WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

LINDA PRUITT, *Applicant*

vs.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION; legally uninsured, administered by State Compensation Insurance Fund, *Defendants*

Adjudication Numbers: ADJ8450336 (MF), ADJ8720647
Salinas District Office

OPINION AND DECISION AFTER RECONSIDERATION

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

Applicant seeks reconsideration of the Joint Findings & Award (F&A) issued on June 14, 2022, by the workers' compensation administrative law judge (WCJ). The WCJ found in pertinent part that, in ADJ8450336, applicant sustained an industrial injury on July 20, 2010, while employed as a registered nurse, to her low back, both shoulders, both wrists, gastrointestinal system in the form of gastroesophageal reflux disease (GERD), and a sleep disorder, which resulted in 40% permanent disability, commencing February 25, 2014. The WCJ further found in pertinent part that, in ADJ8720647, applicant sustained an industrial injury during the period from March 5, 2007 to January 11, 2013, to her neck, low back, left wrist, left hip, left ankle, and gastrointestinal system in the form of GERD, which resulted in 26% permanent disability, commencing November 12, 2014. In both cases, the WCJ found that applicant did not sustain an industrial injury to her heart or cardiovascular system in the form of hypertensive cardiac disease, and that, while the presumption of compensability pursuant to Labor Code section 3212.2[2] applied, defendant successfully rebutted it.

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[1] Commissioner Sweeney and Deputy Commissioner Garcia were on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board and Deputy Commissioner Garcia is not available to participate. New panel members have been appointed in their places.

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

Applicant contends that the WCJ erred in finding that defendant rebutted the presumption of compensability pursuant to section 3212.2 and should have found instead that applicant sustained an industrial injury to her heart with March 9, 2018 as the date of injury pursuant to section 5412. Applicant further contends that, in both cases, the WCJ should have found industrial injury in the form of weight gain and, in ADJ8720647, the WCJ should have found an industrial injury in the form of a sleep disorder. Applicant also contends that the WCJ failed to follow the opinions of Panel Qualified Medical Evaluator (PQME) Massoud Mahmoudi, D.O., and Agreed Medical Evaluator (AME) Mark Anderson, M.D., who both opined that it was appropriate to add the physical impairments rather than combining them using the Combined Values Chart (CVC) in the Permanent Disability Rating Schedule (PDRS). Finally, applicant contends that payment of her permanent disability indemnity should commence on July 31, 2010 in ADJ8450336 and on February 25, 2014 in ADJ8720647.

We have received an Answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we grant reconsideration to change the commencement dates for payment of permanent disability in both cases.

We have considered the allegations in applicant's Petition, defendant's Answer, and the WCJ's Report regarding these matters. Based on our review of the record and for the reasons discussed below, as our Decision After Reconsideration, we will rescind the F&A and substitute a new F&A finding applicant sustained industrial injury to the heart and cardiovascular system in the form of hypertensive cardiac disease, in ADJ8450336 and ADJ8720647[3], and, for ADJ8720647, in the form of a sleep disorder and award 43% permanent disability in ADJ8450336, commencing July 31, 2010, and 100% permanent disability in ADJ8720647, commencing February 25, 2014. We otherwise make no substantive changes to the F&A.

BACKGROUND

In ADJ8450336, applicant, while employed as a registered nurse on July 20, 2010, sustained industrial injury to her low back, both shoulders, both wrists, gastrointestinal system in

[3] We note that the WCJ omitted "sleep disorder" from the minutes of hearing in ADJ8720647 and, in the F&A, concluded that applicant stipulated that she limited her claim for an industrial sleep disorder to ADJ8450336. However, the record contains no evidentiary support for such a stipulation. Accordingly, we find that applicant sustained an industrial injury in the form of a sleep disorder in ADJ8720647, consistent with the opinions of PQME Dr. Mahmoudi, and award permanent disability and entitlement to further medical treatment in connection therewith.

the form of GERD, and a sleep disorder.

In ADJ8720647, applicant, during the period from March 5, 2007 to January 11, 2013, sustained industrial injury to her neck, low back, left wrist, left hip, left ankle, gastrointestinal system in the form of GERD, and a sleep disorder.

In both cases, applicant claimed to have sustained an industrial injury to her heart and cardiovascular system in the form of hypertensive cardiac disease and in the form of weight gain.

Applicant worked for defendant during the period March 5, 2007 to January 11, 2013. (Minutes of Hearing/Summary of Evidence (MOH/SOE), 01/27/2022, 8:16-18, 12:5.) Her job duties involved picking up medical requests from the inmates' housing daily and bringing them to the call line (MOH, 01/27/2022, 8:18) as well as providing emergency room care for injured or ill inmates and administering vaccines. (MOH/SOE, 01/27/2022, 8:24-15 to 9:1-2.) As an emergency room nurse, she provided triage care, involving reviewing written medical request slips to determine the nature of the requested treatment. When the request involved the emergency room, she would evaluate the inmate's physical condition and determine what procedures, if any, were required. In the emergency room, she treated a range of conditions, including cuts, wounds, abrasions, and fractures. Her responsibilities also included performing dressing changes, cleaning ears, and examining eyes for foreign objects. (MOH/SOE, 01/27/2022, 9:11-15.)

