

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

EDWARD LINDBERG, *Applicant*

vs.

**WEST COAST QUARTZ CORPORATION;
SECURITY NATIONAL INSURANCE COMPANY/AMTRUST NORTH AMERICA,
*Defendants***

**Adjudication Number: ADJ15991395
Oakland District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the January 27, 2026 Findings, Award & Orders issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant sustained injury arising out of and in the course of employment to his to his lumbar spine and sacroiliac joint resulted in 8% permanent disability and need for further medical treatment. The WCJ further found that the current record is insufficient to determine if the Applicant is entitled to a supplemental job displacement benefit (SJDB) voucher.

Applicant contends that the WCJ erred in finding 8% permanent disability arguing that there is no substantial medical evidence record as to apportionment and that the record supports additional impairment for the sacroiliac (SI) joint. Applicant further contends that the WCJ should have awarded a SJDB voucher

We received an Answer from defendant. The WCJ issued a Report and Recommendation on Applicant's Petition for Reconsideration (Report) recommending that we grant reconsideration for the limited purpose of adding an order deferring the issue of applicant's entitlement to a SJDB voucher and otherwise deny reconsideration.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant applicant's Petition for Reconsideration. Our order granting the Petition for

Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

I.

Preliminarily, we note that former Labor Code¹ 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 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 March 12, 2026 and 60 days from the date of transmission is May 11, 2026. This decision is issued by or on May 11, 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

¹ All further statutory references are to the Labor Code, unless otherwise noted.

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 March 12, 2026, and the case was transmitted to the Appeals Board on March 12, 2026. 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 March 12, 2026.

II.

The WCJ provided the following discussion in the Report:

This case was tried and submitted on the record without testimony on October 30, 2025. (See Minutes of Hearing (MOH) dated 10/30/25.) The claim involves an accepted specific injury to the Applicant's lumbar spine on February 24, 2022, and a claimed injury to the sacroiliac joint that same day. The issues for determination, as noted in the MOH at p. 3 were: 1. Permanent disability (PD) and apportionment, with Applicant relying on the opinions of the primary treating physician (PTP) Anupama Ganga, M.D., as to both PD and apportionment, and defendant relying on the opinions of the orthopedic QME, David Fisher, M.D. Each party disputed the medical substantialness of the opposing evaluator's opinions; 2. The need for medical treatment, including as to the sacroiliac joint, if that body part is found to be industrial; 3. Attorney fees, with Applicant's attorney requesting a fee of 15% of the dollar value of the PD awarded; and 4. Applicant's entitlement to a supplemental job displacement benefit (SJDB), and a related penalty claim related to the alleged failure to timely provide such a voucher. (MOH at p. 3.)

The case involves an accepted specific injury to the Applicant's low back sustained on February 24, 2022, while mopping as a janitor. (MOH Stipulation No. 1, at 2; Joint 101 QME report of Dr. Fisher dated 2/6/23 at p. 1; Applicant's 1, PTP report of Dr. Ganga dated 4/16/25 at p. 1.) The QME, Dr. Fisher, issued an initial report dated February 6, 2023, which was based on his exam of the Applicant performed that same day. (Joint 101, Report of 2/6/23.) That report provides a history that Applicant was mopping on February 24, 2022, when he "twisted and felt a pop in his back" and thereafter began to develop "pain radiating into his left hip and left thigh." (*Id.* at p. 1.) He also noted a history of a prior left total hip replacement in 2017 at lumbar spine surgery in the form of a hemilaminectomy and disc excision at L5-S1 in 1988. (*Id.* at p. 2.) The Applicant is also diabetic and was taking glipizide at the time. (*Id.*) Dr. Fisher concluded the Applicant was not yet P&S, and provided temporary work

restrictions of “no lifting more than 10 pounds, no bending, climbing or crawling, and no standing or walking more than one to two hours.” (*Id.* at p. 3.) No medical or other records were provided to the QME or summarized at the time. (*Id.* at p. 1.)

