

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

JEFFREY HILLINGS, *Applicant*

vs.

**CITY OF LOS ANGELES, permissibly self-insured,
administered by INTERCARE, *Defendants***

**Adjudication Numbers: ADJ22495839; ADJ22495402
Los Angeles District Office**

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

Defendant City of Los Angeles (defendant) seeks reconsideration of two decisions issued on March 25, 2026 by a workers' compensation arbitrator (WCA). In Case No. ADJ22495839, the WCA found that applicant, while employed as a police officer from October 21, 2002 to July 10, 2020, sustained industrial injury to his lumbar spine. In ADJ22495402, the WCA found that applicant, while employed as a police officer on September 1, 2021, sustained industrial injury to his lumbar spine and right knee. In both cases, the WCA determined that applicant sustained permanent partial disability.

Defendant contends that pursuant to Labor Code¹ section 4664(b), applicant's lumbar spine disability is subject to apportionment to prior awards of disability to the same body part, and that applicant's prior awards overlap his current disability.

We have received an Answer from applicant. The WCA prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration, the Answer and the contents of the report of the WCA with respect thereto. Based on our review of the record, and

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

for the reasons discussed below, we will grant reconsideration and amend the two Findings and Awards (F&As) to defer the issues of permanent disability and attorney's fees (Findings of Fact 4, 7; Award a), and return this matter to the WCA for further proceedings consistent with this decision. We otherwise affirm the decisions.

FACTS

The relevant facts are set forth in the WCA's Report as follows:

The parties have stipulated that Officer Hillings sustained a cumulative trauma injury during the period October 21, 2002 through July 10, 2020 to the lumbar spine and right hip and an injury on September 21, 2021 to the right knee and [] lumbar spine. The parties utilized Dr. Osep Armagan as the AME and he produced three (3) reports dated May 24, 2024, May 1, 2025 and August 19, 2025.

Officer Hillings had three (3) prior awards of permanent disability to the lumbar spine totaling 27% permanent disability which are relevant here. These were a July 21, 2008 award of 10% permanent disability to the back, a July 23, 2015 award of 12% to the back and an award of 5% permanent disability to the back for a CT injury from July 22, 2008 through September 30, 2015.

The AME found a cumulative trauma injury to the back which he attributed to applicant working with a Sam Brown Belt and Kevlar Vest every day with frequent overtime and on weekends. He also took a history of applicant working surveillance of homeless encampments during the pandemic where he would sit in a car during his entire ten (10) hour shift. Dr. Armagan found the September 1, 2021 vehicular injury aggravated the applicant's lower back, noting the history of applicant traveling on the 210 freeway on his City motorcycle and being struck by a Ford F-250 truck in the [HOV] lane. The impact sent applicant into a concrete median wall. Dr. Armagan assessed 12% disability for the lumbar spine which was apportioned 10% to the CT injury and 90% to the September 1, 2021 accident.

(Report, at pp. 1-2.)

Pursuant to an Alternative Dispute Resolution (ADR) agreement authorized under section 3201.7, the parties proceeded to arbitration on January 26, 2026, and placed in issue, in relevant part, whether the anti-attribution provisions of section 4663(e) precluded apportionment to applicant's prior awards of disability under section 4664(b). (Transcript of Arbitration Proceedings, dated January 26, 2026, at p. 6:20.) Neither party offered witness testimony, and the WCA ordered the matter submitted for decision on February 13, 2026. (*Id.* at p. 12:16.)

On March 25, 2026, the WCA issued two Findings and Awards. In ADJ22495402, the WCA determined that applicant's admitted specific injury to the lumbar spine and right knee on September 21, 2021 resulted in 45 percent permanent partial disability. In ADJ22495839, the WCA determined that applicant's admitted cumulative injury to the lumbar spine from October 21, 2002 to July 10, 2020 resulted in 2 percent permanent partial disability. With respect to the issue of apportionment, the WCA "determined that Labor Code 4664(b) apportionment would not apply here because it was precluded by the anti-attribution clause under Labor Code 4663(e) ... [t]herefore 2% permanent [disability] to the lumbar spine was awarded on the CT injury and 21% to the September 1, 2021 injury resulting in a combined 23%." (Report, at p. 2.)