She treated infected wounds and administered medications or vaccines by injection when ordered by a physician. In cases of significant infection, a doctor might order an antibiotic injection, such as tetracycline, or a tetanus vaccine, which she administered only pursuant to a physician's order. On average, such injections occurred four to five times per month. Injections were also sometimes required for cuts, bruises, or abrasions. She provided care to inmates on a one-on-one basis and then escorted them, unaccompanied, back to their housing units or holding cells. This occurred daily. (MOH/SOE, 01/27/2022, 9:16-20.)

She testified that her work was stressful and that the stress persisted throughout her entire career. The stress arose from the constant need to remain aware of her surroundings, including who was nearby, who might be following her, and who appeared dangerous or ill. She also encountered riots in which inmates fought one another, requiring her to treat injuries such as

broken noses, blows from punches, bleeding, and inmates found on the floor. (MOH/SOE, 01/27/2022, 10:14-18.)

If an inmate became pushy in seeking medications more frequently, she would ask the inmate to leave. If the inmate refused to comply or became aggressive or physical, she would activate an alarm, prompting correctional officers to respond within seconds. She prepared reports when she witnessed misconduct, including inappropriate or disruptive behavior. On one occasion, an inmate reacted angrily when the medical staff did not increase his morphine dosage. She reported the incident to the officer in charge, who returned the inmate to custody. Such incidents did not occur frequently. (MOH/SOE, 01/27/2022, 11:7-11.)

She also restrained inmates on a gurney whenever medical conditions, such as seizures or severe symptoms, made it necessary. (MOH/SOE, 01/27/2022, 11:12-13.)

While she received her hypertension diagnosis prior to defendant hiring her, she began taking medication for the condition after beginning employment. (MOH/SOE, 01/27/2022, 11:19-21.) No physician informed her that her hypertension related to her employment or provided her any work restrictions. (MOH/SOE, 01/27/2022, 11:22-25.)

With respect to applicant's internal complaints, in his December 12, 2014 report, PQME Dr. Mahmoudi evaluated applicant and described the July 20, 2010 incident in which, after completing her shift and leaving work, she stepped down one step, her left foot caught on the ground, and she bent forward and fell onto the left side of her body. (App. Ex. A-18 at p. 2.) In addition to her orthopedic complaints, she also had diagnoses of hypertension and insomnia. (*Id.* at p. 23.) She began taking her blood pressure medication in 2002, and after she began her employment with defendant, she changed to a different medication; she had a preexisting history of hypertension. (*Id.* at p. 24.) With respect to her insomnia, she weighed 245½ pounds at the evaluation, and there was no evidence that she gained weight following her July 20, 2010 injury. (*Id.* at pp. 24, 25.) She reached maximum medical improvement (MMI) for her insomnia as of the evaluation on November 12, 2014. (*Ibid*.) Her Epworth Sleepiness Scale score, dated November 12, 2014, was 13. (*Id.* at p. 27.)

In his October 17, 2016 report, PQME Dr. Mahmoudi, after reevaluating applicant, diagnosed gastrointestinal symptoms industrially caused by her use of ibuprofen contained in Vicoprofen. (App. Ex. A-16 at pp. 10-12.) She reached MMI for her GERD on September 21,

2016. (*Id.* at p. 13.) Her Epworth Sleepiness Scale score, dated September 21, 2016, was 14. (*Id.* at p. 15.)

In his December 7, 2017 report, PQME Dr. Mahmoudi, after referring applicant for polysomnography, diagnosed her with obstructive sleep apnea syndrome resulting from nocturnal hypoxemia and periodic limb movements. (App. Ex. A-13 at p. 1.) PQME Dr. Mahmoudi recommended that applicant undergo a trial of positive airway pressure therapy and participate in a weight reduction program. (*Id.* at p. 2.)

