whole person impairment for the right knee based on Tables 17-10, on page 537, 17-20, 17-21, 17-22 and 17-23, on page 540 of the AMA Guides. (*Id.* at p. 2.) With respect to apportionment, AME Dr. Simpkins found, with respect to the lumbar spine, left shoulder and right knee, 90% permanent disability apportioned to the industrial injury and, with respect to the left knee, and 85% apportioned to the industrial injury. (*Id.* at pp. 4-5.)

In his deposition dated June 30, 2020, AME Dr. Simpkins opined that, for the right shoulder, 80% permanent disability was apportioned to the industrial injury. (Joint Ex. 8 at p. 5:18.) With respect to applicant's left knee, he substantiated his basis for 50% lower extremity impairment per Table 17-31 on page 544, opining that applicant had a zero-cartilage interval in the medial compartment, indicating bone-on-bone contact and osteoarthritis justifying 20% whole person impairment. (*Id.* at pp. 6-7.) AME Dr. Simpkins opined that, with respect to applicant's orthopedic disabilities, adding disability for the knees and adding shoulders and wrists after adding each unilateral extremity was appropriate. (*Id.* at p. 35.) He opined that adding applicant's orthopedic disability to his hematopoietic disability was based on his "experience of understanding that lymphoma is a problem of the hematopoietic system and orthopedics is a system of the muscle skeletal . . . They are separate systems that should be added." (*Id.* at pp. 30:23-25 to 31:13; 38:15-21.)

Based on AME Dr. Simpkins' above discussion, this resulted in permanent disability strings as follows:

CERVICAL SPINE DRE:	100%	[15.01.01.00 - 5 - [1.4]	7 - 480I - 11 - 13]
13			
LUMBAR SPINE DRE:	90%	[15.03.01.00 - 5 - [1.4]	7 - 480I - 11 - 13]
12			
LEFT CTS:	100%	[16.01.02.02 - 6 - [1.4]	8 - 480G - 9 - 11]
11			
LEFT SHOULDER ROM:	90%	[16.02.01.00 - 10 - [1.4]	14 - 480H - 18 - 21]
19			
LEFT WRIST ROM:	100%	[16.04.01.00 - 7 - [1.4]	10 - 480G - 12 - 15]
15			
RIGHT SHOULDER ROM:	80%	[16.02.01.00 - 12 - [1.4]	17 - 480H - 21 - 25]
20			
RIGHT WRIST ROM:	100%	[16.04.01.00 - 8 - [1.4]	11 - 480G - 13 - 16]
16			
LEFT KNEE ARTHRITIS:	80%	[17.05.03.00 - 20 - [1.4]	28 - 480H - 34 - 39]
31			
RIGHT KNEE ROM:	90%	[17.05.04.00 - 8 - [1.4]	11 - 480H - 14 - 17]
15			
13 C 12 11 C 19 E 15 C 20 C 16 C 31 C 15 = 82% PD			

In his second deposition dated December 6, 2021, AME Dr. Simpkins expanded on his opinion of lack of overlap between the body systems testifying that disability to the hematopoietic system limits applicant's physical activities due to his lack of endurance from diminished oxygen capabilities and anemia. (Joint Ex. 9 at p. 53:7-11.) This was separate and distinct from applicant's orthopedic disability due to derangement or dysfunction of muscles and tendons. (*Id.* at p. 53:12-14.) He testified "[t]hey are two separate systems that function somewhat in a parallel universe as opposed to an inner or overlapping universe" (*Id.* at p. 53:14-16) resulting in a synergistic effect (*id.* at pp. 57:23-25 to 58:1-16) to compete in the open labor market (*Id.* at p. 59:22-23) requiring aggregation of the internal and orthopedic disabilities by addition (*Id.* at pp. 60:18-25 to 61:1-3). This is "because of the different disease processes that are acting on the applicant's hematopoietic systems and musculoskeletal systems" (*Id.* at p. 61:4-6) resulting in differing impacts on ADLs from both applicant's orthopedic injury and from his chemotherapy due to his lymphoma injury (*Id.* at pp. 85:11-25 to 86:1-9; 91:7-17; 92:18-25 to 93:1; 98:11-20).

Here, based on the analysis above, while AME Dr. Simpkins did not adequately explain why he would aggregate the orthopedic disabilities by addition, he thoroughly explained his opinion, in accordance with *Kite* and *Vigil*, requiring addition of applicant's orthopedic and

internal disabilities based on the independent impacts on ADLs caused by the orthopedic and hematopoietic system injuries. As such, having found that opinion fully substantiated, it is substantial medical evidence and the WCJ erred in disregarding AME Dr. Simpkins's opinion on addition and applying instead the CVC.

Accordingly, after combining the orthopedic disabilities by CVC, but adding the internal permanent disability strings, we amend the F&A to find that applicant is 100% permanently totally disabled.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings & Award dated on April 11, 2022 is **AFFIRMED**, except it is **AMENDED** as follows:

**FINDINGS OF FACT**

4. Applicant's injuries resulted in 100% permanent disability payable at a weekly rate of \$1,172.57 (subject to reduction for an attorney's fee as set forth below) commencing November 27, 2019 to present and continuing, less any permanent disability paid during that period.
5. Applicant's attorney performed reasonable services entitling counsel to 15% of the permanent disability award commuted from the side of the award.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**DECEMBER 12, 2025**

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

**TIPP CHAFFIN  
BREDFELDT, ODUKOYA & HAN, LLP  
WHITING, COTTER & HURLIMANN, LLP**

**DLP/md**

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