WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JEFFREY BLAKE, *Applicant*

vs.

STATE OF CALIFORNIA, Legally Uninsured, *Defendant*

Adjudication Number: ADJ11253479
Goleta District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of April 3, 2026, wherein it was found that while employed as a Department of Motor Vehicles examiner, applicant sustained injury to his neck, psyche, head and in the form of headaches causing permanent disability of 72% and the need for further medical treatment. In finding permanent disability of 72%, it was found that no apportionment of permanent disability was indicated, despite a prior industrial injury to the cervical spine. Additionally, it was found that applicant's cervical spine disability, psyche disability and headache disability (which consisted solely of a 3% whole person impairment pain add-on) should be added rather than combined using the Combined Values Chart (CVC) found in the 2005 Schedule for Rating Permanent Disabilities.

Defendant contends that the WCJ erred in finding 72% permanent disability arguing that the WCJ erred in (1) applying the "violent act" exception to Labor Code section 4660.1(c) which otherwise precludes psychiatric permanent disability arising out of a compensable physical injury, (2) not finding Labor Code section 4664 or section 4663 apportionment of permanent disability, (3) finding headache permanent disability consisting of only a pain add-on in the absence of underlying headache impairment and despite the fact that the cervical permanent disability included a pain add-on, and in (4) adding applicant's separate permanent disabilities rather than

combining them by utilizing the CVC. We have received an Answer from applicant and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we find that the WCJ erred in not incorporating independent medical evaluator orthopedist Peter Newton, M.D.'s Labor Code section 4663 determination that 40 percent of applicant's cervical permanent disability was due to factors pre-existing the current industrial injury. Additionally, we agree with defendant that the WCJ erred in incorporating the second pain add-on regarding the headaches to applicant's permanent disability rating. Although we otherwise affirm the WCJ's findings, we therefore grant reconsideration and amend the WCJ's decision to reflect that applicant's injury caused permanent disability of 47%.

Preliminarily, we note that former Labor Code 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, Labor Code 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 Labor Code 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 May 11, 2026 and 60 days from the date of transmission is July 10, 2026. This decision is issued by or on July 10, 2026, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 May 11, 2026, and the case was transmitted to the Appeals Board on May11, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on May 11, 2026.

Turning to the merits, Labor Code section 4660.1(c) states, in pertinent part:

> (1) Except as provided in paragraph (2), the impairment ratings for … psychiatric disorder … arising out of a compensable physical injury shall not increase. This section does not limit the ability of an injured employee to obtain treatment for … psychiatric disorder … that [is] a consequence of an industrial injury.
>
> (2) An increased impairment rating for psychiatric disorder is not subject to paragraph (1) if the compensable psychiatric injury resulted from … the following:
>
> (A) Being a victim of a violent act or direct exposure to a significant violent act within the meaning of Section 3208.3.

Previous decisions have defined the phrase "violent act" "as an act that is characterized by either strong physical force, extreme or intense force, or an act that is vehemently or passionately threatening." *Wilson v. State Cal Fire* (2019) 84 Cal.Comp.Cases 393, 405 (Appeals Bd. en banc).

Here, applicant testified that the vehicle in which he was a passenger "bottomed out" while hitting two dips while traveling at a high speed causing him to strike his head twice against the top of the car. The car then collided against a curb and was no longer operable after the accident. Applicant sought medical treatment on the day of the accident and later had to have a spinal fusion as a result of the injury caused by the accident. (Minutes of Hearing and Summary of Evidence of October 3, 2023 hearing at pp. 4-5.) The WCJ found applicant's testimony credible and that finding

is entitled to "great weight." (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].)