In his supplemental report dated March 9, 2018, with respect to applicant's hypertension claim, PQME Dr. Mahmoudi opined that, with respect to her hypertension, while she may meet the criteria for "heart trouble" pursuant to section 3212.2 due to her left ventricular hypertrophy (LVH), it related to her prolonged preexisting hypertension. (App. Ex. A-12 at p. 3.) In addition, given that her medical records did not show either consistently high blood pressure reading or an increase in the number or dosage of her medications, her employment neither caused nor worsened her hypertension. (*Ibid.*) However, because her LVH developed gradually, it was reasonably probable that it occurred during the course of her employment. (*Ibid.*) PQME Dr. Mahmoudi found applicant reached MMI for her LVH and insomnia on November 12, 2014, and, for her GERD on September 21, 2016. (*Ibid.*)

With respect to permanent disability, PQME Dr. Mahmoudi found 40% whole person impairment (WPI) to the heart based on Class 3 under Table 4-2 on page 66 of the AMA Guides to the Evaluation of Permanent Impairment (AMA Guides), noting that she was asymptomatic on medications, had LVH, and her blood pressure was normal to pre-hypertensive. (*Id.* at p. 4.) With respect to her insomnia, she has 15% WPI based on Class 2 under Table 13-4 on page 317 of the AMA Guides based on her high Epworth score (13 and 14) and diagnosis of obstructive sleep apnea. (*Ibid.*) With respect to her GERD, she has 3% WPI based on the effects of medication on page 600 of the AMA Guides. (*Ibid.*) With respect to aggregation of the WPIs, PQME Dr. Mahmoudi opined adding the three WPIs rather than utilizing the CVC since the internal impairment are from different organ systems. (*Ibid.*) He apportioned, for the heart, 100% to the March 5, 2007 to January 11, 2013 date of injury. (*Id.* at p. 5.) For the insomnia, he apportioned 10% to the July 20, 2010, date of injury and 90% to the March 5, 2007, to January 11, 2013, date of injury. (*Ibid.*)

In his June 8, 2018 supplemental report, PQME Dr. Mahmoudi found applicant's hypertension to be nonindustrial, stating that it preexisted her employment with defendant and that, although her blood pressure measurements fluctuated, they did not demonstrate any obvious work-induced increases based on her medical history, medication use, and overall pattern of blood pressure changes. (App. Ex. A-11 at pp. 7-8.) For applicant's GERD, PQME Dr. Mahmoudi apportioned 30% to the July 20, 2010 date of injury and 70% to the March 5, 2007 to January 11, 2013 date of injury. (*Id.* at p. 9.) With respect to aggregation of the WPIs, he stated that the impairment for the heart, insomnia and GERD did not duplicate or overlap and are different organ systems. (*Ibid.*)

In his deposition of December 3, 2018, PQME Dr. Mahmoudi testified that he attributed applicant's weight gain to inactivity due to her injury and stress. (App. Ex. A-10 at p. 29:7-19.) With respect to applicant's hypertension, PQME Dr. Mahmoudi explained that in determining if applicant's employment affected her blood pressure, he looked for trends in the medical records, such as increases in blood pressure readings, higher doses of medication, or additional medications. He also considered factors like stress at work or changes in job duties. Temporary spikes in blood pressure from daily stress were not enough. Instead, he looked for consistent patterns over time that would indicate permanent impairment. In this case, he did not see any such patterns. (*Id.* at pp. 40:9-25 to 41:1-21.) With respect to applicant's LVH, PQME Dr. Mahmoudi opined that applicant's LVH developed during her employment with defendant based on the June 22, 2017 echocardiogram report. (*Id.* at p. 47:11-24.) With respect to adding the WPIs, PQME Dr. Mahmoudi explained that applicant's impairments involving her heart, sleep, and gastrointestinal function affected separate body systems without overlap. While the CVC applies to multiple injuries within the same system, it did not apply here. Instead, those conditions compounded to worsen her overall health, daily functioning, and well-being. For example, her insomnia causes daytime sleepiness that impairs concentration and activities of daily living, and, combined with her heart and gastrointestinal conditions as well as her musculoskeletal injuries, the impairments have a cumulative, additive effect on her permanent disability. (*Id.* at pp. 54:15-25 to 57:1-22.) PQME Dr. Mahmoudi did not find any impairment for applicant's weight gain. (*Id.* at p. 59:2-12.)

In his supplemental report dated June 19, 2020, PQME Dr. Mahmoudi further explained that applicant's internal condition affected different body systems with distinct anatomy and

function, and that there is no overlap between her internal conditions or between internal and orthopedic injuries. When combined, those conditions have a synergistic effect, meaning they worsen her ability to perform daily activities more than each condition alone. For example, gastrointestinal symptoms affect eating and drinking, insomnia affects concentration and driving, and LVH causes fatigue and shortness of breath. This cumulative impact also applies when adding internal and orthopedic impairments. Finally, using simple addition to combine these impairments is more accurate than the CVC, which reduces the total rating and underrepresents her overall disability. (App. Ex. A-8 at p. 4.)

In his deposition dated October 26, 2020, PQME Dr. Mahmoudi, opined that applicant's 30-pound weight gain contributed to her obstructive sleep apnea. (App. Ex. A-7 at p. 23:4-14.)

