

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

**MARIA DA SILVA, *Applicant***

**vs.**

**IN-HOME SUPPORTIVE SERVICES, legally uninsured,  
administered by INTERCARE INSURANCE SERVICES, *Defendants***

**Adjudication Number: ADJ11087603  
Marina del Rey District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the December 12, 2025 Findings of Fact, Award and Order (F&A) issued by the workers' compensation administrative law judge (WCJ), wherein the WCJ found that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to her low back and left shoulder while employed as a caregiver, Occupational Group Number 340, on August 16, 2017. The WCJ also found compensable consequences in the form of an intraoperative stroke affecting the head, right upper extremity, gait, right lower extremity and facial weakness. The WCJ deferred the issue of whether applicant sustained injury arising out of and in the course of her employment to her brain, throat (dysphasia)<sup>1</sup>, and psyche. The WCJ further found that applicant's injury caused permanent total disability of 100%.

Defendant contends that the WCJ erred in finding 100% permanent disability arguing that the opinion of Agreed Medical Evaluator (AME) Lawrence Richman, M.D., that applicant is permanently and totally disabled is not substantial evidence, and that the vocational expert opinions of Aida Worthington should have been followed instead to find that applicant is not permanently and totally disabled.

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<sup>1</sup> Although the F&A uses the word "dysphasia" (difficulty finding words), the proximity to the word "throat" suggests that the WCJ intended to use the word "dysphagia" (difficulty swallowing). It is ultimately of no consequence whether dysphagia or dysphasia was intended, because applicant has symptoms of both, and because the WCJ deferred a determination of both when she deferred the issue of whether the brain and throat were injured on an industrial basis.

Applicant has filed an Answer, and the WCJ has prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer thereto, and the contents of the WCJ's Report. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, and for the reasons stated below, we will deny reconsideration.

## I.

Former Labor Code section 5909<sup>2</sup> 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 8, 2026, and 60 days from the date of transmission is Saturday, June 7, 2026. The next business day after 60 days from the date of transmission is Monday, June 9, 2026. (See Cal. Code Regs., tit. 8, §

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<sup>2</sup> All further references are to the Labor Code unless otherwise noted.

10600(b).)<sup>3</sup> This decision is issued by or on June 9, 2026, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on April 8, 2026, and the case was transmitted to the Appeals Board on April 8, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 8, 2026.

## II.

We adopt and incorporate the statement of facts and reasoning set forth by the WCJ in her Report, and note by way of clarification that when the WCJ indicates that she presumes the AME to be correct so long as his opinions are supported by substantial medical evidence, she is undoubtedly referring to the following long standing opinion of the California Court of Appeal in *Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114]:

...we begin by presuming that the agreed medical examiner has been chosen by the parties because of his expertise and neutrality. Therefore his opinion should ordinarily be followed unless there is good reason to find that opinion unpersuasive.

(*Power, supra*, at 179 Cal.App.3d 782.)

For additional legal context, we note that in *Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1321 [72 Cal.Comp.Cases 565], the Supreme Court addressed the definition and purposes of permanent disability, and that definition has not changed. Citing *Kopping v. Workers'*

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<sup>3</sup> 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.

*Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1111, the state’s highest court noted that permanent disability is “understood as ‘the irreversible residual of an injury.’” Citing *State Comp. Ins. Fund v. I.A.C.* (1963) 59 Cal.2d 45, 52, the court observed that permanent disability “causes impairment of earning capacity, impairment of the normal use of a member, or a competitive handicap in the open labor market.” The court concluded that permanent disability payments are intended to compensate workers for “both physical loss and the loss of some or all of their future earning capacity.” (*Brodie, supra*, 40 Cal.4th at p. 1320.)

