WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MIGUELINA INFANTE, ***Applicant***

vs.

SANTA BARBARA SMOKEHOUSE; PACIFIC COMPENSATION INSURANCE; CYPRESS INSURANCE, ***Defendants***

Adjudication Number: ADJ10043033
Marina Del Rey District Office

OPINION AND ORDER
GRANTING PETITIONS FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION

Defendants Pacific Compensation Insurance Company (Pacific) and Cypress Insurance (Cypress) have filed separate petitions for reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of March 11, 2026, wherein it was found that while employed during a cumulative period ending on July 21, 2015 as a salmon packer, applicant sustained industrial injury to both upper extremities in the forms of carpal tunnel syndrome, cubital tunnel syndrome, "aggravation of Arnold-Chiari syndrome," and to the psyche causing permanent disability of 75% and the need for further medical treatment. In finding permanent disability of 75%, the WCJ utilized Occupational Group 420, added the component disabilities of each upper extremity rather than combining them per the Combined Values Chart (CVS) of the 2025 Schedule for Rating Permanent Disabilities, and found that "there is no legal basis for apportionment. In this matter, Pacific insured the employer through March 6, 2015, whereupon the employer came to be insured by Cypress. After years of litigation between applicant and Cypress, Pacific was joined as a party defendant on the eve of the first trial hearing in November of 2024. However, applicant elected to proceed at trial solely against Cypress. However, the Findings and Award finds both Cypress and Pacific liable to the applicant.

In its Petition, Pacific contends that the WCJ erred in finding it liable to the applicant, arguing that although it was joined late in the litigation, applicant elected to proceed against Cypress, and it should not be held liable pending possible supplemental contribution proceedings. Cypress contends in its Petition that the WCJ erred in (1) finding industrial injury in the form of "aggravation of Arnold-Chiari syndrome" and in (2) finding permanent disability of 75% arguing that the WCJ erred in (a) utilizing Occupational Group 420 to rate the applicant's permanent disability, (b) adding applicant's right upper extremity permanent disability to her left upper extremity permanent disability rather than combining them as outlined in the CVC and (c) not finding apportionment of permanent disability to applicant's pre-existing Arnold-Chari syndrome per the apportionment determination of qualified medical evaluator orthopedist Thor Gjerdrum, M.D.[1]

Applicant has filed an Answer to Cypress's Petition. Additionally, Cypress has sought leave to file a supplemental pleading pursuant to Appeals Board Rule 10964 (Cal. Code Regs., tit. 8, § 10964.) We approve this document for filing and have considered its contents. Additionally, the WCJ has filed a Report and Recommendation on Petitions for Reconsideration (Report) addressing the two petitions. In the Report, the WCJ admits error in finding industrial injury in the form of "aggravation of Arnold-Chiari syndrome" and in imposing liability on Pacific. The WCJ otherwise recommends that we affirm his decision.

As explained below, we will grant reconsideration and amend the WCJ's decision to remove the finding of industrial injury in the form of "aggravation of Arnold-Chiari syndrome" and to remove Pacific from liability in the Award, as recommended by the WCJ. However, we also find that defendant has adequately carried its burden on apportionment of permanent disability. We therefore amend the decision to find compensable permanent disability of 38%. We recalculate attorneys' fees because of this reduced recovery, and we find that defendant should hold any attorneys' fees in trust pending resolution of the division of attorneys' fees between applicant's current and former counsel.

Preliminarily, we note that former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

[1] Defendant also notes that since it is arguing for a reduction in applicant's permanent disability, attorneys' fees will have to be recalculated, and that any attorneys' fees should be held in trust pending a resolution of the division of attorneys fees between applicant's current counsel and her prior counsel who filed the Application for Adjudication and was then substituted early in the litigation.

> (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.
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> (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.
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> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on April 10, 2026 and 60 days from the date of transmission is June 9, 2026. This decision is issued by or on June 9, 2026, so we have timely acted on the petition as required by Labor Code section 5909(a).