Defendant's Petition notes that prior panel decisions of the Appeals Board have reached different conclusions with respect to the applicability of section 4664(b) apportionment in response to the anti-attribution provisions of section 4663(e). Defendant directs our attention to the reasoning in a recent panel decision in *Canto Shadoan v. City of San Diego* (2025) 91 Cal.Comp.Cases 352 [2025 Cal. Wrk. Comp. P.D. LEXIS 435], writ den. sub nom. *Shadoan v. Workers' Comp. Appeals Bd.* (April 29, 2026, D087484) ___ Cal.App.5th ___ [2026 Cal. Wrk. Comp. LEXIS 26] (*Shadoan*), wherein the panel distinguished between the apportionment to *causation* required under section 4663(e) and apportionment to *prior awards* required under section 4664(b). Defendant urges that we apply a similar analysis herein.

Applicant's Answer asserts that the *Shadoan* panel decision is factually distinguishable from the present matter because the parties in *Shadoan* agreed that section 4664(b) applied in the first instance, whereas in the present matter, applicant asserts section 4664(b) does not apply due to the lack of overlap. Applicant further urges our reliance on the reasoning found in other panel decisions including *Bates v. County of San Mateo* (2019) 84 Cal.Comp.Cases 648 [2019 Cal. Wrk. Comp. P.D. LEXIS 72] (*Bates*), and *Santiago v. Cal. Highway Patrol* (2022) 87 Cal.Comp.Cases 1011 [2022 Cal. Wrk. Comp. LEXIS 51] (*Santiago*), wherein the panels determined that the later-enacted anti-attribution provisions of section 4663(e) preempted apportionment generally, including apportionment under section 4664(b).

The WCA's Report observes that the primary issues decided in *Shadoan, supra*, 91 Cal.Comp.Cases 352, was "how to analyze overlap and assess the factors of disability, i.e., the methods used in the AMA Guides to rate impairment." (Report, at p. 4.) The WCA further notes that the central issue in the present matter of the applicability of whether the anti-attribution

provision of section 4663(e) precludes the application of section 4664(b) apportionment was specifically addressed in *Santiago, supra*, 87 Cal.Comp.Cases 1011, and finding the reasoning therein to be persuasive, the WCA recommends we deny reconsideration.

DISCUSSION

I.

Former 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 April 28, 2026, and 60 days from the date of transmission is Saturday, June 27, 2026. The next business day that is 60 days from the date of transmission is Monday, June 29, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on June 29, 2026, so that we have timely acted on the petition as required by section 5909(a).

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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. 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 arbitrator, the Report was served on April 24, 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 did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on April 28, 2026.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on April 28, 2026.

II.

The present dispute involves the interaction between sections 4664(b) and 4663(e). Section 4664 provides:

(a) The employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment.

(b) If the applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury. This presumption is a presumption affecting the burden of proof.

(c)

(1) The accumulation of all permanent disability awards issued with respect to any one region of the body in favor of one individual employee

shall not exceed 100 percent over the employee's lifetime unless the employee's injury or illness is conclusively presumed to be total in character pursuant to Section 4662. As used in this section, the regions of the body are the following:

- (A) Hearing.
- (B) Vision.
- (C) Mental and behavioral disorders.
- (D) The spine.
- (E) The upper extremities, including the shoulders.
- (F) The lower extremities, including the hip joints.
- (G) The head, face, cardiovascular system, respiratory system, and all other systems or regions of the body not listed in subparagraphs (A) to (F), inclusive.

(2) Nothing in this section shall be construed to permit the permanent disability rating for each individual injury sustained by an employee arising from the same industrial accident, when added together, from exceeding 100 percent.

(Lab. Code, § 4664.)