In *Department of Corrections & Rehabilitation v. Workers’ Comp. Appeals Bd. (Fitzpatrick)* (2018) 27 Cal.App.5th 607, 614 [83 Cal.Comp.Cases 1680], the Court reiterated that the scheduled rating is not absolute and may be rebutted. (*Id.* at pp. 619-620.) We note that in the present case, AME Dr. Richman provided whole person impairment ratings, which, when adjusted as directed in section 4660.1 and the PDRS for all non-deferred body parts, produce scheduled permanent disability (PD) as shown in the following rating strings:

13.07.05.00-19-[x1.4]27-340G-30-33% PD, facial

13.08.00.00-60-[x1.4]84-340G-85-87% PD, gait derangement

13.09.00.00-60-[x1.4]84-340F-84-86% PD, left upper extremity

Permanent disability of 87, 86, and 33 percent produce 99 percent permanent disability when combined on the Combined Values Chart (CVC) in the PDRS. Because of the compressive effect of the CVC, this result does not change when combined with any adjusted percentages of impairment provided by Dr. Richman for the cognitive and swallowing disorders. In fact, any additional percentage of permanent disability less than 51 percent will not change the result on the CVC. Accordingly, deferral of the brain, throat, and psyche makes no difference in terms of a scheduled rating based on AME Dr. Richman, and petitioner provides no reason to believe it will make any difference in applicant’s actual level of permanent disability in accordance with the fact if additional ratings are obtained from a neuropsychologist or an ear, nose, and throat specialist as proposed by petitioner. The AME has not indicated as a matter of reasonable medical probability that applicant’s condition is likely to have improved, nor that he requires a re-evaluation after specialist consultations, stating only that it is “possible” that applicant’s condition has improved, and that he “would be agreeable” to a re-evaluation of applicant after additional consultations. (Joint Exhibit Z, Deposition of AME Lawrence Richman, M.D. dated November 5, 2024, page 38, line 25 to page 39, line 12.) Nothing in the evidentiary record supports the inference that additional

evidence would alter either the scheduled rating or the AME's sound and well-reasoned opinion that the fact of applicant's hemiparalytic condition renders her permanently and totally disabled, and not just 99 percent disabled.

Petitioner argues that the vocational expert opinions of Aida Worthington compel rejection of the AME's opinion that applicant is permanently and totally disabled. (*See* Defendant's Exhibit A, Vocational Report of Aida Worthington dated April 30, 2024.) As pointed out by the WCJ in her report, AME Dr. Richman has reviewed the vocational expert's report and found it unpersuasive. We agree with the AME and the WCJ that petitioner's vocational expert is not persuasive evidence that applicant is employable.

We also disagree with petitioner's assertion that the report of the vocational expert effectively rebuts the testimony of applicant that she cannot return back to work in any capacity due to constant pain throughout the entire right side of her body. (Minutes of Hearing (Further) and Summary of Evidence date August 29, 2025, page 5, lines 4-6.) Ms. Worthington neither disproves that applicant is in constant pain, nor that such pain would not interfere with applicant's ability to maintain employment, even in a "sedentary" position.

The vocational opinions of Ms. Worthington do not constitute substantial medical evidence, let alone persuasive rebuttal of applicant's testimony and the AME's opinions, because she fails to provide sufficient reasoning and analysis in support of her conclusion that applicant is employable. Ms. Worthington lists various job titles without any explanation of how exactly applicant could manage her pain and paralysis in those positions:

Ms. Da Silva could secure and sustain either part-time or a full-time entry-level "Sedentary" Unskilled occupations with her motivation, despite being wheelchair-bound from a vocational standpoint.

Representative Samples of said occupations include: Surveillance System Monitor, Call-Out Operator, and Furniture Rental Consultant, based on the current work restrictions and medical findings and opinions of PQME Orthopedic Dr. Fisher and consideration given to the findings and opinions of AME in Neurology Dr. Richman.

After reviewing her medical records and interviewing Ms. Da Silva, I believe she is vocationally feasible and/or amenable to vocational rehabilitation in any form despite being wheelchair-bound with her current limitations. I do not think she is 100% permanently totally disabled based on the results of this Vocational Evaluation.