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

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on April 10, 2026, and the case was transmitted to the Appeals Board on April 10, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 10, 2026.

Turning to the merits, we will delete the finding of industrial injury in the form of "aggravation of Arnold-Chiari syndrome" as recommended by the WCJ. Dr. Gjerdrum explained at deposition that Arnold-Chiari syndrome is a congenital "herniation of the cerebellum in through the foramen magnum and that herniation disrupts the normal flow of cerebrospinal fluid and create problems both in the brain and in the spinal cord." (April 28, 2023 deposition at p. 7.) Although this condition and applicant's work exposure which caused carpal and cubital tunnel syndrome combined to cause applicant's overall condition and disability, work exposure did not affect the actual herniation of the cerebellum. Therefore, the finding of industrial injury in the form of aggravation of Arnold-Chiari syndrome was not apposite.

We will also delete Pacific from the Award, as also recommended in the Report, pursuant to Labor Code section 5500.5(c) which states in pertinent part, "If, during the pendency of any claim wherein the employee … has made an election to proceed against one or more employers, it should appear that there is another proper party not yet joined, the additional party shall be joined as a defendant by the appeals board on the motion of any party in interest, but the liability of the employer shall not be determined until supplemental proceedings are instituted."

With regard to the utilization of Occupational Group 420 to rate applicant's permanent disability, we will affirm the WCJ decision for the reasons stated by the WCJ in the Report, which states as follows:

> Applicant testified at the February 13, 2025, trial as follows,
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> > Her job title last year was that of a salmon packer. She packed salmon in bags. A machine would cut the salmon, and it would be moved to her on a conveyor belt, which she would then put in a bag and then put the bag on the table. The bag of fish weighed approximately six pounds. She was only responsible for the part of the cutting process early on in her employment. She would have to lift a fish that weighed four pounds into the cutting machine. The heaviest item she had to lift were trays that weighed approximately 60 pounds because these trays had salmon on it. She knows it was 60 pounds because she had to weigh the fish. She did this position for less than one year in 2013."
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> Defendant claimed the appropriate occupational group code was 360 based on Applicant being a packer. The occupations listed in the Permanent Disability Rating Schedule (PDRS) for this occupational group number are clerk, shipping, conveyor, tender, and warehouse worker. Based on Applicant's unrefuted testimony, she was not a clerk nor involved in shipping per se. She was not doing warehouse-type work, and she was doing more than tending to a conveyor system.
>
> Applicant claimed occupational group number 420- or that of a meat processor-

> is more appropriate. The occupations generally associated with this occupational group number include butcher, baker, and glass cutter.
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> Meat processor is not defined. Meat is not necessarily limited to or only means strictly a red meat processor. Furthermore, given Applicant's testimony, it appears to be the appropriate occupational group number is 420. She lifted the 60-pound salmon into a cutting machine. After the machine cut the salmon, she then packed the salmon in bags. These job duties are akin to a red meat processor job duties. The occupational group number 420 more accurately reflects Applicant's job duties and occupation.

(Report at p. 3.)

Although defendant argues that applicant's duties were lighter at the tail end of her employment, there is no argument that these heavier earlier duties did not contribute to her injury and disability in the cumulative injury case. Accordingly, we affirm the WCJ's use of Occupational Group 420.

With regard to the issue of whether the right and left upper extremity impairments were properly added to one another rather than combined using the CVC, Dr. Gjerdrum stated in his initial report, "Based on the Kite decision, the bilaterality of the condition, the impairment is added rather than combined…." (June 28, 2022 report at p. 16.)

In referencing the "Kite decision," Dr. Gjerdrum was referring to *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ den.), which held that adding two different impairments rather than combining them per the method outlined in the 2005 Schedule for Rating Permanent Disabilities better reflected a worker's impairment when substantial medical evidence supported the notion that the two impairments had a synergistic effect where, in effect, the resultant impairment was more than the sum of the two impairments.