Sections 3212 through 3213.2 contain a series of statutory presumptions regarding the industrial nature of various injuries applicable to certain law enforcement personnel, specified first responders and other public safety employees. "Generally, the provisions rebuttably presume an industrial causation between various injuries and diseases—such as hernia, heart trouble, pneumonia, cancer, tuberculosis, meningitis, or Lyme disease—sustained by the enumerated classes of public safety officers while or within a specified period of time so employed." (*California Dept. of Corrections & Rehabilitation v. Workers' Compensation Appeals Bd. (Garza)* (2009) 74 Cal.Comp.Cases 134, 138 [2009 Cal. Wrk. Comp. LEXIS 18].)

Section 3213.2 provides such a presumption, applicable to certain public safety officers who meet various conditions of employment including wearing a duty belt. When a qualifying safety officer sustains a low back injury, section 3213.2 provides the injury "shall be presumed to arise out of and in the course of the employment." (Lab. Code, § 3213.2(b).) The presumption "is disputable and may be controverted by other evidence, but unless so controverted, the appeals board is bound to find in accordance with it." (*Ibid.*)

In addition, section 4663 provides:

- (a) Apportionment of permanent disability shall be based on causation.

(b) A physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall address in that report the issue of causation of the permanent disability.

(c) In order for a physician's report to be considered complete on the issue of permanent disability, the report must include an apportionment determination. A physician shall 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. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

(d) An employee who claims an industrial injury shall, upon request, disclose all previous permanent disabilities or physical impairments.

(e) Subdivisions (a), (b), and (c) do not apply to injuries or illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3, 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10, 3212.11, 3212.12, 3213, and 3213.2.

(Lab. Code, § 4663.)

Here, there is no dispute that applicant qualifies for the presumptions of section 3213.2, and that section 3213.2 is among those sections subject to the anti-attribution provisions of section 4663(e). In other words, because applicant's injury is subject to the presumption of section 3213.2, section 4663(e) exempts applicant's low back injury from apportionment to causation that would otherwise be required under section 4663(a).

However, section 4664(a) also provides that the defendant herein is only liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment. It is not disputed that applicant has three prior awards of permanent disability also involving the low back and that under section 4664(b), applicant's prior low back disabilities are conclusively presumed to exist at the time of any subsequent industrial injury.

Accordingly, the issue before us involves whether the anti-attribution provisions of section 4663(e), which preclude apportionment based on causation, would also preclude the apportionment required under section 4664(b) to prior awards of disability.

In *Bates*, *supra*, 84 Cal.Comp.Cases 648, the WCJ found that applicant sustained two consecutive cumulative injuries, the first from May 10, 2009 to May 10, 2010, and another beginning May 10, 2010 through April 18, 2012. Both injuries were subject to the “heart trouble” presumptions of section 3212. The WCJ entered one award of disability for both injuries but allowed credit for the dollar value of the prior industrial award. (*Id.* at p. 650.) Defendant petitioned for reconsideration, contending that section 4664(a) and *Benson v. Workers’ Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535 [74 Cal.Comp.Cases 113] (*Benson*), required that each cumulative injury receive its own award. We observed, however, that:

[A]lthough *Benson* and the apportionment to causation provisions of section 4663, subdivisions (a) through (c), would *generally* require that permanent disability caused by two separate industrial injuries be awarded separately, the language of section 4663(e) expressly precludes apportionment to causation for injuries that are presumed compensable under sections 3212 through 3213.2. (*Dept. of Corrections and Rehabilitation v. Workers’ Comp. Appeals Bd. (Alexander)* (2008) 166 Cal.App.4th 911, 914-920 [82 Cal.Rptr.3d 920, 73 Cal.Comp.Cases 1294] [holding that section 4663(e) precludes the application of the apportionment provisions of section 4663(a)-(c) to injuries or illnesses covered by section 3212.2 and, therefore, the WCAB properly declined to apportion correctional officer’s heart and cardiovascular injury to non-industrial causation].)”

(*Id.* at pp. 653-654, italics original.)