We agree with the WCJ that the scenario testified to encompasses the "strong physical force" sufficient to invoke the section 4660.1(c)(2)(A) exception. *Duran v. Cal. Dep't of Corr. & Rehab.* (2019) 2019 Cal. Wrk. Comp. P.D. LEXIS 186 (Appeals Bd. panel), cited by defendant, is inapposite. In *Duran*, the applicant's injury was caused by the tightening of seatbelts. The applicant in that case was tapped lightly on the bumper and "did not strike any part of her body on the interior of the van during or after the impact." Unlike here where the car struck a curb and became inoperable, the vehicle in *Duran* was able to come to a controlled stop. *Zarifi v. Group 1 Auto* (2018) 2018 Cal. Wrk. Comp. P.D. LEXIS 300 (Appeals Bd. panel) and *Ugalde v. Rockwell Drywall, Inc.* (2019) 2019 Cal. Wrk. Comp. P.D. LEXIS 213 (Appeals Bd. panel), also cited by defendant, did not involve motor vehicle accidents and are thus of limited utility in comparing their scenarios to the one presented here. Although it was determined in those cases that the injuries did not have the sufficient physical force to invoke the section 4660.1(c)(2)(A) exception, it is not clear that the force encountered in those cases is comparable to the force testified to here and found credible by the WCJ. Accordingly, we affirm the WCJ's determination that applicant's physical injury involved a "significant violent act" and that applicant is thus entitled to psychiatric permanent disability.

Turning to the issue of apportionment, defendant argues that applicant's cervical disability should have been rated pursuant to the Diagnosis Related Estimate (DRE) method and that Labor Code section 4664 apportionment to an earlier March 26, 2018 stipulated award of permanent disability regarding a July 20, 2012 injury should have been found. The March 26, 2018 stipulated award had found 49% permanent disability caused by an industrial injury to the cervical spine and shoulder, with 38% cervical disability. The cervical disability was based on an opinion of treating physician Amy Wickman, M.D. that applicant's injury caused a 28% WPI DRE Category IV cervical impairment rated utilizing Table 15-5 of the AMA Guides. (June 1, 2015 report at p. 3; AMA Guides, Table 15-5, page 392.)

However, in this case, applicant's disability was correctly rated under the ROM method rather than the DRE method. The AMA Guides state that the Range of Motion Method, rather than the DRE Method is to be utilized when there is "a recurrent injury in the same spinal region." (AMA Guides, § 15.2 Determining the Appropriate Method for Assessment, p. 379.) Although Dr.

Newton said that he could have also rated applicant under the DRE method, he provides no discussion of why the DRE method would be appropriate in this case given the AMA Guides' preference for the ROM method in this scenario. In *Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099 [71 Cal.Comp.Cases 1229], the Court of Appeal held that in order to apportion permanent disability pursuant to Labor Code section 4664, a defendant must show that (1) there was a prior award of permanent disability, and that (2) there is overlap between the prior disability and the subsequent disability. "Overlap is not proven merely by showing that the second injury was to the same body part because the issue of overlap requires a consideration of the factors of disability … resulting from the two injuries, not merely the body part injured. [Citations.]" (*Guedea v. Foley Family Wines, Inc.* (2024) 2024 Cal. Wrk. Comp. P.D. LEXIS 164, *20 [Appeals Bd. panel].)

Here, defendant did not prove overlap between the pre-existing disability rated utilizing the DRE method and the instant disability found by utilizing the ROM method. To the contrary, Dr. Newton testified that the second injury caused increased impairment due to the need for spinal fusion as well as decreased range of motion compared to the impairment caused by the first injury. (April 23, 2025 deposition at pp. 9-10.) Although Dr. Newton does seem to suggest that there is partial overlap, he states that section 4664 apportionment is inapposite and gives his apportionment determination pursuant to Labor Code section 4663. Accordingly, there is not complete overlap between these impairments, and defendant did not sufficiently prove the specific amount of partial overlap necessary for Labor Code section 4664 apportionment.

However, we disagree with the WCJ's finding that the record does not sufficiently establish Labor Code section 4663 apportionment. The WCJ correctly notes that apportionment, like any determination of the WCAB, must be based on substantial evidence. As we explained in *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 617 [Appeals Bd. en banc]:

> [A] medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. [Citations.]
>
> Moreover, 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 Board can determine whether the physician is properly apportioning under correct legal principles. [Citations.]
>
> ***

> 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.