In his supplemental report dated January 8, 2021, PQME Dr. Mahmoudi, explained that LVH is an enlargement of the heart muscle fibers in the left ventricle, typically caused by long-term pressure or volume overload. Known causes include systemic hypertension, aortic stenosis, aortic regurgitation, mitral regurgitation, cardiomyopathies, ventricular septal defect, and infiltrative cardiac diseases. The echocardiograms showed LVH with mild mitral regurgitation in December 2016, though mitral regurgitation was not present on the June 2017 study. Based on the echocardiographic findings and medical records, applicant's LVH was most clearly attributable to her chronic systemic hypertension. (App. Ex. A-6 at p. 2.)

Finally, in his November 1, 2021 deposition, PQME Dr. Mahmoudi explained that applicant's LVH resulted from end-organ damage caused by her nonindustrial hypertension. (App. Ex. A-4 at p. 69.)

With respect to applicant's orthopedic complaints, in his May 26, 2016, report, AME Dr. Anderson evaluated applicant and diagnosed cervical sprain, bilateral rotator cuff injuries with significant left shoulder impingement, bilateral carpal tunnel syndrome, lumbar disc impairment with left L5 radiculopathy, left hip greater trochanteric bursitis, and bilateral ankle complaints. (App. Ex. A-23 at p. 9.) He determined that applicant reached MMI on February 25, 2014. (*Ibid.*)

In his October 22, 2017 supplemental report, AME Dr. Anderson recommended adding the WPIs for the bilateral shoulder and carpal tunnel injuries, explaining that applicant's injuries at both the shoulder and wrist significantly impair normal function and prevent her from effectively performing maneuvers or activities. (App. Ex. A-22 at p. 5.)

In his May 19, 2019 report, AME Dr. Anderson, after reevaluating applicant, opined that she has 5% WPI to the cervical spine based on DRE Category II under Table 15-5 at page 392 of the AMA Guides, citing complaints of pain, loss of motion, and nonverifiable radiculopathy. (App. Ex. A-20 at p. 9.) He concluded that 100% of the permanent disability related to the March 5, 2007 to January 11, 2013 date of injury. (*Ibid.*) For the shoulders, he noted that a strict application of the AMA Guides, which requires subtracting the left shoulder's range of motion from the right, yields a 3% Upper Extremity Impairment (UEI), equating to 2% WPI. However, he determined that rating the left shoulder's loss of motion directly under *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal.Comp.Cases 1084 (Appeals Board en banc) provided the most accurate representation of applicant's impairment when combined with her positive MRI study. Under this direct method, AME Dr. Anderson calculated 150° of flexion (2% UEI under Figure 16-40, page 476), 140° of abduction (2% UEI under Figure 16-43, page 477), and 40° of internal rotation (3% UEI under Figure 16-46, page 479). This totals 7% UEI, which converts to 4% WPI. Finally, he apportioned 100% of the permanent disability for both shoulder injuries related to the July 20, 2010 specific date of injury. (*Ibid.*) With respect to the bilateral carpal tunnel syndrome, applicant has 3% WPI based on 5% UEI for the right hand calculated on page 495 of the AMA Guides and a 25% grip loss, equating to 10% UEI or 6% WPI under Table 16-34 at page 509 of the AMA Guides. (*Id.* at p. 11.) 100% of the right wrist permanent disability related to the July 20, 2010, date of injury and 50% of the left wrist permanent disability related equally between the July 20, 2010, and March 5, 2007 to January 11, 2013 date of injury. (*Ibid.*) For the lumbar spine, applicant has 13% WPI based on DRE Category III under Table 15-3 on page 384 of the AMA Guides based on left L5 radiculopathy with a 1% pain add-on. (*Id.* at p. 12.) 93% of the permanent disability related to the July 20, 2010 date of injury with 7% of the permanent disability related to the March 5, 2007 to January 11, 2013 date of injury. (*Ibid.*) With respect to the left hip, applicant has 3% WPI under Table 17-33 on page 546 of the AMA Guides based on left greater trochanteric tenderness and the presence of a limp. (*Ibid.*) 100% of the permanent disability related to the March 5, 2007 to January 11, 2013 date of injury. (*Ibid.*) For the left ankle, applicant had no WPI. (*Id.* at p. 13.)

Based on defendant's industrial disability leave (IDL) history report dated September 18, 2017 (App. Ex. A-3) for the July 20, 2010 date of injury, defendant made IDL payments to applicant from July 21, 2010 to July 30, 2010, March 16, 2011 and September 21, 2011.

The WCJ issued the F&A dated June 14, 2022 finding that defendant rebutted the presumption of compensability pursuant to section 3212.2 and found no industrial injury to the heart or cardiovascular system in the form of hypertensive cardiac disease. In calculating permanent disability, the WCJ added only the impairments for the left and right carpal tunnel syndrome but used CVC for all the remaining body parts. The WCJ made no findings on applicant's claim of injury in the form of weight gain or her claim of a sleep disorder in ADJ8720647.