In a supplemental report dated March 28, 2023, Dr. Fisher reviewed, summarized, and commented on 679 pages of medical records and other records, which included lumbar MRI reports dating from August 2, 2022 and November 13, 2013, and Applicant’s deposition transcript dated August 29, 2022. (Joint 101, Report of 3/28/23.) It notes the prior lumbar surgery in 1988, which reportedly had a good result until the Applicant developed left leg numbness and paresthesia’s in his left foot, starting in September 2013, which prompted a visit to a Dr. Kula. (*Id.* at p. 16.) A flare-up of back pain was noted in April of 2021, when Applicant was working, which prompted a visit to a Dr. Noorzad, who provided him with significant work restrictions. (*Id.*) It is unclear if Mr. Lindberg missed time from work or if he was accommodated. Treatment included PT and a neck CT, which documented some facial cellulitis and a small abscess in his right mandible. (*Id.*) He was seen in the emergency room in February 2022 complaining of low back and left hip pain, which prompted x-rays of the left hip which showed moderate degenerative changes, and which also showed a left total hip replacement with no evidence of osteolysis. (*Id.*) Lumbar diagnostics documented retrolisthesis of L2 on L3, L3 on L4, and L4 on L5, with mild degenerative changes throughout the lumbar spine. (*Id.*) He was placed on modified duty and by a PA in March 2022, and later saw Dr. Rikhy in March who provided an injection and prescribed medications.

Per the QME’s summary of the Applicant’s deposition testimony, the Applicant suffered a slip resulting in injury to his hip and back on February 23, 2022, while lifting a couch at home. This appears to be the day before his industrial injury claim on February 24, 2022. (*Id.* at p. 17.) The Applicant was also involved in a motor vehicle accident, which reportedly “resulted in” a hip replacement in 2017. (*Id.*) He subsequently injured his mid-back, low back, and hip while working at West Coast Sports, after starting there in June of 2018, (*Id.* at pp. 17-18.) After this review and summary of these significant additional records, Dr. Fisher concluded that his substantive opinions, as expressed in his initial report, were unchanged. (*Id.* at p. 18.)

In a second supplemental report dated October 27, 2023, (Joint 101, Report of 10/27/23), Dr. Fisher reviewed, summarized, and commented on 67 additional pages of medical records. As before, those record did not affect any of his previously expressed opinions. (*Id.* at p. 7.)

Dr. Fisher re-examined the Applicant on April 4, 2024, which resulted in a report dated April 8, 2024. (Joint 101, Report of 4/4/24.) His diagnoses were: 1. History of left hemilaminotomy at L5-S1 in approximately 1988 according to the provided medical records and diagnostic studies; 2. Multilevel chronic

degenerative disc disease with central canal and neuroforaminal stenosis, most significant at L3-4 and L4-5, per the most recent MRI (6/01/23) although the actual films have not been provided; 3. History of left total hip arthroplasty, stable; 4. Right hip osteoarthritis unrelated to the injury in question; and 5. New onset of bilateral knee pain unrelated to the injury in question. (*Id.* at p. 4.) A EMG/NCV of the bilateral lower extremities in April of 2023 by Dr. Mann was summarized as documenting mild chronic bilateral S1 radiculopathy, but symptoms were noted as being limited to the left side. (*Id.*) Dr. Fisher again concluded that the Applicant was not P&S, deferred opinions on apportionment, which he indicated would be an issue later, and requested an updated lumbar MRI and bilateral lower extremity EMG/NCV. (*Id.* at p. 5.)

In a third supplemental report dated May 24, 2024, (Joint 101, Report of 5/24/24), the QME reviewed, summarized, and commented on 84 additional pages of medical records. He did not change any of his prior opinions, and he noted that he was still waiting on his earlier request for an updated lumbar MRI, including the actual films. (*Id.* at p. 6.) He also seems to provide a new work restriction of a preclusion from lifting, and notes again that apportionment will be an issue in the future, but this new/supplemental work restriction is not really explained or discussed. (*Id.*)