(Defendant's Exhibit A, Vocational Report of Aida Worthington dated April 30, 2024, page 62, paragraphs 3-5.)

Absent some cogent explanation of how it is reasonably probable that applicant would and could obtain and maintain employment as a Surveillance System Monitor, Call-Out Operator, Furniture Rental Consultant, or in some other sedentary or remote capacity “out of the comfort of her own home, where she can set her own schedule and work hours,” Ms. Worthington’s conclusory assertions that applicant is employable or feasible for vocational rehabilitation lack any probative value. (*Id.*, page 62, paragraph 8.)

In contrast, AME Dr. Richman provides detailed and persuasive reasoning in support of his forceful rejection of the conclusions of Ms. Worthington:

Having reviewed the report of Worthington Vocational Experts, based on my evaluation of the claimant who sustained a perioperative stroke, no motor function of the right upper limb, and minimal to no motor function of the right lower limb, in order for this patient to hypothetically perform any kind of work she will require at least one if not two assistants to provide her mechanical as well as cognitive assistance for any type of work plus transportation to and from work as well as to have some type of medical background as the patient is a fall risk from a chair or any other supportive device given her almost complete weakness on the right side.

It would be best for the patient to work from a gurney with one non-medical assistant as well as one medical assistant trained in emergent care to include advanced life support in the event the patient were to fall and suffer an intracranial hemorrhage, pneumothorax, or open femur fracture with laceration of the femoral artery which can exsanguinate and result in death within 20 minutes, as the patient could readily fall out of a chair or sustain such a fracture of a femur for example, or a similar fracture of the upper limbs as well, again causing immediate exsanguination.

Assuming all these precautions can be met, the patient would be able to participate in a relatively low paying job, the cost of which would be multiplied tenfold by the carrier so as to achieve safety compliance for the claimant in such a type of employment. Otherwise the patient would not be employable.

In my opinion, from a most obvious practical perspective and the absolutely required medical and attendant requirements, needs and surveillance for a paralyzed patient, to a reasonable medical probability, the claimant is not employable.

(Joint Exhibit Y, AME Report of Lawrence Richman, M.D. dated October 10, 2023, page 3, paragraphs 1-4.)

We are persuaded by the conclusions of the AME, and agree with the WCJ that no further development of the record is necessary to find that applicant is permanently and totally disabled.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

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



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

**JUNE 5, 2026**

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

**MARIA DA SILVA  
HINDEN & BRESLAVSKY, APC  
ANTHONY MASSINO, ATTORNEY AT LAW, APC**

**CWF/cs**

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

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**  
**AND NOTICE OF TRANSMITTAL**

**I**

**INTRODUCTION**

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|--|--|
| 1. Applicant's Occupation:                 | Caregiver  |
| 2. Applicant's Age:                        | 50   |
| 3. Date of injury:                         | 8/16/2017  |
| 4. Parts of Body Injured:                  | low back, left shoulder, head, stroke, right upper extremity, gait, right lower extremity and facial weakness.   |
| 5. Parts of Body Alleged:                  | brain(dysphasia), throat and psyche  |
| 6. Manner in which injuries have occurred: | Specific injury  |
| 7. Identity of Petitioner:                 | Defendant, In Home Supportive Supportive Services; Intercare   |
| 8. Timeliness:                             | The petition was timely filed.   |
| 9. Verification:                           | A verification is attached.  |
| 10. Date of Findings and Award:            | 2/10/2026  |
| 11. Petitioner's contentions:              | 1.) The evidence does not support a finding of 100% Permanent and Total Disability.<br>2.) Additional discovery is warranted based on the AME Dr. Lawrence Richman's deposition testimony.<br>3.) If the finding of 100% is upheld, the weekly rate awarded by the WCJ should be remanded as it is unclear to Defendant. |