We further observed that “[a]lthough *Alexander* involved apportionment between industrial and non-industrial causation, there is nothing in section 4663(e)’s language that suggests it permits apportionment of permanent disability between two or more industrial injuries that are presumed compensable under section 3212 et seq.” (*Id.* at 654.) We acknowledged that by its own terms, section 4663(e) addressed apportionment under section 4663, subdivisions (a) through (c). However, we explained that for several reasons, the general “apportionment to causation” provisions of section 4664(a) would not supersede the later-enacted and specific provisions of section 4663(e):

First, section 4664(a) is a general statute authorizing apportionment to causation, while section 4663(e) is a specific statute precluding apportionment to causation in cases involving public safety members whose injuries are presumed compensable under section 3212 et seq. It is well-established that where a general statute conflicts with a specific statute, the specific statute controls over the general one. (*Fuentes v. Workers’ Comp. Appeals Bd.* (1976) 16 Cal. 3d 1, 7-8 [128 Cal. Rptr. 673, 547 P.2d 449, 41 Cal. Comp. Cases 42].)

Second, “where two statutes deal with the same subject matter, the more recent enactment prevails as the latest expression of legislative will.” (*Sears v. Baccaglio* (1998) 60 Cal. App. 4th 1136, 1161-1162, 70 Cal. Rptr. 2d 769.) The language of section 4664(a) was enacted by Senate Bill 899 (SB 899), which became effective on April 19, 2004. (Stats. 2004, ch. 34, § 35.) The language of section 4663(e), however, was added later by Assembly Bill 1368 (AB 1368), effective January 1, 2007. (Stats. 2006, ch. 836, § 1.)

Third and most importantly, the courts have long viewed the apportionment to causation provisions of section 4663 and 4664(a) as manifesting a single unified legislative approach to apportionment. (See, e.g., *Brodie v. Workers’ Comp. Appeals Bd.* (2007) 40 Cal. 4th 1313, 1327 [57 Cal. Rptr. 3d 644, 156 P.3d 1100, 72 Cal. Comp. Cases 565] (“[T]he Legislature’s purpose in adopting a revised section 4663 and a new section 4664 ... [was to create a] new regime of apportionment based on causation ...”); *Benson, supra*, 170 Cal. App. 4th at p. 1549 [74 Cal. Comp. Cases 113] (“[T]he plain language of the new statutory scheme requires apportionment to each cause of a permanent disability, including each distinct industrial injury. This conclusion is compelled by ... the plain language of current sections 4663 and 4664”); *Kleemann v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal. App. 4th 274, 284 [25 Cal. Rptr. 3d 448, 70 Cal. Comp. Cases 133] (“new sections 4663, subdivision (a) and 4664 are primarily substantive changes [establishing that] [p]ermanent disability is now apportioned on the basis of causation”).) It would be inconsistent with the Legislature’s unified scheme of apportionment based on causation to conclude that section 4664(a) somehow overrides the specific and later enacted provisions of section 4663(e). Indeed, any such reading of section 4664(a) would effectively render the provisions of section 4663(e) null and void. It is a basic principle of statutory construction that “[a]n interpretation that renders statutory language a nullity is obviously to be avoided.” (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal. 4th 1029, 1039, 175 Cal. Rptr. 3d 601, 330 P.3d 912 (internal quotation marks omitted) [additional citations omitted].”

(*Bates, supra*, at p. 656.)

Accordingly, we affirmed the WCJ’s determination that applicant was entitled to one award for both injuries.

In *Santiago, supra*, 87 Cal.Comp.Cases 1011, applicant sustained an original presumptively compensable cumulative injury ending June 7, 2011, for which he received an award of 43 percent, of which 18 percent was attributable to “heart trouble.” Applicant later filed a subsequent cumulative injury claim ending September 24, 2018, which the parties agreed rated at 55 percent disability, attributable solely to heart trouble. Applicant contended that section 4664(b) apportionment was unavailable to the defendant because of section 4663(e), which in turn

obviated apportionment to causation under section 4664(a). The WCJ determined that section 4663(e) precluded apportionment to causation, including section 4664(b)'s apportionment to prior awards of disability. In response to defendant's petition seeking reconsideration, we noted that "it would be illogical to find the anti-attribution provision in section 4663(e) applies to apportionment under section 4664(a) but not to apportionment under section 4664(b)." (*Id.* at p. 1014.) We further observed that the conclusive presumption of 4664(b) would not attach in the first instance because of the apportionment preclusion mandated under section 4663(e). (*Ibid.*) Accordingly, we affirmed the WCJ's award of disability without apportionment to the prior award. Defendant's petition for writ of review was subsequently denied.