Dr. Fisher re-examined the Applicant for a third time on December 12, 2024, which resulted in a report dated December 16, 2024. (Joint 101, Report of 12/16/24.) His diagnoses were now a repeat of the only the first three from his April 8, 2024 report. (*Id.* at p. 4.) He found the Applicant to be P&S/MMI and provided a rating of 13 WPI for the lumbar spine using DRE III, and stated that the left hip impairment relates to the 2017 left hip replacement which pre-dates the injury in this case, and was non-industrial, and he “does not see any evidence of an intrinsic injury to the left hip” but views those symptoms as the result of radicular pain from the low back down the left leg. (*Id.* at pp. 6-7.) He finds a new injury to the low back on February 24, 2022, which constituted an “aggravation of pre-existing pathology.” (*Id.* at p. 6.) He apportions 80% of the lumbar spine PD to pre-existing stenosis and Applicant’s prior back surgery, previous left leg radicular complaints, and pre-existing degenerative changes, all of which “predisposed him to further injury.” (*Id.*) However, it what appears to be a typographical error, he notes that 30% of the PD for the low back was caused by the aggravation of the February 24, 2022 injury. (*Id.*) The left hip impairment, which he did not actually rate, was noted to be 100% pre-existing, and he does not find any aggravation of the prior left hip condition as a result of that injury. (*Id.*) As to permanent work restrictions, he provides for no lifting more than 10 pounds, no standing or walking for more than two hours per shift, and no climbing, forward pending, kneeling, or crawling. (*Id.* at p. 5.)

Dr. Fisher’s last report is a supplemental dated February 20, 2025, which issued in response to a letter from defense counsel and in essence further explains his apportionment opinions. (Joint 101, Report of 2/20/25.) He does not address or

make any changes to his permanent work restrictions or other substantive opinions. As to apportionment, he first notes the error in the causation percentages listed in his prior report, and comments that his opinion is actually 70% apportioned to the preexisting injuries/surgery and stenosis/DDD, and that 30% of the PD for the low back was due to the February 24, 2022 date of injury. His analysis and rationale for that opinion was explained as follows:

“It should also be noted that Mr. Lindberg’s complaints in the review of medical records showed significant degenerative changes and loss of disc space at L4 on L5 and L2 on L3 and also at L3 on L4. No disc bulges were seen. There was also significant facet hypertrophy – an anatomic configuration in which the joints are enlarged – causing further impingement of the spine canal and nerve roots. There do not appear to be any new disc formations and Mr. Lindberg’s complaints appear to be back pain and stiffness without radiation, but he did have some tingling in both feet. This may be the result of the aggravation of the most recent injury.

Therefore, with the anatomic configurations shown in the medical records, including the narrowing of the canal and the joint space hypertrophy enlargement, which enters into the canal further to decrease the size, he was at high risk for any type of injury that may have caused further single-level disc herniations. Because he did have any [sic?] injury, which appears to have resulted in additional back pain and also some radiation to his feet in the form of tingling, I feel that this would be significant enough that this injury has resulted in increase in his symptoms that would not have been present had the injury not occurred. For this reason, I apportioned 30% to the injury. Seventy percent would be due to the previous causes that were present, which included prior surgery and his anatomic configuration.” (*Id.* at p. 2.)

In contrast to the QME, the most recent PTP, physiatrist, Anupama Gangna, M.D., issued a P&S report dated April 16, 2025. (Applicant’s 1.) This report appears to have been solicited by Applicant’s attorney in an effort to rebut the QME’s opinions with respect to impairment ratings and apportionment. She diagnoses: 1. Other spondylosis, lumber region; 2. Other spondylosis with radiculopathy, lumber region; 3. Other spondylosis with radiculopathy, lumbosacral region; 4. Left sacroilitis. (*Id.* at p. 8.) With respect to the left hip, she finds “Based on my examination of the patient, the review of the mechanism of injury, and review of medical records, an injury to the left hip joint did not occur.” (*Id.* at p. 9.) She provides impairment ratings of 13 WPI for the lumbar spine using DRE III, which I note is the same rating as the QME Dr. Fisher. (*Id.* at p. 10.) However, she provides a separate rating of 3 WPI for sacroiliac dysfunction, which she concedes is not ratable using the strict AMA Guides, and to provide pursuant to *Almaraz/Guzman*, via analogy to ischial bursitis in Table 17-33, on page 546 of the AMA Guides 5th Edition. (*Id.* at pp. 10-11.) She then combines the 13 and 3 WPI ratings using the CVC to come up with a combined

rating of 16 WPI. (*Id.* at p. 11.) As to apportionment, she finds none for the SI dysfunction and as to the low back states as follows: “After considering the entirety of the medical evidence in this case, it is my opinion to a degree of reasonable medical probability, that 60% of the permanent disability/whole person impairment of his lumbar spine is due to the industrial injury of 02/24/22. The remaining 40% of lumbar spine impairment is due to his prior injury, surgery and degenerative change residuals.” (*Id.* at p. 12.)