**II**

**FACTS**

Applicant, Maria Da Silva, while employed on 8/16/2017, as a caregiver, by In Home Supportive Services, sustained injury arising out of and in the course of her employment to her low back, left shoulder, head, stroke, right upper extremity, gait, right lower extremity and facial

weakness. Applicant claims to have sustained injury arising out of and in the course of employment to her brain(dysphasia), throat and psyche. The Applicant originally resolved her case via Stipulations with Request for Award on 2/23/2021 at 18% with future medical for her low back and left shoulder. Applicant filed a timely Petition to Reopen on 2/7/2022. Applicant suffered a stroke on 2/9/2023, during industrial back surgery resulting in significant additional impairment.

Trial commenced on the record on 5/1/2025 and was submitted on 8/28/2025. The issues framed at trial included, parts of body, permanent disability, apportionment, need for further medical treatment, liability for self-procured medical treatment, attorney fees, whether or not Applicant is permanently and totally disabled, whether the matter was not ready for trial, discovery is ongoing regarding a psychiatric PQME and additional testing set forth in AME Dr. Richman's reporting and deposition testimony.

The parties offered two AME reports of Dr. Lawrence Richman and one deposition transcript of the AME as joint exhibits. Applicant offered one exhibit into evidence and Defendant offered twenty additional exhibits into evidence. Applicant was the only witness to testify at trial.

The WCJ issued an order vacating submission pending DEU Rating on 11/20/2025. On 11/21/2025 the Formal Rating Instruction and the Formal Rating was served on all parties. There was no objection received to either the Formal Rating Instruction or the Formal Rating.

A Findings of Fact, Award and Order issued and was served on all parties on 2/11/2026. On 3/6/2026, Defendant filed a timely and verified Petition for Reconsideration. Applicant filed an Answer to the Petition for Reconsideration on 3/16/2026. Defendant's Petition for Reconsideration contends that the evidence in this matter does not substantiate a finding of 100% permanent and total disability. Defendant also contends that the record requires further development according to the deposition testimony of the AME Lawrence Richman and need for a neuropsychiatric PQME before a finding of permanent and total disability may be determined. Finally, in the alternative, if a finding of 100% is upheld, Defendant contends that the weekly rate for life pension awarded by the WCJ is unclear and requires further explanation. The Petition for Reconsideration should be denied on all issues raised for the following reasons.

### **III**

#### **DISCUSSION**

Defendant suggests that the WCJ failed to consider the Vocational Report of Aida Worthington, but this is incorrect. In making the determination that Applicant is permanently and

totally disabled in the instant case, the entire record was reviewed including Defendant's Exhibit A, the Vocational Report of Aida Worthington. The Vocational Report was also reviewed and addressed by the AME in Neurology, Dr. Lawrence Richman in his 10/17/2024 report and his deposition testimony on 11/5/2024.

The only evidentiary item offered into evidence that is presumed to be correct is that of an AME so long as it is supported by substantial medical evidence. The reason for this is that it is presumed that the parties have selected a trusted and neutral physician to render the opinions requested and if these opinions are based on substantial medical evidence, then they should be presumed to be correct. In the instant case, the AME Dr. Richman conducted a thorough, in person examination of the Applicant, reviewed over 6,800 pages of medical and other records, took a thorough history from the Applicant, prepared two narrative reports and testified under oath in his deposition on 11/5/2024, clearly answering all questions from both parties.

After the first examination, the AME Dr. Richman opined that Applicant was permanently and totally disabled. The deposition testimony of the AME Dr. Richman solidified his opinion regarding Applicant's permanent and total disability which was corroborated by his 10/17/2024 report specifically addressing the Vocational Report of Aida Worthington and the credible testimony of the Applicant at trial. Unfortunately, the Vocational Report of Aida Worthington, was conducted remotely, preceded the 10/17/2024 report of the AME and his deposition testimony on 11/5/2024. Based on the timing of her report it could not rebut the AME's opinions regarding Applicant's ability to return to gainful employment.

