

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

**STEVEN STRANAK, *Applicant***

**vs.**

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

**Adjudication Number: ADJ8911663  
Van Nuys District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted reconsideration in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the “Findings and Award” (F&A) issued on November 6, 2020, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant sustained an industrial injury on a cumulative basis through May 13, 2012 to the following body parts: “cognitive impairment, psyche, gait, hypertensive heart disease, apraxia/agnosia, headaches, erectile dysfunction, GERD, bilateral lower extremities (DVT), vision, sleeping, hypertension, and brain.” (F&A, p. 1.) The WCJ further found that the disability in the form of sleep, cognitive, and psyche are categorized as mental and behavioral disorders under Labor Code<sup>1</sup> section 4664(c)(1)(C). The WCJ categorized the following disabilities under the general provision of section 4664(c)(1)(G): hypertension, erectile dysfunction, GERD, deep-vein thrombosis of the bilateral lower extremities, gait derangement, apraxia, agnosia, and headaches.

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<sup>1</sup> All future references are to the Labor Code unless noted.

Applicant argues that the WCJ miscategorized the regions of the body in applying section 4664(c). Specifically, applicant argues that the DVT of the bilateral lower extremities and gait disorder should be categorized under section 4664(c)(1)(F) as disorders of the lower extremities. Applicant further argues that his apraxia and agnosia disorders should fall under 4664(c)(1)(C), as they are mental or behavioral disorders.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, and the contents of the WCJ's Report. Based on our review of the record as our Decision After Reconsideration we will rescind the WCJ's November 6, 2020 F&A and return the matter to the trial level for further proceedings consistent with this opinion.

### FACTS

The facts at issue are, for the most part, stipulated. Applicant sustained an admitted cumulative industrial injury to “cognitive impairment, psyche, gait, hypertensive heart disease, apraxia/agnosia, headaches, erectile dysfunction, GERD, bilateral lower extremities (DVT), vision, sleeping, and hypertension.” (Minutes of Hearing and Summary of Evidence, October 15, 2020, p. 2, lines 9-14.) The parties disputed the body part of ‘brain’; however, the WCJ found that body part industrial and no party sought reconsideration of that finding.

The parties stipulated to the ratings, including apportionment under section 4663 as follows:

- d. Parties stipulate to the rating strings below.
- e. Labor Code Section 4664(c)(1)(G) – applicant has received Awards totaling 90% for this region of the body.

The parties stipulate to the following ratings:

|       |     |                                    |        |
|-------|-----|------------------------------------|--------|
| HTN   | 50% | (04.01.00.00-16-[05]20-490I-27-32) | 16     |
| ED    |     | 07.05.00.00-05-[02]06-490F-06      | 07     |
| GERD  |     | 06.01.00.00-09-[06]12-490F-12      | 15     |
| Sleep | 50% | (13.03.00.00-06-[06]08-490I-12-15) | 08     |
| DVT   |     | 17.01.05.00-04-[05]05-490I-08-10   | CVC 15 |
|       |     | 17.01.05.00-02-[05]03-490I-05-06   |        |

|           |     |                                    |    |
|-----------|-----|------------------------------------|----|
| Cognitive | 50% | (13.04.00.00-12-[02]14-490I-20-24) | 12 |
| Gait      | 50% | (13.08.00.00-10-[05]13-490I-18-21) | 11 |
| Apraxia   | 50% | (13.09.00.00-08-[05]10-490I-15-18) | 09 |
| Headaches | 75% | (13.07.04.00-03-[02]03-490H-05-06) | 05 |
| Psyche    | 20% | (14.01.00.00-26-[08]36-490J-48-54) | 11 |
| Vision    |     |                                    | 0  |

(*Id.* at p. 3, lines 6-17.)

The parties further stipulated that applicant has received prior awards totaling 90% permanent disability under section 4664(c)(1)(G). (*Id.* at p. 3, lines 7-8.)

The sole question on reconsideration is whether the WCJ correctly assigned the body parts to their corresponding body systems listed in applying section 4664(c).