In our en banc opinion *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686, 691 (Appeals Bd. en banc), we expanded on *Kite*, and held that two different impairments may be added, rather than combined, even if the impairments impact the same activities of daily living (ADLs) when the impairments overlap in a way that increases or amplifies the impact on the ADLs.

Here, Dr. Gjerdrum opined that the overlapping impairments increased the burden on applicant's ADLs. (September 15, 2025 report at p. 1.) As explained at Dr. Gjerdrum's deposition, because applicant's disability involves both upper extremities, "the impact her condition has with respect to the bilateral upper extremities is amplified in so far as both upper extremities are limited in doing" ADLs such as bathing, brushing teeth, dressing, and combing hair. (November 18, 2025 deposition at pp. 10-14.) We therefore affirm the adding of the disabilities.

Turning to the issue of apportionment, Dr. Gjerdrum wrote in his initial June 28, 2022 report:

> This applicant presents with a classic example of double crush syndrome. She had clear evidence, verified by electrodiagnostic studies, of bilateral carpal tunnel syndrome and cubital tunnel syndrome. Surgery was appropriate, but not terribly helpful. The principal reason for this unfortunate outcome from surgeries is the coexistence of a syrinx or of fluid buildup in the cord as a consequence of the Arnold-Chiari syndrome. The hand appearance is classically described as an Arnold-Chiari claw hand in the medical literature. This problem usually presents in childhood or adolescence; it did not present with this woman until she was in her 20s and 30s, and it did not present itself until she had worked for The Santa Barbara Smokehouse for about 6 years. Therefore, it is reasonable to conclude that absent her exposure with the smokehouse doing packing and lifting and weighing, she may never have been symptomatic. Therefore, I believe that the applicant's overall impairment is appropriately contributed equally to both industrial and nonindustrial causation.

(June 28, 2022 report at p. 15.)

At deposition, as noted above, Dr. Gjerdrum explained that Arnold-Chiari syndrome is a congenital herniation that disrupts the normal flow of spinal fluid. Dr. Gjerdrum explained that applicant's congenital condition is "symptomatic enough to cause a radiculopathy of her upper extremities." (April 28, 2023 deposition at pp. 7-8.)

Applicant's permanent impairment was rated by Dr. Gjerdrum as a Class 3 impairment of each upper extremity. Under a Class 3 impairment, the "individual can use the involved extremity but has difficulty with self-care activities." (AMA Guides, Table 13-16, p. 338.) Dr. Gjerdrum explained that applicant's impairment was caused by clawing of the hands which can be caused both by the Arnold-Chiari syndrome and by the ulnar nerve issues caused by the industrial carpal and cubital tunnel syndromes. (April 28, 2023 deposition at p. 10.)

Dr. Gjerdrum explained that "Ulnar nerve problems can cause the problem, but so can the [non-industrial Arnold-Chiari] C8 nerve problem. I'm saying there are two contributing factors here" and that both factors shown by electromyography. (April 28, 2023 deposition at p. 11.) Dr. Gjerdrum explained, "EMG shows a polyneuropathy, she clearly has a C7 radiculopathy which is coming from the cervical spine. And she clearly has cubital tunnel syndrome which is coming from the ulnar nerve. And she clearly has a median nerve coming from carpal tunnel." (April 28, 2023 deposition at pp. 14-15.) Dr. Gjerdrum explained that, in his view, these conditions were documented in diagnostic testing had approximately equal contribution to the applicant's impairment.

Dr. Gjerdrum's discussion of apportionment meets the standard set by the Court of Appeal in *E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922 [71 Cal.Comp.Cases 1687]. In *Gatten*, the Court of Appeal reversed a WCAB finding of no apportionment, and found, in accordance with an independent medical examiner's report, that 20 percent of the injured worker's permanent disability was caused by non-industrial factors. The medical evidence supporting apportionment in *Gatten* was the physician's review of an MRI showing degenerative disc disease. The *Gatten* court held that apportionment was proper even though the applicant was asymptomatic prior to the industrial injury, writing that, "[t]he doctor made a determination based on his medical expertise of the approximate percentage of permanent disability caused by [the] degenerative condition [in] applicant's back. [Labor Code] [s]ection 4663, subdivision (c), requires no more." (*Gatten*, 145 Cal.App.4th at p. 930.)