However, the AME Dr. Richman specifically addresses and refutes the conclusion of the Vocational Expert, Aida Worthington regarding her opinion that Applicant could perform sedentary occupations in his report dated 10/17/2024. He states the following, "Having reviewed the report of Worthington Vocational Experts, based on my evaluation of the claimant who sustained a perioperative stroke, no motor function of the right upper limb, and minimal to no motor function of the right lower limb, in order for this patient to hypothetically perform any kind of work she will require at least one if not two assistants to provide her mechanical as well as cognitive assistance for any type of work plus transportation to and from work as well as some type of medical background as the patient is a fall risk from a chair or any other supportive device given her almost complete weakness on the right side." (See Exhibit X page 3)

In his deposition on 11/5/2024, the AME Dr. Richman once again specifically addressed the Vocational Report of Aida Worthington as follows:, The patient is paralyzed on one side of her body. She can't have gainful employment. I gave a hypothetical that you have to have some way to keep her upright so she doesn't fall off a chair and have an injury. It makes the vocational expert - - however that person came to a conclusion the patient can return to any kind of gainful employment is pure fantasies.” ( See Exhibit Z pages 33 and 34)

Based on the entire record including the credible testimony of the Applicant and the AME reports and deposition testimony of Dr. Richman which are presumed correct as they are supported by substantial medical evidence, the WCJ determined the Applicant is permanently and totally disabled.

Next Petitioner addresses why he believes further discovery is necessary before a finding of permanent and total disability can be made. He states the following, “The defendant objected to this matter going forward as Dr. Richman requested further evidence to finalize his opinion.” (See Petition for Reconsideration dated 3/6/2026 page 2) The problem with this statement is that his finding that Applicant is permanently and totally disabled does not require further evidence. This statement by the AME was clear, definitive and repeated on several occasions. Although Dr. Richman agreed to re-examine Applicant after she underwent a neuropsychiatric examination and a barium swallow test to see if Applicant's cognitive function or swallowing had improved, his opinion that Applicant could not return to gainful employment was based on the paralysis of Applicant's right lower limb and right upper extremity. The AME confirmed this opinion in his deposition when he stated that is current opinions are not dependent on either an evaluation by either a neuropsychiatrist or a speech therapist. (See Exhibit Z page 44) Dr. Richman indicates the reason Applicant can't be employed is because she has complete loss of function of right lower limb and right upper limb. He indicates that Applicant will require 24 hour care. (See Exhibit Z page 40 That attendant would be charged with administering Applicant's medications, buying and preparing food in accord with Applicant's need to be determined after the results of the barium swallow test.

Next, Petitioner does not challenge the development of the record regarding Applicant's throat and psyche but takes issue with the finding of 100% not being deferred. The record development ordered regarding Applicant's psychiatric or throat impairment in no way changes the fact that Applicant is unable to return to gainful employment or participate in vocational

retraining to obtain any employment due to the complete paralysis of Applicant 's right upper and lower limbs as determined by the AME Dr. Richman.

Finally, Petitioner asserts arguendo that if the 100% permanent disability is upheld then they are unclear as to how the weekly rate of \$833.36 was calculated. Applicant points out in her Answer that Defendant failed to object to the formal rating instruction and formal rating served on all parties on 11/20/2025. If in fact petitioner had objected at that point and asked this question, perhaps they would be clear. However, in response to this contention, the WCJ incorporates the analysis of Labor Code Sections 4659 and 4453 set forth on pages 9 and 10 of the Answer to Petition for Reconsideration filed by Applicant on 3/16/2026. This analysis appropriately responds to Petitioner's inquiry regarding the rate found by the WCJ.

**RECOMMENDATION**

Pursuant to the recommendation and reasoning set forth above, the Petition for Reconsideration should be denied.

Respectfully submitted,

**CIRINA A. ROSE**

Workers' Compensation Judge

Date: April 8, 2026