

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

ADONAI BONILLA, *Applicant*

vs.

**TRI CITY ECONOMIC DEVELOPMENT CORPORATION;
CYPRESS INSURANCE COMPANY, administered by BERKSHIRE HATHAWAY
HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ11299343
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Amended Findings and Award (F&A) dated July 15, 2025¹ wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that while employed by defendant as truck mechanic on October 23, 2017, applicant sustained injury arising out of and in the course of employment (AOE/COE) to the neck, left shoulder and arm, low back, GERD, constipation, and sleep disorder with a resulting 89% permanent disability, payable at \$290.00 weekly, and a life pension payable thereafter, in an amount to be adjusted by the parties, less an attorney's fee of 15% of the 89% permanent disability awarded, and less credits for any permanent disability indemnity payments previously made. Applicant was also awarded future medical treatment for the injured body parts.

Defendant contends that "applicant has failed to rebut the CVC" because the submitted medical evidence provided "no discussions of activities of daily living impacted by the associated impairments" and therefore lacked the requirements outlined "under [the] *Kite/Vigil* [decisions.]" (Petition, pp. 2, 10.) Defendant further contends that "detailed evidence regarding the non-industrial factors" contributing to applicant's impairments to the lumbar spine, GERD, constipation, and sleep reflect that applicant sustained a 57% permanent disability, after

¹The original F&A dated June 6, 2025 was amended on July 15, 2025 to provide corrections to the award for attorney's fees to reflect a 15% attorney's fee from an 89% rather than a 99% permanent disability award. The F&As are otherwise identical.

apportionment, rather than the 89% permanent disability, which was awarded without apportionment by the WCJ. (Petition for Reconsideration of Amended F&A (Petition), pp. 18-19.)

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

We have considered the Petition, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petition.

FACTS

Applicant, while employed by defendant on October 23, 2017 as a truck mechanic, claimed to have sustained injury AOE/COE to the head, neck, left shoulder, and left arm. The claim was later amended to include the back and internal body system, including GERD, constipation, sleep disorder, and obesity.

The parties proceeded with discovery and retained Dr. Mikiko Murakami, and later, Dr. Ilya Sabsovich, as the pain management panel Qualified Medical Evaluator (PQME), and Dr. Scott Anderson as the internal medicine PQME.

Dr. Murakami evaluated applicant on April 7, 2020, and August 17, 2021, with corresponding reports dated May 5, 2020, and August 27, 2021, issuing thereafter, in addition to a supplemental report dated June 3, 2020. Dr. Murakami found injury AOE/COE for the cervical spine, lumbar spine, left shoulder, and left elbow. (Applicant's Exhibit 5, p. 11.)

Dr. Sabsovich evaluated applicant on April 5, 2022, with a corresponding report, as well as a supplemental report dated July 12, 2023, issuing thereafter. In his April 5, 2022 report, he found injury AOE/COE to applicant's left shoulder, left upper extremity, cervical spine, and lumbar spine with corresponding whole person impairments (WPIs) of 8%, 11%, 7%, and 8%, in addition to a 3% pain add-on. (Applicant's Exhibit 9, pp. 32-35.) For applicant's lumbar impairment, he apportioned "50% for the industrial injury on [October 23, 2017] and 50% for the preexisting lumbar spine conditions." (*Id.* at p. 36.)

In his July 12, 2023 report, Dr. Sabsovich opined that use of the CVC rating method would "not reflect [applicant's] disability or impairment" given the "anatomical and functional integration of the [applicant's left] shoulder and the cervical spine." (Applicant's Exhibit 8, p. 7.)

With respect to applicant's internal claims, to a "reasonable degree of medical probability," and based upon prior reporting and review of the medical records, Dr. Sabsovich similarly believed it more accurate to add rather than combine the internal medicine and orthopedic impairments because the two body systems also had a "synergistic effect." (*Id.* at p. 8.)

Dr. Anderson evaluated applicant on November 3, 2022, with a corresponding report, as well a supplemental dated January 23, 2023, issuing thereafter. In his November 3, 2022 report, Dr. Anderson found injury AOE/COE for applicant's GERD and constipation resulting in a 3% and 5% WPI, respectively, with 60% apportioned to medication usage from the injury and the remaining 40% to preexisting obesity. (Applicant's Exhibit 13, pp. 165-168.) Injury AOE/COE for applicant's sleep apnea was also found, with a resulting 6% WPI apportioned 40% to weight gain from the injury and the remaining 60% to preexisting obesity. (*Ibid.*) Although injury AOE/COE was found for applicant's exogenous obesity, no impairment was indicated. (*Ibid.*) Dr. Anderson also found no injury AOE/COE for applicant's deep vein thrombosis, pulmonary embolism, chronic anticoagulation, hypertension, hyperlipidemia, or umbilical hernia. (*Id.* at p. 165.)

Later, applicant retained Scott Simon and defendant obtained Emily Tinchler as their respective vocational experts. Mr. Simon issued two reports dated July 25, 2024, and January 30, 2025. Mrs. Tinchler evaluated applicant on June 21, 2024, and issued two reports, dated July 19, 2024, and December 5, 2024.