The WCJ assigned gait derangement to section 4664(c)(1)(G) as follows:

Dr. Fink indicated that he utilized Table 13-15 in the Central and Peripheral Nervous System Chapter 2 to assign 10% WPI regarding the applicant’s gait. (Joint Exhibit JJ, page 12, under the heading “Gait”) Accordingly, in the opinion of the undersigned, the gait issues are part of the nervous system, which falls under Labor Code §4664 (c)(1)(G).

(WCJ’s Report, p. 3.)

The WCJ assigned apraxia and agnosia to section 4664(c)(1)(G) as follows:

Dr. Fink states in his report dated March 24, 2016:

“The loss of ability to perform previously learned tasks does accompany central nervous system injury. This patient provided specific details about loss of ADLs and hobbies due to apraxia/technology after the central nervous system injury that merits an impairment rating. The loss of function in both upper extremities due to deficit is akin to loss of ‘dexterous use’ of the upper extremities. Thus, Table 13-17 will be used.” (Joint Exhibit JJ, page 13, under the heading “Apraxia/Agnosia”)

Accordingly, in the opinion of the undersigned, the applicant’s apraxia/agnosia are part of the central nervous system and/or brain, which fall under Labor Code §4664 (c)(1)(G).

(*Ibid.*)

As per the opinion of Agreed Medical Evaluator Edward O'Neill MD in his deposition testimony, the DVT in the applicant's lower extremities is due to a vascular issue. Dr. O'Neill testified in his deposition that although the applicant's DVT occurred in the lower extremities, veins are part of a continuous vascular tree, and any clot located in those branches can migrate. (Joint Exhibit EE, pages 13 line 25, through page 16, line 14). Accordingly, in the opinion of the undersigned, the DVT in the applicant's bilateral lower extremities is part of the cardiovascular system, which falls under Labor Code §4664 (c)(1)(G).

(*Id.* at pp. 3-4.)

### DISCUSSION

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).)

A decision "must be based on admitted evidence in the record" (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Board en banc), and must be supported by 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].) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton, supra*, at p. 475.)

Section 4664(c) states:

(c) (1) The accumulation of all permanent disability awards issued with respect to any one region of the body in favor of one individual employee shall not exceed 100 percent over the employee's lifetime unless the employee's injury or illness is conclusively presumed to be total in character pursuant to Section 4662. As used in this section, the regions of the body are the following:

(A) Hearing.

(B) Vision.

(C) Mental and behavioral disorders.

(D) The spine.

(E) The upper extremities, including the shoulders.

(F) The lower extremities, including the hip joints.

(G) The head, face, cardiovascular system, respiratory system, and all other systems or regions of the body not listed in subparagraphs (A) to (F), inclusive.

In prior panel decisions, the Appeals Board has often taken a commonsense approach to assignment of disability to a body system, much like the WCJ has done here. (See e.g., *Jordan v. California Dep't of Corrections*, 2018 Cal. Wrk. Comp. P.D. LEXIS 243 [Wherein the panel, using the chapters of the AMA Guides, assigned cognitive impairment as a 'mental and behavioral' disability under subsection 4664(c)(1)(C), and not disability to the 'head' under 4664(c)(1)(G).]) However, upon further review, the issue of assignment of a disability to a body system is a medical issue over which a dispute exists, and the determination should be based on substantial medical evidence.

To constitute substantial evidence “. . . a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions.” (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

“[T]he medical cause of an ailment is usually a scientific question, requiring a judgment based upon scientific knowledge and inaccessible to the unguided rudimentary capacities of lay arbiters.” (*Peter Kiewit Sons v. Industrial Acci. Com. (McLaughlin)* (1965) 234 Cal.App.2d 831, 839 [30 Cal.Comp.Cases 188]; see also, *Peter Kiewit Sons v. Industrial Acci. Com. (McLaughlin)* (1965) 234 Cal.App.2d 831 [30 Cal.Comp.Cases 188] “[i]n a field which forces the experts into hypothesis, unaided lay judgment amounts to nothing more than speculation”].)