Similarly, here, Dr. Gjerdrum made a determination based on his medical expertise after an adequate examination and after review of the relevant medical record and diagnostic testing. Dr. Gjerdrum noted applicant's well-documented Arnold-Chiari syndrome, and review of diagnostic tests medical records. "His conclusion cannot be disregarded as being speculative when it was based on his expertise in evaluating the significance of these facts." (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 930 [71 Cal.Comp.Cases 1687].) Additionally, Dr. Gjerdrum explained at length in his deposition how both the industrial and non-industrial components combined to cause applicant's current disability.

We therefore amend the WCJ's decision to incorporate Dr. Gjerdrum's 50% apportionment under Labor Code section 4663 to find compensable permanent disability of 38%. Because of the reduction of applicant's permanent disability indemnity recovery, we recalculate attorneys' fees which should be held in trust pending a resolution of the division of fees between applicant's current and former counsel. The filing of an application for adjudication of claim by an attorney automatically creates a lien for attorneys' fees on behalf of that attorney. (*State Compensation Ins. Fund v. Workmen's Comp. Appeals Bd.* (*Chester*) (1971) 36 Cal.Comp.Cases 678 [writ den.].)

For the foregoing reasons,

IT IS ORDERED that Defendant Pacific Compensation Insurance Company and defendant Cypress Insurance's respective Petitions for Reconsideration of the Findings and Award of March 11, 2026 are **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board the Findings and Award of March 11, 2026 is **AMENDED** as follows:

FINDINGS OF FACT

1. Miguelina Infante, age 30 at the time of injury, while employed during the period of on June 1, 2014, through July 21, 2015, as a salmon packer, Occupational Group No. 420, at Santa Barbara, California, by Santa Barbara Smokehouse, sustained injury arising out of and in the course of employment to her bilateral carpal tunnel, bilateral cubital tunnel, and psyche. The date of injury pursuant to Labor Code§ 5412 is February 14, 2015.

2. At the time of the injury, the employer's workers' compensation carrier was Pacific Compensation Insurance for the period of March 6, 2014, to March 6, 2015, and Cypress Insurance.

3. At the time of the injury, the employee's earnings were $410.00 per week, warranting indemnity rates of $273.33 for temporary disability, and $273.33 for permanent disability.

4. The employer has furnished some medical treatment.

5. The Occupational Group is 420.

6. It is found Applicant is entitled to a permanent disability award of 38%, equivalent to 187 weeks of indemnity payable at the rate of $273.33 per week, in the total amount of $51,112.71 payable commencing February 12, 2019, which has now fully accrued.

7. It is found Applicant is entitled to further medical treatment to cure or relieve the effects of the industrial injury.

8. It is found Applicant is entitled to be reimbursed for all out-of-pocket medical expenses according to proof.

9. It is found that applicant's attorneys are entitled to fees in the amount of $7,666.91, said amount to be held in trust by defendant pending a

resolution of the division of attorneys' fees between applicant's current and former counsel.

10. It is found Applicant is entitled to a Supplemental Job Displacement Voucher.

AWARD

AWARD IS MADE in favor of Miguelina Infante, and against Cypress Insurance, as follows:

a. Permanent disability indemnity in the accrued amount of $51,112.71, less attorneys' fees in the amount of $7,666.91, to be held in trust by defendant pending resolution of the division of attorneys' fees between applicant's current and former counsel.

b. All further medical treatment reasonably required to treat or relieve applicant of the effects of the industrial injury.

c. Reimbursement of all out-of-pocket medical expenses caused by the industrial injury, subject to proof.

d. A Supplemental Job Displacement Voucher.

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 9, 2026

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

MIGUELINA INFANTE
WOLFF WALKER LAW
GOLDMAN MAGDALIN & STRAATSMA
COPPERPOINT LEGAL
PEJMAN RAHNAMA

DW/oo

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