More recently, however, a panel of the Appeals Board reached a different conclusion in *Shadoan, supra*, 91 Cal.Comp.Cases 352. Therein, applicant received an award of permanent disability of 9 percent for a low back injury in 2010. Applicant subsequently sustained an additional cumulative injury ending in 2017, and the combined prior and current injuries resulted in 24 percent aggregate permanent partial disability. The parties stipulated that the presumptions and anti-attribution provisions of sections 3213.2 and 4663(e) applied to applicant. While applicant in *Shadoan* conceded that section 4664 applied generally, the parties disputed the mechanics of how to calculate the apportionment afforded under section 4664. The WCJ issued an award that deducted the dollar value of applicant's prior award rather than the percentage of permanent disability previously awarded. Defendant sought reconsideration averring the holding in *Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal. 4th 1313 [72 Cal.Comp.Cases 565] (*Brodie*) required the deduction of the percentage of permanent disability of the prior award, rather than the dollar value of the award.

The panel's analysis in *Shadoan* began with a comprehensive review of the history of legal apportionment in California, noting that it has long been the law in California that "when an employee who had pre-existing permanent disability sustained an industrial injury that also resulted in permanent disability, the employer or its insurer was not liable for the combined disability but only for that portion attributable to the subsequent industrial injury considered alone. (*Shadoan, supra*, 91 Cal.Comp.Cases at p. 357.) The *Shadoan* panel further noted that while the mechanics of how disability is rated have evolved under reform legislation in 2004, it remains defendant's burden to prove both the existence of a prior award of disability and that the prior

disability overlaps with the current disability. (*Id.* at p. 358, citing *Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 11158 [71 Cal.Comp.Cases 1229].)

Set against this legal backdrop, the Appeals Board observed that the applicant in *Shadoan* did not challenge the applicability of section 4664(b) apportionment, only the method by which the apportionment should be calculated. (*Id.* at p. 362.) The Appeals Board observed:

When apportionment is proven pursuant to section 4664, the correct method for calculating apportionment was decided by the Supreme Court in *Brodie, supra*. The percentage of disability attributable to the new injury is calculated by subtracting the old rating from the new rating, then awarding the difference. (*Brodie, supra* 40 Cal. 4th 1322.) The *Brodie* court expressly rejected the formula used by the WCJ in this case, which was to subtract the dollar amount of the prior disability from the dollar amount of the present disability. (*Ibid.*)

The WCJ based their opinion, in part, upon the Appeals Board holding in *Bates v. County of San Mateo*, 2019 Cal. Wrk. Comp. P.D. LEXIS 72.2 In *Bates*, the Appeals Board addressed a novel argument raised by defendant, that apportionment based upon causation was allowed notwithstanding section 4663(e) because section 4664(a) states: “(a) The employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment.” (§ 4664(a).) The employer argued that section 4664(a) was outside section 4663 and thus apportionment based upon causation was permissible notwithstanding 4663(e)’s non-attribution clause. The Appeals Board rejected this argument and held that section 4664(a) states a general principle of apportionment and the more specific section of 4663(e) excluding apportionment based upon causation for certain presumed injuries was controlling. (*Bates, supra*, at *17–19.)

The Appeals Board further noted that apportionment under *Benson* is also not permitted when dealing with presumptive injuries as *Benson* apportionment necessarily involves apportionment based upon causation under section 4663. (*Id.* at *12–13.)

We continue to find the holding in *Bates* persuasive. The inclusion of a general principle of apportionment in section 4664(a), does not override the more specific exclusion of apportionment based upon causation contained in 4663(e). However, the *Bates* opinion did not address the dispute in this matter. The question here is whether the non-attribution clause of section 4663(e) in any way impacts the apportionment calculation under section 4664(b) and *Brodie*. It does not.