APPLICANT’S CLAIMS OF ERROR

Applicant’s Petition argues Dr. Fisher improperly discusses his apportionment opinion in terms of his prior condition increased Applicant’s risk of subsequent injury as opposed to causation of the PD, and that renders it non-substantial. (*Id.* at p. 2, line 18.) While I concede he does at points reference increased risk of injury, I think when read and considered in its entirety, including Dr. Fisher’s long discussion of his apportionment opinion in his final report dated February 20, 2025, it is clear that he finds the majority of the current impairment/PD, i.e., 70% was caused and due to Applicant’s prior back injuries, which included a pre-existing back surgery in 1988, with resultant scarring and left leg radiculopathy, a long history of back symptoms which waxed and waned, and MRI documented pre-existing stenosis and joint space hypertrophy, all combined to cause him, after three separate re-exams and a review of extensive medical records, to reasonably conclude and sufficiently explain under Escobedo, why he believed in his professional judgment and experience, a majority of the causation of the current impairment/PD, i.e., 70% was due to those non-industrial and/or pre-existing conditions.

The Petition asserts at page 3, that the prior injury and/or pathology contributed to his disability as opposed to causation of the injury, and later asserts Dr. Fisher’s opinions are speculative and not based on reasonable medical probability. (*Id.* at p. 4.) I disagree. Apportionment opinions are not scientific equations or formulas. It is not clear what Applicant thinks that Dr. Fisher has to say to sufficiently explain his opinion. It is undisputed and clear from the record that the Applicant had a 1988 back surgery and had decades of back symptoms that waxed and waned over the years, and involved ongoing, if sporadic medical treatment, and that he evidently had a non-industrial lifting incident involving a couch, which lit up his back the day before the accepted industrial injury which arose from a seemingly innocuous mopping while at work. (See Joint 101, Fisher report of 3/28/23 at p. 17, per the QME’s summary of Applicant’s deposition transcript.) The Applicant also had a prior non-industrial left hip replacement in 2017 that was seemingly prompted by a motor vehicle accident and had a June 2018 industrial injury to his low back while working at West Coast Sports. In short, there was a long and well documented medical record of prior back problems, including disability, surgery, and occasional periods of being off work that he treated for on and off over decades. In my view, Dr. Fisher sufficiently explains his rationale with respect to his

apportionment opinion percentages to satisfy *Escobedo* and constitute substantial medical evidence.

In contrast, Dr. Ganga, whose P&S report dated April 16, 2025 (Applicant's 1) was evidently solicited by Applicant's attorney to rebut the QME's opinions and post-dates Dr. Fisher's by approximately 5 months, in her discussion of apportionment, does not seem to have reviewed the entirety of the medical records that Dr. Fisher. (*Id.* at p. 11.) A failure to review all relevant medical records can render a medical/legal opinion non-substantial. In formulating and explaining her apportionment opinion that only 40% of the current PD was due to Applicant's prior injuries and/or pre-existing non-industrial conditions, she appears to heavily rely on Applicant's subjective employment history which on its face appears to minimize any symptoms or back problems in the years before this injury. (*Id.* at pp 5-6.) This subjective history in my view and on its face does not seem congruent with the records and medical treatment history cited and reviewed by Dr. Fisher in his multiple reports over two years, and which involved 3 separate re-exams. Dr. Ganga does not comment on or explain how the mechanism of injury, namely mere mopping, can or should cause and account for 60% of the current PD/impairment. In short, I did not find her opinion on apportionment to be well explained or based on a review of all relevant medical records, which meant I did not believe her opinions to be substantial medical evidence and in general, I found Dr. Fisher's discussion and opinions on apportionment to be more persuasive than hers.

