**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**ANTHONY LAMSON (deceased) and DOMINIQUE LAMSON,** ***Applicant***

**vs.**

**STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS & REHABILITATION; legally uninsured, administered by STATE COMPENSATION INSURANCE FUND,** ***Defendants***

**Adjudication Numbers: ADJ11701018; ADJ12193557**
**Salinas District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Petitioner, Dominque Lamson, son and heir of deceased applicant, Anthony Lamson, seeks reconsideration of the Joint Findings, Award, and Order (JFA&O) issued by the workers' compensation judge (WCJ) on April 3, 2026 in case ADJ11701018[1] wherein the WCJ found, in relevant part, that while employed by defendant on October 7, 2018 as a correctional sergeant, applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to the lumbar spine and left hip and side effects due to medications taken for treatment of the subject injury, resulting in seventy-six percent (76%) permanent disability. The WCJ further held that applicant failed to rebut the Permanent Disability Rating Schedule (PDRS) to allow for the addition versus combination (CVC) method of rating the lumbar spine and left hip disabilities.

Petitioner contends that he successfully rebutted the PDRS through reporting from applicant's vocational expert, James Westman, who found a total loss of earning capacity thereby rendering applicant one hundred percent (100%) permanently and totally disabled prior to his

[1] The WCJ also issued findings and orders with respect to the claimed cumulative injury to the circulatory system (heart/hypertension) in ADJ12193557. Because this was a Joint FA&O, we must rescind the findings and orders issued in that case but, we do not address the merits of the findings and orders issued in ADJ12193557 here as they were not challenged.

death. (Petition, p. 3.) Petitioner further contends that the lumbar spine was incorrectly rated and that the reports of chiropractic panel Qualified Medical Evaluator (PQME), Deanna Erickson, D.C., successfully rebutted the PDRS, thereby allowing petitioner to add rather than combine permanent disabilities for the lumbar spine and left hip. (*Id*. at pp. 6-9.)

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 contents of the Petition, Answer, and Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition, rescind the JFA&O, and return this matter to the trial level for further proceedings consistent with this decision.

## FACTS

Applicant claimed that while employed by defendant as a correctional sergeant on October 7, 2018 (ADJ11701018), he sustained injury AOE/COE to the lumbar spine and left hip and side effects from medications used to treatment the subject injury. Applicant also claimed injury AOE/COE during the period from November 11, 1995 through November 15, 2013 (ADJ12193557) to the circulatory system (hypertensive and valvular heart disease), and during the period from March 14, 2017 through March 14, 2018 (ADJ11701019) to the circulatory system (heart, arrhythmia, and hypertensive heart disease), psyche, and tuberculosis. Applicant passed away on December 22, 2024, and the cumulative injury through March 14, 2018 (ADJ11701019) was settled via a Stipulation and Award and Order which was approved on February 5, 2026.

Prior to applicant's passing, the parties retained Dr. Erickson as the chiropractic PQME and Brian Jacks, M.D. as the psyche PQME. Scott Simon and James Westman were also retained by the parties as their respective defense and applicant vocational experts. Scott Anderson, M.D. and James Schmitz, M.D. served as internal PQMEs for the cumulative injury through November 15, 2013 (ADJ12193557).

In his report dated December 16, 2019, psyche PQME, Dr. Jacks, opined that applicant sustained a GAF score of 67 as a compensable consequence of the October 7, 2018 injury (ADJ11701018) and the cumulative injury through November 15, 2013 (ADJ12193557). (Exhibit J17, p. 18.) In his final January 28, 2021 report, Dr. Jacks confirmed that apportionment was to be

divided "80% due to upset about industrial factors [(60% due to upset about cardiac problems from the cumulative injury through November 15, 2013 and 20% due to upset about the back injury from October 7, 2018)], and 20% due to upset about his preexisting and personal nonindustrial stressors." (Exhibit J19, p. 4.)

In his report dated October 7, 2020, chiropractic PQME, Dr. Erickson, indicated that applicant sustained a ten percent (10%) WPI to the left hip under table 17-33 and thirteen percent (13%) WPI to the lumbar spine under table 15-3, DRE lumbar category III, eighteen percent (10%) WPI to the lumbar spine due to loss of range of motion, two percent (2%) WPI to the lumbar spine due to sensory loss, fourteen percent (14%) WPI due to motor deficits, a three percent (3%) WPI add-on for pain in the left hip, and a 3% WPI for side effects due to medication, with apportionment divided eighty percent (80%) to the October 7, 2018 specific injury and twenty percent (20%) to the cumulative injury. (Exhibit J4, pp. 10-14.)