In reaching our conclusion, we must address another panel decision, *Thomas Santiago v. California Highway Patrol*, which expanded our holding in *Bates* and found that presumptive injuries contained in 4663(e) are not subject to

apportionment under section 4664(b). (2022 Cal.Wrk.Comp. LEXIS 51; 87 Cal Comp.Cases 1011.) However, we do not find the holding in *Santiago* persuasive as it does not adequately explain why section 4664(b) is preempted by section 4663(e).

Section 4663(e) precludes apportionment based upon *causation of disability*. *Apportionment under 4664(b) is not apportionment based upon causation, but instead is apportionment to a prior award of disability, which overlaps with the current award.*

That is, like section 4663(e), section 4664 requires an analysis of whether the two disabilities overlap, but that analysis **does not involve causation of the disability**. This is because a prior award necessarily reflects only that portion of the disability that was found industrial. When examining a prior award of disability, any analysis under section 4663 has already occurred.

(*Id.* at p. 362-363, italics and emphasis original.)

The decision in *Shadoan* thus addressed both *Bates* and *Santiago* as necessary to a complete discussion of the issues raised therein, including why section 4664(b) and the holding in *Brodie* would apply notwithstanding the applicability of section 4663(e). The Appeals Board observed that while it continued to find the reasoning in *Bates* persuasive as it applied to apportionment under section 4664(a) and *Benson, supra*, it could not agree that the same reasoning would extend to section 4664(b) as did the panel in *Santiago, supra*.

We noted that fundamentally, section 4663 apportions to the *causation* of a disability, whereas section 4664 apportions to *a prior award* of disability insofar as it overlaps a present disability. Because “the basis for apportionment under section 4664(b) does not analyze the cause of the disability, section 4663(e) does not preclude its application.” (*Id.* at p. 363.) Accordingly, we concluded that when calculating apportionment under section 4664(b), the subtraction of the percentage of the prior award was required under *Brodie, supra*, even where the injury is subject to the anti-attribution clause of section 4663(e). (*Ibid.*)

The Court of Appeal for the Fourth Appellate District denied review on April 29, 2026.

With this jurisprudence in mind, we turn to the present matter. Applicant contends that section 4663(e) precludes apportionment under section 4664(a), and that the “specific language is very clear and intentional because these injured first responders return to the job that caused their prior injury, sustaining further industrial trauma that the Legislature saw fit to compensate in full without attribution to prior injury, including prior industrial injury.” (Answer, at p. 6:25.) Applicant further contends that the panel decision in *Shadoan* is distinguishable because the parties

therein agreed that section 4664 applied in the first instance, while applicant herein disputes the applicability of section 4664(b) or the presence of overlap. (*Id.* at p. 7:5.) Applicant points out that the apportionment required under section 4663(c) requires consideration of factors of apportionment “both before and subsequent to the industrial injury, *including prior industrial injuries.*” (*Id.* at p. 7:17, emphasis original; Lab. Code, § 4663(c).) Applicant also observes that section 3202 requires liberal construction in our interpretation of the applicable statutory scheme. (*Id.* at p. 8:2.)

Defendant’s Petition contends, however, that “where the Legislature’s intent in enacting a particular statute is clear, section 3202’s general rule of liberal construction will not compel a contrary result.” (*Brodie, supra*, 40 Cal.4th at p. 1323.) Defendant asserts that the distinction between apportionment to causation under section 4663, and apportionment to a prior award under section 4664 reflects the Legislative intent to narrow employer liability. Defendant cautions that if employers may not deduct prior awards of disability pursuant to section 4664(b), injured workers subject to the anti-attribution provisions of section 4663(e) could “file successive claims for the same presumptive body part and be awarded a new unapportioned full-value award over and over again ... [t]here would be no limit.” (Petition, at p. 10:19.)