Likewise, as to the SI joint PD rating, the QME Dr. Fisher does not diagnose or find a SI joint injury and/or dysfunction and obviously does not provide an impairment rating for it. Dr. Ganga's does, and even she concedes there is no strict AMA rating for an SI joint injury and provides an Almaraz/Guzman rating of 3 WPI analogizing to ischial bursitis using Table 17-33 on page 546 of the AMA Guides. (Applicant's 1, at pp. 10-11.) To constitute substantial medical evidence and rebut a strict AMA rating, any Almaraz/Guzman rating must sufficiently explain its rationale under *Escobedo*. In my judgment and opinion, Dr. Ganga fails to do so. Specifically, she does not explain how or why an SI joint rating does not overlap with a DRE rating for the low back in general and why it deserves its own rating. Although the Petition, asserts at p. 5, line 24, that the DRE rating does not account for SI joint dysfunction, no authority is cited for the claim. It is also not quite clear to me what exactly the unique SI joint dysfunction is as compare to the immediately adjacent lumbar spine, and in my view, even in a best-case scenario, e.g., diagnostic evidence of a unique SI joint injury/pathology, it is difficult if not impossible to parse out causation as between the lumbar spine and SI joint

Frankly, in my 10 years as a judge, this is the first time I can remember any med/legal evaluator providing for a standalone SI joint impairment/PD rating, especially when there is a significant rating for the lumbar spine using DRE. I also note that both Dr. Fisher and Dr. Ganga agree that the lumbar spine warrants

a 13 WPI rating using DRE III, although she in addition provides a 3% WPI pain add on, although it is not clear if she means to apply it to the lumbar spine or to the SI Joint. For this reason, and as similarly discussed in the Opinion on Decision at p. 11, I do not find her SI joint rating to be substantial medical evidence and/or persuasive, which is why I did not use it to calculate the PD in this case.

Finally, the Petition alleges error in failing to award a SJDB voucher. My rationale in the Opinion on Decision in finding that the record was insufficient to make such a finding was that the copy of the QME's P&S report in evidence, i.e., Joint 101, Report dated 12/16/24, did not have an attached DWC-AD 1011.33.36 form, which provides for specific work restrictions and as discussed in the Opinion at p. 12, is the trigger for the investigative process by the employer to determine if modified or alternative work can and will be offered pursuant to Rule 10133.31. The Opinion notes that it is possible there was such a completed form and that it was just not attached to the copy of the report that was uploaded. I therefore officially found and concluded that the record was insufficient to make a finding on whether the Applicant was entitled to a SJDB voucher in this case. See FA&O Finding No. 7. I similarly ordered the parties if that form was not completed to have the QME complete it and proceed with the process to determine if the employer can and/or will provide modified work, or alternatively a voucher. Finding No. 3. In retrospect, I should have explicitly ordered the issue of entitlement to the voucher and Applicant's related penalty claim deferred, which I now regret not doing. That that end, I recommend reconsideration be granted for the limited purpose of adding an order to the FA&O to the effect that Applicant's claim of entitlement to an SJDB voucher and related penalty petition are deferred pending the additional discovery ordered with respect to whether the form in question was ever completed by the QME, and that once completed, if not already done, the parties shall attempt to informally resolve that dispute.

Although the Petition cites to a writ denied case, *Opus One Labs v. Workers' Comp. Appeals Bd., (Fndkyan)*, (2019) 80 Cal.Comp.Cases 634, for the premise that a QME report with work restrictions can be sufficient to put an employer on notice to initiate an investigation into whether the employer can/will offer modified work and provide a voucher if they cannot, I think it is distinguishable. In this case, unlike that one, I did not make a finding the Applicant is not entitled to a SJDB voucher, and merely found the record was insufficient to make a finding either way, given the lack of the required DWC form in evidence. In fact, I ordered the record be developed on that issue in Order No. 3. As noted above, I should have made it clearer that the entitlement to the SJDB voucher issue and the associated penalty claim was deferred pending that discovery. I also still read Rule 10133.31(b) as establishing that the trigger for entitlement to a SJDB voucher is completion of the DWC-AD10133.36 form, and to the extent that *Fndkyan* is read or interpreted to the contrary, I note that it is not binding authority, and on these facts does not seem applicable or persuasive to me.