In his supplemental report dated June 29, 2021, Dr. Erickson noted that he would "utilize the Kite decision, to add rather than combine the separate left hip and lumbar spine impairments, as there is no overlap of disability." (Exhibit J6, p. 3.) He found "no overlap of the medication side effect impairment rating, which should [also] be added." (*Ibid*.) He admitted that his prior apportionment findings were speculative and that "[a] more accurate description would be that the two injuries (specific and cumulative) are in fact inextricably intertwined for [the following] reasons: 1. There is no substantial medical evidence of impairment between the multiple injuries to separate the effects of those injuries causing the overall disability; 2. [He] did not evaluate Mr. Lamson prior to the 10/7/18 industrial injury; and 3. There was indeed no permanent and stationary/MMI report between the injuries." (*Id*. at pp. 3-4.) He therefore found "100% of the lumbar spine and left disability/impairment to the 10/7/18 specific injury." (*Id*. at p. 4.)

In a further supplemental report dated July 19, 2021, Dr. Erickson explained that for the 3% WPI due to medication side effects, it was to be divided 2% WPI to the left hip and 1% WPI to the lumbar spine. (Exhibit J7, p. 3.)

In his final report dated November 5, 2024, Dr. Erickson outlined various restrictions to applicant's activities of daily living (ADLs) for both the lumbar spine and left hip. (Exhibit J9, p. 3.) He noted that "overlap in ADL restrictions most definitely amplifies the effects of the overlapping restrictions" thereby warranting addition of the left hip and lumbar impairments. (*Ibid*.)

In his reports dated November 18, 2023 and December 3, 2024, applicant's vocational expert, Mr. Westman, indicated that applicant "experienced a full loss of access to the job market with no future earning capacity whatsoever" and "should be considered 100% disabled." (Exhibit A1, p. 34; Exhibit A2, p. 7.)

Conversely, in his report dated March 18, 2022, defense vocational expert, Mr. Simon, indicated that applicant was "amenable for rehabilitation and has sustained a 64% loss of his future earning capacity[.]" (Exhibit D1, p. 30.) In his report dated February 26, 2025, Mr. Simon continued to find applicant amenable to rehabilitation, notwithstanding his review of Mr. Westman's opinions. (Exhibit D2, p. 14.)

On September 4, 2025, applicant filed a Declaration of Readiness to Proceed to a mandatory settlement conference. The matter proceeded to hearing and was ultimately set for a trial, to be held on February 5, 2026.

At trial, issues set for determination in ADJ11701018 included permanent disability; apportionment; attorney's fees; the amount of permanent disability accrued through applicant's death and owing to applicant's son and heir as petitioner; and whether applicant was permanent totally disabled prior to his death. The parties submitted as joint exhibits, benefit printouts and the reports of Drs. Erickson, Schmitz, Jacks, and Anderson. Petitioner submitted the reports of Mr. Westman and defendant submitted the reports of Mr. Simon in addition to denial letters, an objection letter addressed to Dr. Anderson, and letters to applicant regarding medical history and medical releases.

On March 16, 2026, the WCJ issued an Order Vacating Submission (Order) in ADJ11701018 for referral of the case to the Disability Evaluation Unit (DEU) for a formal permanent disability rating.

On March 17, 2026, a Consultative DEU Rating issued. A formal rating was not issued.

On April 3, 2026, the WCJ issued a JFA&O wherein she found, in relevant part, that while employed by defendant on October 7, 2018 (ADJ11701018) as a correctional sergeant, applicant sustained injury AOE/COE to the lumbar spine, left hip, and side effects due to medications, resulting in 76% permanent disability. The WCJ further held that applicant failed to rebut the PDRS and the CVC method of rating. In her Opinion on Decision (OOD) and Report, the WCJ advised that her finding of 76% permanent disability was based upon the March 17, 2026 Consultative DEU Rating.

It is from these findings that petitioner seeks reconsideration.

## DISCUSSION

### I.

Preliminarily, former Labor Code section 5909[2] 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 under the Events tab 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 April 28, 2026, and 60 days from the date of transmission is June 27, 2026, which is a Saturday. The next business day that is 60 days from the date of transmission is June 29, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision was issued by or on June 29, 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

[2] Unless otherwise stated, all further statutory references are to the Labor Code.

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 constitute notice of transmission.

Here, according to the proof of service for the Report, the Report was served on April 28, 2026, and the case was transmitted to the Appeals Board on April 28, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on April 28, 2026.