We acknowledge that there are relevant factors both supporting and detracting from the argument that the Legislature intended that section 4663(e) obviate section 4664(b) apportionment to prior awards of disability. As we observed in *Bates*, “where two statutes deal with the same subject matter, the more recent enactment prevails as the latest expression of legislative will.” (*Bates, supra*, at p. 656, citing *Sears v. Baccaglio* (1998) 60 Cal.App.4th 1136, 1161-1162, 70 Cal. Rptr. 2d 769.) As relevant herein, section 4664 was enacted by Senate Bill 899 (SB 899), which became effective on April 19, 2004. (Stats. 2004, ch. 34, § 35.) The language of section 4663(e), however, was added later by Assembly Bill 1368 (AB 1368), effective January 1, 2007. (Stats. 2006, ch. 836, § 1.) Thus, insofar as sections 4663 and 4664 both deal with the same subject matter of apportionment, the later statutory pronouncement of section 4663(e) better reflects underlying legislative intent.

While both sections 4663 and 4664 ostensibly address issues of apportionment, however, our analysis in *Shadoan* distinguishes between the apportionment to causation of a disability required under section 4663(a) and the longstanding principle of apportionment to prior awards of disability embodied in former section 4750 and now in section 4664(b). We noted that it has been

the law in California for more than 100 years that an employer is only responsible for industrial disability arising out of and occurring during their employment and not for preexisting disability. (*Shadoan, supra*, 91 Cal.Comp.Cases at 356.) Sections 4663 and 4664 were enacted to reach individual legislative goals, and each statute has its own requirements and burden of proof to be carried by the employer in establishing entitlement to such apportionment. Our decision in *Shadoan* thus reasoned that section 4663(e) and 4664(b) are not fundamentally concerned with the same subject matter.

We have reached a similar conclusion as it relates to the interaction between section 4663(e) and the lifetime disability limits described in section 4664(c). (*Hunt v. California Highway Patrol* (2024) 89 Cal.Comp.Cases 371 [2024 Cal. Wrk. Comp. P.D. LEXIS 27] [notwithstanding applicant's entitlement to multiple anti-attribution conditions, lifetime limits of section 4664(c) apply]; *Russell v. County of Los Angeles* (June 9, 2021, ADJ12319674) [2021 Cal. Wrk. Comp. P.D. LEXIS 152] (writ den.) [section 3212.1 presumption does not preclude application of prior award of 34 percent against lifetime regional maximum under section 4664(c)(1)(G)]; *Ross v. California Highway Patrol* (2020) 86 Cal.Comp.Cases 99) [2020 Cal. Wrk. Comp. P.D. LEXIS 331] [section 3212.5 heart presumption does not preclude application of prior awards totaling 59 percent against lifetime regional maximum under section 4664(c)(1)(G)]; *Varga v. City of Los Angeles* (July 10, 2019, ADJ11278324) [2019 Cal. Wrk. Comp. P.D. LEXIS 253] [section 3212.1 cancer presumption does not obviate the application of 4664(c) in principle, but lifetime cap not applied due to failure of quantum of proof]; *McGowan v. City of Los Angeles* (January 7, 2015, ADJ7912683) [2015 Cal. Wrk. Comp. P.D. LEXIS 24] [section 3212.1 presumption does not preclude application of prior awards totaling 87 percent against lifetime regional maximum under section 4664(c)(1)(G)].) While both sections 4663 and 4664 ostensibly deal with issues of apportionment, the legislative goals underlying sections 4663(e) and 4664(c) and their respective threshold requirements and burdens of proof militate against divining legislative intent based on the later enacted statute because the statutes do not fundamentally address the same subject matter.