(Report at pp. 2-13.)

III.

We highlight the following legal principles that may be relevant to our review of this matter:

It is well established that decisions by the Appeals Board 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].) “The term ‘substantial evidence’ means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value.” (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Medical evidence is required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c)(d), 4061(i), 4062.3(l).) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. 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.” (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Section 4663 provides that “[a]pportionment of permanent disability shall be based on causation.” (Lab. Code, § 4663(a).) A doctor who prepares a report addressing the issue of permanent disability due to a claimed industrial injury must address the issue of causation of the permanent disability. (Lab. Code, § 4663(b).) Section 4663 requires that the doctor “make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment

and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries.” (Lab. Code, § 4663(c).) Pursuant to section 4663(c) and section 5705, it is defendant that has the burden of establishing the approximate percentage of permanent disability caused by factors other than the industrial injury. (*Benson v. Workers’ Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535, 1560 [74 Cal.Comp.Cases 113]; *Kopping v. Workers’ Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 607 (Appeals Board en banc).)

The report by the physician addressing the issue of apportionment must be supported by substantial evidence. (*Escobedo, supra*, 70 Cal.Comp.Cases at p. 620, citing Lab. Code, § 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) A medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (*Heggin, supra*, 4 Cal.3d at p. 169; *Place v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378–379 [35 Cal.Comp.Cases 525].)

In order to comply with section 4663, a physician’s report in which permanent disability is addressed must also address apportionment of that permanent disability. However, the mere fact that a physician’s report addresses the issue of causation of permanent disability and makes an apportionment determination by finding the approximate respective percentages of industrial and non-industrial causation does not necessarily render the report substantial evidence upon which we may rely. Furthermore, the physician must explain the nature of the disease and how and why it is causing disability at the time of the evaluation. (*Id.*)

In the context of apportionment determinations, the medical opinion must disclose familiarity with the concepts of apportionment, describe in detail the exact nature of the apportionable disability, and set forth the basis for the opinion, so that the Appeals Board can determine whether the physician is properly apportioning under correct legal principles. (*Escobedo, supra*, 70 Cal.Comp.Cases at p. 621.) Our decision in *Escobedo* summed up the minimum requirements for an apportionment analysis as follows:

[T]o be substantial evidence on the issue of the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors, 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.

For example, if a physician opines that approximately 50% of an employee's back disability is directly caused by the industrial injury, the physician must explain **how** and **why** the disability is causally related to the industrial injury (e.g., the industrial injury resulted in surgery which caused vulnerability that necessitates certain restrictions) and **how** and **why** the injury is responsible for approximately 50% of the disability. And, if a physician opines that 50% of an employee's back disability is caused by degenerative disc disease, the physician must explain the nature of the degenerative disc disease, how and why it is causing permanent disability at the time of the evaluation, and how and why it is responsible for approximately 50% of the disability.

(*Ibid.*, emphasis added.)

As to the SJDB voucher, section 4658.7(b), provides that an injured employee with permanent partial disability is entitled to SJDB benefits unless the employer makes an offer of regular, modified, or alternative work no later than 60 days from an employee's permanent and stationary date and the offer is for regular work, modified work, or alternative work lasting at least 12 months. (Lab. Code, § 4658.7(b).)

Here, it is unclear from our preliminary review that there is substantial medical evidence to support the WCJ's decision, regarding permanent disability and apportionment without additional development of the record, or his decision to defer the issue of entitlement of the SJDB voucher. Where the medical evidence or opinion on an issue is incomplete, stale, and no longer germane, or is based on an inaccurate history, or speculation, it does not constitute substantial evidence. (*Place v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Based on our review, we are not persuaded that the record is properly developed. Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned

decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

IV.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

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 [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 [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. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal.2d 360, 364.) “[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied.”; see generally Lab. Code, § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”].)

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a “threshold”

issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final'"]; *Rymer, supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. ...

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

V.

Accordingly, we grant applicant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. *While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to WCABmediation@dir.ca.gov.*

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

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

MAY 11, 2026

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

**EDWARD LINDBERG
BRIAN THORNTON
HANNA BROPHY**

PAG/mt

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