It is from this F&A that applicant seeks reconsideration.

DISCUSSION

I.

Section 3212.2 establishes that heart trouble developing or manifesting during a correctional officer's employment presumptively arises out of and in the course of employment. (Lab. Code, § 3212(c).) The statute extends this rebuttable presumption after termination for three calendar months per full year of qualifying service, up to a maximum of 60 months from the last date worked. (*Ibid.*) The application of the presumption is not limited to those whose primary or principal duties were custodial, but rather applies to employees who had any duties incidentally custodial. (*Cal. Dep't of Corr. & Rehab. v. Workers' Comp. Appeals Bd.* (*Alviso*) (2016) 81 Cal.Comp.Cases 608, 609 (writ denied); *Reeves v. Workers' Comp. Appeals Bd.* (2000) 80 Cal.App.4th 22, 28 [65 Cal.Comp.Cases 359].)

In defining "heart trouble," in *Muznik v. Workers' Comp. Appeals Bd.* (1975) 51 Cal.App.3d 622 [40 Cal.Comp.Cases 578], the Court wrote as follows:

> [T]he phrase "heart trouble" assumes a rather expansive meaning. This result is further evidenced by the Legislature's decision not to utilize a medical term or to list or require any specific malady for the presumption of section 3212 to become operative, but rather, to employ a lay term which is not necessarily related to physical deterioration or "disease" at all. As defined in Webster's Dictionary, the term "trouble" when used as a noun covers a wide range of meanings, including distress, affliction, anxiety, annoyance, pain, labor, or exertion. The intent of the authors of the amendment adding the phrase "heart trouble" to section 3212 was no doubt to have the meaning of that phrase encompass any affliction to, or additional exertion of, the heart caused directly by that organ or the system to which it belongs, or to it through interaction with other afflicted areas of the body, which, though not

> envisioned in 1939, might be produced by the stress and strain of the particular jobs covered by the section.

(*Id.* at p. 635.)

Manifestation occurs when an applicant first has symptoms, even in the absence of a diagnosis. (*City of Los Angeles County v. Workers' Comp. Appeals Bd.* (*Darling*) (2000) 70 Cal.Comp.Cases 1147 (writ denied); *County of El Dorado v. Workers' Comp. Appeals Bd.* (*Klatt*) (2000) 65 Cal.Comp.Cases 1437, 1438 (writ denied).)

A defendant has the burden of proof to present evidence to rebut the presumption that a correctional officer's heart trouble arose out of and in the course of employment. (*Williams v. Dep't. of Corr.* [2009 Cal. Wrk. Comp. P.D. LEXIS 442, *3].)[4] This requires showing that a contemporaneous, nonindustrial event solely caused the injury or that the employee's job played no part in the development and manifestation of the condition. (*City and County of San Francisco v. Workers' Comp. Appeals Bd.* (*Wiebe*) (1978) 22 Cal.3d 103, 111 [43 Cal.Comp.Cases 984]; *Davis v. Workers' Comp. Appeals Bd.* (2005) 70 Cal.Comp.Cases 1593, 1596 (writ denied).) While the anti-attribution clause in section 3212 limits rebuttal evidence to contemporaneous physical or emotional exertion and excludes evidence of preexisting heart disease, no such limitation applies to correctional officers covered by section 3212.2. (*Turner v. Workmen's Comp. Appeals Bd.* (1968) 258 Cal.App.2d 442, 449-450 [33 Cal.Comp.Cases 61]; *Wiggins v. Kern Valley State Prison* [2018 Cal. Wrk. Comp. P.D. LEXIS 469, *13].)

Here, the presumption of compensability applies because applicant performed incidental custodial duties and developed LVH, a recognized form of heart trouble, within the statutory time limits of section 3212.2. Defendant bears the burden to rebut this presumption by demonstrating that a contemporaneous, nonindustrial event solely caused the injury. PQME Dr. Mahmoudi confirmed that applicant's LVH developed progressively and overlapped with her employment periods. Defendant failed to produce sufficient evidence establishing a contemporaneous, nonindustrial event that solely caused the heart trouble. Consequently, we find that defendant did

[4] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

not rebut the section 3212.2 presumption of compensability for either the July 20, 2010 specific injury or the cumulative trauma period from March 5, 2007, to January 11, 2013.

Because we find industrial causation, we must determine the date of injury pursuant to section 5412. The record establishes that no physician informed applicant that her hypertension related to her employment or provided her any work restrictions. Applicant first acquired knowledge of the industrial nature of her cardiac condition upon the issuance of PQME Dr. Mahmoudi's March 9, 2018 supplemental report. In that report, PQME Dr. Mahmoudi identified the LVH and concluded it reasonably occurred during the course of her employment. Therefore, we concur with applicant's contention and find the date of injury pursuant to section 5412 is March 9, 2018.

II.