**II.**

Turning now to the merits of the Petition, as explained in *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton*, *supra*, at pp. 473, 475.) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Id.* at p. 475; See also see also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22 (Appeals Bd. en banc).) This "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Here, petitioner contends that he has successfully rebutted the PDRS through vocational reporting from Mr. Westman who found a total loss of earning capacity thereby rendering applicant 100% permanently and totally disabled prior to his death. (Petition, p. 3.) Petitioner further contends that the lumbar spine was incorrectly rated and that the reporting of Dr. Erickson served to successfully rebut the PDRS to allow for addition versus the CVC method for rating the lumbar spine and left hip disabilities. (*Id*. at pp. 6-9.)

As noted above, the WCJ relied upon a March 17, 2026 DEU Consultative Rating in reaching her permanent disability findings. Consultative DEU Ratings, however, are not admissible in judicial proceedings. (Cal. Code Reg., title 8, § 10166(b).)

Further, the Order issued by the WCJ on March 16, 2026 in ADJ11701018 vacated submission of the case so that the matter could be referred to the DEU for a formal rating. The Order advised that:

> The matter has been referred to the Disability Evaluation Unit for Formal Permanent Disability Rating on March 16, 2026. The Formal Permanent Disability Rating will be served on the parties, who shall then have seven (7) days, plus five (5) for mailing, to object to the rating and request cross-examination of the disability evaluator. If no such request is timely made, the matter shall be re-submitted on the twelfth (12th) day following service of the rating.

(Order Vacating Submission, March 16, 2026.)

A formal permanent disability rating is based upon rating instructions set forth by the WCJ advising the DEU as to the date of birth, date of injury, occupation and occupational group number upon which to rate the disability, age at date of injury, the average weekly wage of the injured worker, the specific factors to be rated, whether to apply apportionment to any individual factor, and how to calculate the rating (i.e. whether to combine or add disabilities).

Notwithstanding the Order, formal disability rating instructions were not issued by the WCJ. Thus, a formal rating was not issued, and the matter was not resubmitted for decision. Given that the JFA&O in ADJ11701018 issued without a formal submission, the parties were denied due process as the ability to dispute and challenge any issues arising from formal rating instructions was never provided.

We note that pursuant to *Blackledge*, "rating instructions are tentative findings of fact." (*Blackledge, supra,* at p. 622.) Thus, if there was any question regarding the calculation of permanent disability in this matter, the WCJ could have submitted formal rating instructions to the DEU and, also, sought the assistance of a rater. A DEU rater "is an expert … in the application of

the rating schedule" (*Aliano v. Workers' Comp. Appeals Bd.* (1979) 100 Cal.App.3d 341, 373 [44 Cal.Comp.Cases 1156, 1177]) and "a rating specialist's expert opinion [can] be of assistance to the Board" (*Johns-Manville Products Corp. v. Workers' Comp. Appeals Bd.* (*Carey*) (1978) 87 Cal.App.3d 740, 752 [43 Cal.Comp.Cases 1372, 1379]).

However, "under no circumstances should the WCJ abdicate responsibility for the comprehensive assessment of the employee's WPI(s) to the rater under the guise of asking for the rater's expert assistance. The assistance of the rater should be sought only after the WCJ has thoroughly reviewed the physician's report(s) in conjunction with the AMA Guides and has fully described the WPI(s) to be rated to the best of the WCJ's understanding." (*Blackledge*, *supra*, at p. 623.)

Further, in the absence of a specific request from the WCJ, under no circumstances may a rater deviate from the WCJ's formal rating instructions or offer an unsolicited opinion regarding the appropriate WPI(s). Permitting a rater to do so would mean that the rater would effectively displace the WCJ as the trier of fact. If the WCJ does not request assistance from the rater, then it is the responsibility of one of the parties, *not the rater*, to point out any errors in the WCJ's formal rating instructions. (See generally *Fidelity & Casualty Co. v. Workmen's Comp. Appeals Bd.* (*Ratzel*), 252 Cal.App.2d 332-333 [32 Cal.Comp.Cases 274-275]; 2 *Cal. Workers' Comp. Practice* (Cont. Ed. Bar, June 2009 Update) Trial, § 18.75, pp. 1592-1593.)

Without receipt of formal rating instructions, however, parties are unable to identify any errors. Given that no formal rating instructions were provided, and no formal rating issued, the matter has yet to be properly submitted for decision.

Accordingly, we grant the Petition, rescind the JFA&O, and return this matter to the trial level for further proceedings consistent with this opinion. Once the WCJ issues a new decision, any newly aggrieved person may file for reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings, Award, and Order issued by a workers' compensation judge on April 3, 2026, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings, Award, and Order issued by a workers' compensation judge on April 3, 2026, is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

**/s/ PAUL F. KELLY, COMMISSIONER**

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

**JUNE 26, 2026**

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

**DOMINIQUE LAMSON**
**DILLES LAW GROUP, PC**
**STATE COMPENSATION INSURANCE FUND**

**RL/*cs***

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