(*Escobedo*, 70 Cal.Comp.Cases at p. 621.)

At Dr. Newton's April 23, 2025 deposition, the following exchange took place between defense counsel and Dr. Newton:

> Q. In your report, your first report, you apportioned 40 percent to the 2012 injury and 60 percent to the 2017 injury. How did you arrive at the 40 percent number for the 2012 injury.
>
> A. Well, I certainly think that injury in this surgery had a significant effect especially based on the reporting of Dr. Wickman. But as I tried explaining earlier, a disc replacement -- usually people hopefully get better after the surgery and they don't have severe pain and significant limitations. But he did as documented by Dr. Wickman. But it's not as limiting and it shouldn't be as limiting and disabling as a fusion. That's why they do a disc replacement.
>
> So I think it wouldn't be accurate to split it 50/50. But so I felt that the second injury because of the fusion had a higher effect on his current disability. So I felt that 60 percent majority should be apportioned to most recent and 40 percent to the prior. That's how I came up with that.
>
> Q. And then the 2012 injury -- I want to phrase this in a way that doesn't just sound like – so confusing. So how does it affect the overall impairment? What is it the apportioned 40 percent to the 2012 injury? What is the impact. How is it affecting increasing
> impairment?
>
> A. How is the 2012 injury affecting his current condition?
>
> Q. Yeah.
>
> A. I think he went into this injury and the surgery with limitations with ADLs, limitations on exam. I don't think he had full range of motion based on the significant symptoms, Dr. Wickman assigned whole person impairment. I think

> he still continued to have pain. So this injury significantly aggravated his pre-existing condition and his -- allowed him not to work anymore. He went back to work after the prior one, but now he can't.
>
> Q. You said in your first report that the 2017 injury was a significant aggravation of a pre-existing condition. Could you please explain the nature of the aggravation or significant aggravation?
>
> A. Well, he ended up having -- he probably had -- obviously, he had degenerative changes at C6-C7 that wasn't caused by this 2017 injury, but it lit up that underlying condition, aggravated it to the point that he had needed surgery at the additional level.
>
> It also increased his limitations that he couldn't go back to his regular work.

(April 23, 2025 deposition at pp. 18-20.)

Here, Dr. Newton sufficiently explains how the prior injury is contributing to applicant's current disability, and sufficiently explains the percentages ascribed to each. Accordingly, we will amend the decision to incorporate Dr. Newton's Labor Code section 4663 determination that 40 percent of the cervical disability was caused by factors other than the instant industrial injury.

Turning to the issue of permanent disability for headaches, applicant was evaluated by neurologist David Scharf, M.D. who stated that "There was no evidence of specific neurocognitive deficits on today's exam. However, Mr. Blake continues to suffer from daily headaches, most suggestive of headaches on a cervical/musculoskeletal basis." (February 19, 2025 report at p. 13.) Dr. Scharf opined that applicant's headache disability was comprised solely of an AMA Guides Chapter 18 pain add-on of 3%. (February 19, 2025 report at pp. 13-14.)

However, Dr. Newton's orthopedic cervical spine impairment also included a Chapter 18 pain add-on. The 2005 Schedule for Rating Permanent Disabilities states, "The maximum allowance for [AMA Guides Chapter 18] pain resulting from a single injury is 3% WPI regardless of the number of impairments resulting from that injury." Although we need not decide the exact contours of this rule, here both add-ons appear to arise out of the exact same mechanism of cervical injury causing pain. Additionally, in *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 631 [Appeals Bd. en banc]), we held that "Because this pain add-on can be assessed only to 'increase' other ratable impairment [citation], there can be no pain add-on if there is no underlying WPI for a particular body part or system." Although an impairment rating may be based on subjective pain only utilizing other methods or tables in the AMA Guides, including a separate

Chapter 18 pain rating for applicant's headaches given the record presented here runs afoul of the maximum Chapter 18 pain add-on, runs afoul of our en banc decision in *Blackledge*, and appears to be duplicative of the pain add-on found by Dr. Newton also ascribable to applicant's cervical injury. We therefore make a permanent disability finding that does not consider the impairment found by Dr. Scharf.