Although applicant requests that we find weight gain as a separately found industrially injured body part, it does not constitute a body part or disease process. Weight gain represents a secondary condition arising from other underlying medical causes rather than an independently ratable industrial injury. It reflects a change in body mass, not an organ, body part, or discrete pathological process, and is typically secondary to factors such as reduced activity from an orthopedic injury, medication side effects (e.g., steroids, antidepressants), endocrine disorders (e.g., thyroid disease, insulin resistance), or lifestyle changes related to injury or stress. (See e.g., *Rios v. Hummer* [2022 Cal. Wrk. Comp. P.D. LEXIS 242, *11] [Applicant's post-injury weight gain contributed to pulmonary and cardiac symptoms, rendering those conditions compensable consequences of accepted orthopedic injuries reducing applicant's ability to engage in physical activity]; *Collins v. Atlantic Falcons* [2015 Cal. Wrk. Comp. P.D. LEXIS 215, *77] [Hypertension attributable to exogenous obesity caused by weight gain secondary to reduced activity and limited exercise capacity resulting from industrial injuries and chronic pain]; *Vaughn v. Seahawks* [2014 Cal. Wrk. Comp. P.D. LEXIS 40, *7] ["[A]pplicant's hypertension and hypertensive heart disease caused in part by weight gain secondary to his orthopedic injuries."].) Pursuant to the 2005 Schedule and the AMA Guides, impairments used as the basis for permanent disability ratings must be attributable to a specific condition or anatomical region. (*Morales v. Ao-Cal Poly Corp.* [2022 Cal. Wrk. Comp. P.D. LEXIS 9, *5].) As weight gain is neither a specific condition nor anatomical region, we cannot render an independent finding of injury for it.

III.

Permanent disability refers to the lasting, irreversible effects of an injury. It includes conditions that impair earning capacity, limit the normal use of a body part, or create a competitive disadvantage in the labor market. Permanent disability payments compensate workers for both physical loss and the reduction, partial or total, of their future earning potential. (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1320 [72 Cal.Comp.Cases 565].)

Section 4650 governs when an injured employee becomes entitled to permanent disability indemnity. (*Brower v. David Jones Construction* (2014) 79 Cal.Comp.Cases 550, 560–562 (Appeals Board en banc) (*Brower*).) When an injury results in permanent disability, an employer must begin permanent disability payments within 14 days after the last payment of temporary disability. (Lab. Code, § 4650(b)(1).) If the extent of permanent disability remains undetermined, an employer must nevertheless commence timely payments and continue them until it has paid its reasonable estimate of permanent disability indemnity, and, once determined, the full amount due. (*Ibid*.) If an injured employee later proves permanent total disability, the employer must retroactively adjust any permanent partial disability payments to the correct rate. (*Brower*, *supra*, 79 Cal.Comp.Cases at pp. 561-562; *Barnard v. Schellinger Constr. Co.* [2016 Cal. Wrk. Comp. P.D. LEXIS 629, *4-5].)

In *Department of Corrections and Rehabilitation v. Workers' Comp. Appeals Bd*. (*Fitzpatrick*) (2018) 27 Cal.App.5th 607 [83 Cal.Comp.Cases 1680], the Court found that impairments "are generally combined" using the CVC though the "scheduled rating [under the CVC] is not absolute" and other methodologies may be used to calculate permanent disability. (*Id.* at pp. 613-614.)

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

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

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

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

Our en banc decision in *Vigil* issued on June 10, 2024, after our Opinion and Order Granting Petition for Reconsideration dated August 10, 2022, and is mandatory authority on all WCJs and WCAB panels. (Cal. Code Regs., tit. 8, § 10325(a); *Garcia*, *supra*, 126 Cal.App.4th at p. 316, fn. 5; *Gee*, *supra*, 96 Cal.App.4th at p. 1424, fn. 6; see also Govt. Code, § 11425.60(b).)

The law requires the Appeals Board to base its decisions on 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].) To constitute substantial evidence, a medical opinion must state its conclusions in terms of reasonable probability, avoid speculation, rely on pertinent facts and an adequate examination and history, and explain the reasoning supporting its conclusions. (*Escobedo, supra* 70 Cal.Comp.Cases at p. 621.) Medical reports do not constitute substantial evidence when they contain known errors or rely on facts that are no longer germane, inadequate medical histories or examinations, or incorrect legal theories. Likewise, a medical opinion cannot support the Appeals Board's findings if it rests on surmise, speculation, conjecture, or guesswork. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Finally, when the parties have selected an AME whose opinion constitutes substantial evidence, the WCJ must follow the physician's findings. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].)

Here, with respect to applicant's orthopedic claims, we adopt AME Dr. Anderson's opinion adding the WPIs for the shoulders and bilateral carpal tunnel syndrome, as their distinct, non-overlapping impact on applicant's ADLs substantially impair her normal function and restrict her ability to perform maneuvers or activities.