We also observe that when the Legislature amended section 4663(e) in 2007, it specified that the anti-attribution requirements of qualifying conditions would extend only to the apportionment otherwise required under subdivisions (a), (b), and (c) of section 4663. (Lab. Code, § 4663(e).) It is a well-established rule of statutory construction that where exceptions to a general rule are specified by statute, other exceptions are not to be implied or presumed in the absence of

a clear legislative intent to the contrary. (*People v. Guillen* (2013) 212 Cal.App.4th 992 [51 Cal.Rptr.3d 514]; *People v. Palacios* (2007) 41 Cal.4th 720, 732 [62 Cal.Rptr.3d 145]; *Collins v. Superior Court* (2001) 89 Cal.App.4th 1244 [66 Cal.Comp.Cases 706].) Had the Legislature in 2007 intended the apportionment provisions of section 4663(e) to preclude apportionment under section 4664(b), it would have included section 4664(b) among the specified exemptions. The lack of clear statutory intent in this instance militates against extending the apportionment protections of section 4663(e) beyond the specified subdivisions. (See also *People v. Henson* (2002) 13 Cal.5th 574, 598 [296 Cal.Rptr.3d 331] [canon of statutory interpretation violated where one statute silently modifies another].)

We acknowledge the WCA's observation that the primary issue presented in *Shadoan* involved the calculation of apportionment under 4664(b) and the Supreme Court's decision in *Brodie*. (Report, at p. 4.) However, the panel in *Shadoan* necessarily analyzed whether section 4664(b) was even applicable given applicant's entitlement to the anti-attribution provisions of section 4663(c). It was only after concluding that section 4664(b) applied notwithstanding the operation of section 4663(c) that the panel could ultimately proceed to determine the correct method by which to calculate the apportionment otherwise afforded under section 4664(b). We therefore find the analysis in *Shadoan* persuasive and apply its reasoning herein.

Accordingly, and having considered the entire evidentiary record as well as the applicable caselaw including prior Appeals Board panel decisions and the legislative history and intent relevant to both sections 4663(e) and 4664(b), we are persuaded that the anti-attribution provisions of section 4663(e) do not otherwise preclude the apportionment to prior awards available under section 4664(b). Based on the foregoing considerations, and based on our analysis in *Shadoan*, *supra*, whose reasoning we find persuasive and applicable herein, we will grant defendant's Petition insofar as it challenges both of the unapportioned awards at bar.

We note, however, that because the WCA relied on the reasoning in *Bates*, *supra*, 84 Cal.Comp.Cases 648 and *Santiago*, *supra*, 87 Cal.Comp.Cases 1011 to determine that apportionment to applicant's prior awards was generally unavailable, the WCA did not need to reach the issue of whether defendant met the burden of proving overlap necessary to support such apportionment. (*Kopping*, *supra*, 142 Cal.App.4th 1099; *Sanchez v. County of Los Angeles* (2005) 70 Cal.Comp.Cases 1440, 1444-1445 [Appeals Board en banc]; *Shadoan*, *supra*, 91 Cal.Comp.Cases at 357.) The record must therefore be developed to determine whether defendant

has met its affirmative burden of proof with respect to apportionment. (Lab. Code, § 5701; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The required analysis will include whether defendant has met its affirmative burden of proving overlap between applicant's current and prior injuries under section 4664(b).

Accordingly, we grant the Petition for Reconsideration and affirm the two F&As, except that we defer the issues of permanent disability and attorney's fees (Findings of Fact 4; Award a) and return both matters to the WCA for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decisions in ADJ22495402 and ADJ22495839, both issued on March 25, 2026, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision in ADJ22495402 on March 25, 2026 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

Case No. ADJ22495402 (ADR Case No. LAPPL-ADR-11740)

4. The issue of permanent disability is deferred.

7. The issue of attorney's fees is deferred.

AWARD

- a. The issue of an award of permanent disability and attorney's fees is deferred.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision in ADJ22495839 on March 25, 2026 is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

Case No. ADJ22495839 (ADR Case No. LAPPL-ADR-07786)

4. The issue of permanent disability is deferred.

7. The issue of attorney's fees is deferred.

AWARD

- a. The issue of an award of permanent disability and attorney's fees is deferred.

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

June 25, 2026

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

**JEFFREY HILLINGS
LEWIS, MARENSTEIN, WICKE, SHERWIN & LEE
CITY ATTORNEY- LOS ANGELES
LINDA DAVIDSON-GUERRA, ARBITRATOR
MARIOTTO RESOLUTIONS, INC.**

SAR/abs

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