The requirement for expert medical evidence exists throughout workers compensation proceedings, including determination of temporary disability, permanent disability, apportionment, and causation of injury to name a few.<sup>2</sup> (See also, *Escobedo, supra*, [wherein the Appeals Board required that apportionment under section 4663 be established by substantial medical evidence].) We see no reason to deviate from this requirement when analyzing application of section 4664(c).<sup>3</sup>

In many cases it may be apparent, even to the lay person, which body system is affected by a disability. In such cases, the parties may stipulate to body systems under section 4664(c). However, where the parties dispute the body system, such a dispute requires medical evidence, especially where there are issues outside the knowledge of a lay person required to decide the issue.

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<sup>2</sup> See e.g., *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998, 1005 [59 Cal.Comp.Cases 579] (*Rodarte*); *County of San Bernardino v. W.C.A.B. (Nelson-Watkins)* (2018) 83 Cal. Comp. Cases 1282, 12830-1286 [2018 Cal. Wrk. Comp. LEXIS 46] (writ denied) [applicant's correlation of symptoms with work exposures insufficient to establish knowledge her condition was caused by employment]; *Hughes Aircraft Company v. Workers' Comp. Appeals Bd. (Zimmerman)* (1993) 58 Cal.Comp.Cases 220 [1993 Cal. Wrk. Comp. LEXIS 2853] (writ den.) [general medical advice that work stress was depleting applicant's immune system insufficient to confer knowledge for purposes of section 5412]; see also *Zenith Insurance Co. v. Workers' Comp. Appeals Bd. (Yanos)* (2010) 75 Cal. Comp. Cases 1303, 1305-1306 (writ denied) [2010 Cal. Wrk. Comp. LEXIS 208] [statute of limitations does not begin to run prior to applicant's knowledge she had sustained a cumulative trauma and that injury was work-related].

<sup>3</sup> In the past application of section 4664(c) has been described as “apportionment.” (*Gordon v. County of L.A.*, 2010 Cal. Wrk. Comp. P.D. LEXIS 581.) It has also been found that 4664(c) is not “apportionment.” (*McGowan v. City of L.A.*, 2015 Cal. Wrk. Comp. P.D. LEXIS 24.) The issue is one of semantics that does not affect the analysis. Accordingly, we will use the term ‘application of section 4664(c)’ throughout this opinion as referencing the process of calculating the application of 4664(c).

For example, as to deep vein thrombosis Dr. O'Neill testified:

So I think it's fair to say that if you have a condition that sets the stage for the DVT, it's setting the stage not just for the vascular system as a whole, but for a leg, an arm, a brain, a blood clot in the brain. So although it may be systemic, it affects different parts of the body differently.

(Joint Exhibit EE, Deposition of Edward O'Neill, M.D., July 23, 2019, p. 15, lines 3-8.)

Deep vein thrombosis of the leg could be a disability of the lower extremities or cardiovascular system, *or both, or multiple other systems*, but without a medical expert reviewing the body systems under section 4664(c) and explaining which systems are disabled in each case, a decision assigning a body system is not based on substantial evidence.

Here, the record is murky. For example, Dr. Fink describes applicant's apraxia and agnosia as both an issue of cognitive disorder and a disorder of the upper extremities. However, the parties did not directly present their 4664(c) dispute before the doctor. Where the parties dispute the body systems disabled by an impairment, they should present the list of 4664(c) body systems to the evaluator, so that the evaluator may then opine on which body systems are disabled due to each impairment assigned and explain the basis for their opinion. Such an opinion must constitute substantial evidence.

The requirements for proving application of section 4664(c) are essentially no different than apportionment under 4664(b):

First, the employer must prove the existence of the prior permanent disability award. Then, having established by this proof that the permanent disability on which that award was based still exists, the employer must prove the extent of the overlap, if any, between the prior disability and the current disability. Under these circumstances, the employer is entitled to avoid liability for the claimant's current permanent disability only to the extent the employer carries its burden of proving that some or all of that disability overlaps with the prior disability and is therefore attributable to the prior industrial injury, for which the employer is not liable.

(*Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1115.)

In both 4664(b) and 4664(c), defendant is proving overlap. The difference between the two sections is that 4664(b) focuses on overlapping disability, whereas **4664(c) focuses on overlapping body systems, which are impacted by disability.** This is an important distinction. Disability as a result of an industrial injury is often conflated with injury to a body part(s). Here, much of the confusion around which body system was impacted arose out of the way in which the parties stipulated to the “body parts.” Specifically, they stipulated to “cognitive impairment, psyche, gait, hypertensive heart disease, apraxia/agnosia, headaches, erectile dysfunction, GERD, bilateral lower extremities (DVT), vision, sleeping, and hypertension.” Based upon the parties’ stipulations, the WCJ listed multiple disabilities as “body parts” in the F&A. For example, “gait” is not a part of the body -- it is a disability that can affect a body part.