In addition, based on PQME Dr. Mahmoudi's December 3, 2018 deposition and June 19, 2020 supplemental report, he opined that applicant's impairments affect distinct, non-overlapping body systems, including eating and drinking, concentration and driving, fatigue, and shortness of breath. Accordingly, his credible opinion supports adding the separate internal WPIs with the already combined orthopedic WPIs.

Finally, we note that the WCJ omitted sleep disorder in ADJ8720647, even though PQME Dr. Mahmoudi attributed 90% of applicant's permanent disability to the March 5, 2007 to January 11, 2013 date of injury.

Therefore, we rate applicant's permanent disabilities as follows:

ADJ8450336 (July 20, 2010)

GERD (UPPER DIGESTIVE TRACT)
30% (06.01.00.00 – 3 – [6] 4 – 311F – 4 – 5) 2
INSOMNIA (AROUSAL DISORDERS)
10% (13.03.00.00 – 15 – [6] 20 – 311H – 25 – 31) 3
LUMBAR SPINE DRE
93% (15.03.01.00 – 14 – [5] 18 – 311G – 20 – 25) 23
LEFT SHOULDER ROM
100% (16.02.02.00 – 4 – [7] 5 – 311G – 6 – 8) 8
LEFT CARPAL TUNNEL SYNDROME
50% (16.01.02.02 – 6 – [7] 5 – 311G – 8 – 10) 5
RIGHT CARPAL TUNNEL SYNDROME
100% (16.01.02.02 – 3 – [4] 4 – 311G – 5 – 6) 6
8 + 5 + 6 = 19
23 C 19 = 38
38 + 2 + 3 = 43% permanent disability
222.00 weeks at $230.00 per week equaling $51,060.00

ADJ8720647 (March 5, 2007 to January 11, 2013)

HYPERTENSIVE CARDIOVASCULAR DISEASE
100% (04.01.00.00 – 40 – [1.4] 56 – 311H – 62 – 71) 71
GERD (UPPER DIGESTIVE TRACT)
70% (06.01.00.00 – 3 – [1.4] 4 – 311F – 4 – 6) 4
INSOMNIA (AROUSAL DISORDERS)
90% (13.03.00.00 – 15 – [1.4] 20 – 311H – 26 – 33) 30

CERVICAL SPINE DRE
100% (15.01.01.00 – 5 – [1.4] 7 – 311G – 8 – 11) 11
LUMBAR SPINE DRE
7% (15.03.01.00 – 14 – [1.4] 20 – 311G – 22 – 29) 2
LEFT CARPAL TUNNEL SYNDROME
50% (16.01.02.02 – 6 – [1.4] 8 – 311G – 9 – 12) 6
LEFT HIP
100% (17.03.06.00 – 3 – [1.4] 4 – 311F – 4 – 6) 6
11 C 6 C 6 C 2 = 23
23 + 4 + 30 + 71 = 128 (100%) permanent disability

With respect to the July 20, 2010 date of injury (ADJ8450336), defendant made IDL payments to applicant from July 21, 2010 to July 30, 2010, on March 16, 2011 and September 21, 2011. Because IDL payments paused on July 30, 2010, the correct start date for permanent disability is July 31, 2010.

As to the March 5, 2007 to January 11, 2013 date of injury (ADJ8720647), AME Dr. Anderson determined that applicant reached MMI on February 25, 2014. As such, the correct start date for permanent disability is February 25, 2014.

Accordingly, as our Decision After Reconsideration, we rescind the F&A and substitute a new F&A finding applicant sustained industrial injury to the heart and cardiovascular system in the form of hypertensive cardiac disease in ADJ8450336 and ADJ8720647 and, for ADJ8720647, in the form of a sleep disorder and award 43% permanent disability in ADJ8450336, commencing July 31, 2010, and 100% permanent disability in ADJ8720647, commencing February 25, 2014. We otherwise make no substantive changes to the F&A.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings of Fact & Award dated June 14, 2022, is **RESCINDED** and the following is **SUBSTITUTED** therefore:

FINDINGS OF FACT

ADJ 8450336

1. Linda Pruitt, while employed on July 20, 2010 as a registered nurse, occupational group number 311, at Soledad, California, by the California Department of Corrections and Rehabilitation, sustained injury arising out of and occurring in the course of her employment to her low back, shoulders, both wrists, heart, cardiovascular system in the form of hypertensive cardiac disease, and in the forms of gastroesophageal reflux disease and a sleep

disorder, but not in the form of weight gain.

2. At the time of both injuries, the employer was legally uninsured, administered by State Compensation Insurance Fund.

3. At the time of both injuries, applicant's earnings were maximum, warranting maximum rates for both temporary disability and for permanent disability.