Finally, with regard to the issue of adding applicant's psychiatric impairment to the orthopedic spine cervical spine impairment, qualified medical evaluator Howard Greils, M.D. wrote in his June 7, 2023 report:

> Additionally, as stated in my supplemental report of April 2023, in relation to Athens Administrators v. WCAB (Kite) (2013) 78 CCC 213 and Taina v. WCAB, it is my opinion that it would be more accurate in this case to add the psychiatric and orthopedic impairments. My understanding of the findings of *Kite* indicate that a primary consideration is that of whether there is a synergistic relationship between the disabilities, and that when this exists, it is more accurate to simply add (rather than combine) the disabilities. In Mr. Blake's case, it is clear that there is such a synergy among his impairments. This can be seen especially since he does have a pain disorder, a condition in which the psychiatric symptoms exacerbate the pain and the pain exacerbates the psychiatric symptoms, a synergistic effect.

(June 7, 2024 report at pp. 49-50.)

In *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ den.), cited by Dr. Greils, it was held that adding two different impairments rather than combining them per the method outlined in the 2005 Schedule for Rating Permanent Disabilities 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 our en banc opinion *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686, 691 (Appeals Bd. en banc), we expanded on *Kite*, and held that two different impairments may be added, rather than combined, even if the impairments impact the same activities of daily living (ADLs) when the impairments overlap in a way that increases or amplifies the impact on the ADLs.

Here, Dr. Greils explains that the impairments indeed amplify one another. Accordingly, we affirm the WCJ's decision to add the disabilities.

Accordingly, we will grant reconsideration and amend the WCJ's decision to incorporate Dr. Newton's Labor Code section 4663 apportionment determination, and to not consider Dr.

Scharf's pain add-on in rating applicant's permanent disability. With these two amendments, we find that applicant's injury caused compensable permanent disability of 47%.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings and Award of April 3, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of April 3, 2026 is **AMENDED** as follows:

FINDINGS OF FACT

1 Jeffrey Blake, age 56 on the date of injury, while employed on February 3, 2017, as a DMV examiner, Occupational group No. 251, at Santa Maria, California, by the State of California, sustained injury arising out of and within the course of employment to his neck, psyche, head and in the form of headaches.

2. At the time of the injury, the employer was legally uninsured.

3. It is found at the time of the injury, Applicant's earnings were $972.69 per week warranting indemnity rates of $648.46 for temporary disability and $290 for permanent disability.

4. It is found the employer has furnished some medical treatment.

5. It is found Applicant is entitled to psychiatric permanent disability pursuant to Labor Code § 4660.1(c).

6. It is found that applicant's injury caused permanent disability of 47% payable at the rate of $290 per week in the total sum of $72,500.00, payable commencing August 4, 2021, less attorneys' fees as found below. This award has now fully accrued.

7. It is found that 40 percent of applicant's cervical permanent disability is apportionable to factors other than the industrial injury herein. pursuant to Labor Code section 4663 Defendant has not carried its burden regarding Labor Code section 4664 apportionment.

8. It is found there is a need for further medical treatment to cure or relieve the effects of the industrial injury.

9. It is found a reasonable attorney fee of $10,875 in connection with the permanent partial disability awarded hereinabove.

AWARD

Award is made in favor of Applicant **Jeffrey Blake** and against the **State of California** as follows:

a. Permanent disability indemnity as provided in Findings number 6;

b. Lifetime medical care as provided in Findings number 8;

c. Attorney fees as provided in Findings number 9.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 10, 2026

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

JEFFREY BLAKE
STOUT, KAUFMAN, HOLZMAN & SPRAGUE
STATE COMPENSATION INSURANCE FUND

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