This confusion is further compounded by the parties stipulated ratings, which include stipulations to the body part systems impacted by each impairment. However, the WCJ’s findings do not follow the stipulations. For example, the parties stipulated rating places DVT as a disability of the lower extremities, but the WCJ assigned DVT under the general provision of section 4664(c)(1)(G). It appears that the parties may not have intended their stipulated rating to be an agreement on body systems under section 4664(c). Parties must be cognizant when entering into stipulations not to confuse disability with the body part affected by a disability.

Where defendant seeks to apply section 4664(c), and there is a dispute, defendant must do the following:

- 1) Establish a prior award(s) of disability.
- 2) Establish through expert medical evidence which body systems were impacted by the prior disability.
- 3) Establish a current award of disability.
- 4) Establish through expert medical evidence which body systems are impacted by the current disability.

If applicant’s disability is found to span across multiple body systems, applicant is entitled to assign the disability to the body system that will achieve the highest rating.

The purpose of 4664(c) is to preclude accumulation of disability beyond 100% “with respect to any *one* region of the body”. The overarching goal of rating permanent impairment is to achieve accuracy. (*Milpitas Unified School Dist. v. Workers’ Comp. Appeals Bd. (Almaraz-Guzman)* (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].) It has consistently been



held that where applicant's disability can be rated using multiple methods, applicant is entitled to the higher rating. (*Ogilvie v. Workers' Comp. Appeals Bd.*, 197 Cal. App. 4th 1262, 1277, 129 Cal. Rptr. 3d 704 [permitting rebuttal of the rating schedule with alternative higher rating based upon diminished future earnings]; see also, *Grossmont Union High School District v. Workers' Comp. Appeals Bd. (Burns)* (1997) 62 Cal.Comp.Cases 687, [1997 Cal. Wrk. Comp. LEXIS 4483] (writ denied) [establishing dual-occupational rule, which allows for higher of two ratings when applicant's occupation spans two categories]; *Hartford Accident & Indemnity Company v. Workers' Comp. Appeals Bd. (Suttner)* (1990) 55 Cal.Comp.Cases 127, [1990 Cal. Wrk. Comp. LEXIS 2346] (writ denied); see also, *Dalen v. Workmen's Comp. Appeals Bd.* (1972) 26 Cal.App.3d 497, 506 [103 Cal. Rptr. 128, 37 Cal.Comp.Cases 393] (*Dalen*); see also, *Weyerhaeuser Co. v. Workers' Comp. Appeals Bd. (Acosta)* (2003) 68 Cal.Comp.Cases 99 [\*36] (writ den.) (*Acosta*)).) We see no reason to deviate from prior logic.

Where a disability impacts multiple body systems, it may be assigned to any of the impacted systems, and it should be assigned to the body system that will generate the higher rating. (See e.g., *Serrano v. GMC*, 2013 Cal. Wrk. Comp. P.D. LEXIS 28 [Finding that 4664(c)(1) does not apply where fibromyalgia affected multiple body systems and not just applicant's upper extremities.].) However, a finding of fact that a disability spans multiple body systems may only issue if such a finding is supported by substantial medical evidence. As we are clarifying this issue for the first time and the parties did not directly ask the evaluators in this case to address body systems under section 4664(c), we will return this matter to the trial level for further development of the record.

Accordingly, as our Decision After Reconsideration we will rescind the WCJ's November 6, 2020 F&A and return the matter to the trial level for further proceedings consistent with this opinion

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued on November 6, 2020 is **RESCINDED**.

**IT IS FURTHER ORDERED** that this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

I CONCUR,

**s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**JUNE 7, 2024**

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

**STEVEN STRANAK  
LAW OFFICES OF ALAN B. SNITZER  
LOS ANGELES CITY ATTORNEY'S OFFICE**

**EDL/mc**

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