4. Applicant is entitled to a permanent disability award of 43%, payable at $230.00 per week for 222.00 weeks, beginning July 31, 2010 to present and continuing, equaling $51,060.00, less attorney fees.

5. The left and right carpal tunnel disabilities and shoulder disabilities are combined by simple addition, with the low back disability aggregated per the Combined Values Chart and the combination of the orthopedic injuries added to the gastroesophageal reflux disease and sleep disorder disabilities.

6. There is a reasonable basis to apportion permanent disability as follows:

    a. 70% of the gastroesophageal reflux disease to the March 5, 2007 to January 11, 2013 date of injury;
    b. 90% of the sleep disorder to the March 5, 2007 to January 11, 2013 date of injury;
    c. 7% of the low back to the March 5, 2007 to January 11, 2013 date of injury; and
    d. 50% of the left carpal tunnel to the March 5, 2007, to January 11, 2013, date of injury.
    e. 100% of the heart, cardiovascular system in the form of hypertensive cardiac disease to the March 5, 2007, to January 11, 2013, date of injury.

7. There is no reasonable basis to apportion permanent disability for the left shoulder and right carpal tunnel to nonindustrial factors.

8. Applicant is entitled to further medical treatment to cure or relieve the effects of the industrial injuries.

9. The presumption of compensability for heart trouble under Labor Code section 3212.2 applies to Applicant's duties.

10. Defendant did not rebut the presumption of compensability under Labor Code section 3212.2.

11. Applicant is entitled to receive the Supplemental Job Displacement Benefit.

12. The requirements of Labor Code section 3208.2 have been met.

13. A reasonable attorney's fee relating to applicant's permanent disability is found to be $7,659.00, which shall be commuted from the final weekly payments of applicant's permanent disability award to the extent necessary to pay as one lump sum.

AWARD

AWARD is made in favor of applicant, Linda Pruitt, against defendant, California Department of Corrections and Rehabilitation, legally uninsured, administered by State Compensation Insurance Fund, as follows:

1. Permanent disability in accordance with Finding of Fact 4 above.

2. Further medical treatment in accordance with Finding of Fact 8 above.

3. Attorney fees in accordance with Finding of Fact 13 above.

FINDINGS OF FACT

ADJ 8720647

1. Linda Pruitt, while employed during the period March 5, 2007 to January 11, 2013, as a registered nurse, occupational group number 311, at Soledad, California, by the California Department of Corrections and Rehabilitation, sustained injury arising out of and occurring within the course of employment to her neck, low back, left wrist, left hip, left ankle, her heart, cardiovascular system in the form of hypertensive cardiac disease, and in the forms of gastroesophageal reflux disease and sleep disorder, but not in the form of weight gain.

2. At the time of both injuries, the employer was legally uninsured, administered by State Compensation Insurance Fund.

3. At the time of both injuries, applicant's earnings were maximum, warranting maximum rates for both temporary disability and for permanent disability.

4. Applicant is entitled to a permanent disability award of 100%.

5. The orthopedic disabilities are aggregated by the Combined Values Chart and added to the heart, cardiovascular system in the form of hypertensive cardiac disease, gastroesophageal reflux disease and sleep disorder disabilities.

6. There is a reasonable basis to apportion permanent disability as follows:

    a. 30% of the gastroesophageal reflux disease to the July 20, 2010 date of injury;

b. 10% of the sleep disorder to the July 20, 2010 date of injury;
c. 93% of the low back to the July 20, 2010 date of injury; and
d. 50% of the left carpal tunnel to the July 20, 2010, date of injury.

7. There is no reasonable basis to apportion permanent disability for the neck, left hip, heart, or cardiovascular system in the form of hypertensive cardiac disease to nonindustrial factors.

8. Applicant is entitled to further medical treatment to cure or relieve the effects of the industrial injuries.

9. The presumption of compensability for heart trouble under Labor Code section 3212.2 applies to applicant's duties.

10. Defendant did not rebut the presumption of compensability under Labor Code section 3212.2.

11. The requirements of Labor Code section 3208.2 have been met.

12. The date of injury for the heart, cardiovascular system in the form of hypertensive cardiac disease is March 9, 2018.

13. Applicant's attorney has provided legal services of the reasonable value of 15% of the permanent disability indemnity awarded applicant.

AWARD

AWARD is made in favor of applicant, Linda Pruitt, against defendant, California Department of Corrections and Rehabilitation, legally uninsured, administered by State Compensation Insurance Fund, as follows:

1. Permanent disability in accordance with Finding of Fact 4 above.

2. Further medical treatment in accordance with Finding of Fact 8 above.

3. Attorney fees in accordance with Finding of Fact 13 above.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 15, 2026

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

LINDA PRUITT
MICHAEL P. GEORGARIOU II, ATTORNEY AT LAW
STATE COMPENSATION INSURANCE FUND

DLP/md

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