In his July 25, 2024 report, Mr. Simon indicated that the effects of the injury rendered applicant "unable to participate in any type of employment in the competitive labor market" and "due to ongoing combined effects of the industrial injury, the workplace restrictions, and the confluence of his occupation and strictly arduous work history, the applicant has actually lost 100% of his access to the labor market, future earning capacity and amenability to rehabilitation." (Applicant's Exhibit 11, p. 36.)

In her July 19, 2024 report, Ms. Tinchler indicated that "under *LeBoeuf* case law, sufficient jobs were identified for Mr. Bonilla that can accommodate work restrictions. Therefore, when the non-industrial or *Montana* factors are omitted from the formulations, Mr. Bonilla retains a reasonable opportunity to work in the open labor market." (Defense Exhibit A, p. 51.) She estimated that her finding of a "33% loss of earning capacity when non-industrial factors were eliminated" was "already compensated by the standard rating." (*Ibid.*)

On July 16, 2022, defendant filed a Declaration of Readiness to Proceed to a mandatory settlement conference, which was set for January 8, 2025, then continued to a further hearing on February 12, 2025, and finally, to a trial, which was held on April 8, 2025.

Pursuant to the Minutes of Hearing and Summary of Evidence (MOH & SOE), issues set for trial included permanent disability, apportionment, further medical treatment, and a lien for attorney's fees related to a deposition. (MOH & SOE, April 8, 2025, p. 2.) It was noted that applicant alleged a 100% total permanent disability whereas defendant alleged a 56% permanent disability after apportionment. (*Id.* at p. 3.) Exhibits submitted by applicant include the Application for Adjudication of Claim (Application), DWC-1, amended Application, temporary disability termination notice, and reports from Drs. Murakami, Sabsovich, and Anderson, and applicant's vocational expert, Scott Simon. (Applicant's Exhibits 1-14.) Exhibits submitted by defendant include reports from defense vocational expert, Emily Tincher. (Defense Exhibits A-B.)

On June 6, 2025, the WCJ issued an F&A wherein he found, in relevant part, that while employed by defendant as truck mechanic on October 23, 2017, applicant sustained injury AOE/COE to the neck, left shoulder and arm, low back, GERD, constipation, and sleep disorder, with a resulting 89% permanent disability, payable at \$290.00 weekly, and a life pension payable thereafter, in an amount to be adjusted by the parties, less an attorney's fee of 15% of the 89% permanent disability awarded and credit for any permanent disability indemnity previously paid. Applicant was also awarded future medical treatment for all injured body parts. The WCJ did not find the apportionment findings of Drs. Sabsovich and Anderson, or the vocational reporting of Mr. Simon, to be valid. (Opinion on Decision (OOD), pp. 5-6.)

DISCUSSION

I.

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

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

- (b)
- (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected under the Events tab 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 August 21, 2025, and 60 days from the date of transmission is October 20, 2025. This decision was issued by or on October 20, 2025, 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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on August 21, 2025, and the case was transmitted to the Appeals Board on August 21, 2025. 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 August 21, 2025.

II.

Turning now to the merits of the Petition, defendant contends that the WCJ erred in adding versus combining applicant’s impairments as the medical evidence provided “no discussions of

activities of daily living impacted by the associated impairments” and therefore failed to meet the requirements outlined “under [the] *Kite/Vigil* [decisions.]” (Petition, pp. 2, 10.)

Pursuant to *Department of Corrections and Rehabilitation v. Workers' Comp. Appeals Bd. (Fitzpatrick)* (2018) 27 Cal.App.5th 607 [83 Cal.Comp.Cases 1680], impairments “are generally combined” using the combined values chart (CVC) found in the permanent disability rating schedule (PDRS). However, the “scheduled rating is not absolute” and other methodologies may be used to calculate permanent disability. (*Id.* at p. 614.) Thus, while the PDRS is prima facie evidence of an employee’s permanent disability, it is rebuttable. (*Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School Dist. (Almaraz-Guzman II)* (2009) 74 Cal.Comp.Cases 1084, 1106 (Appeals Bd. en banc); see *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613 (Appeals Bd. en banc); *City of Sacramento v. Workers' Comp. Appeals Bd. (Cannon)* (2013) 222 Cal.App.4th 1360.) Ultimately, however, the goal in rating impairments is accuracy. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Almaraz-Guzman III)* (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].)

In *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ den.), the Appeals Board held that if there is substantial medical evidence that two or more impairments have a synergistic effect which causes the resulting impairment to be greater than that reflected through use of the CVC, the impairments should be added for purposes of accuracy. In *Kite*, the applicant underwent bilateral hip replacement surgeries and the orthopedic QME opined that there was a “synergistic effect of the injury to the same body parts bilaterally versus body parts from different regions of the body,” and, as such, “the best way to combine the impairments to the right and left hips would be to add them versus using the combined values chart, which would result in a lower whole person impairment.” (*Id.* at p. 5.) Accordingly, in *Kite*, the WCJ found that the impairment for the applicant’s hips should be added rather than combined.

Subsequent to *Kite*, the Appeals Board issued *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686, 688-689 (Appeals Bd. en banc) wherein it was determined that if an applicant seeks to rebut the CVC and add rather than combine impairments, the applicant must establish 1) The activities of daily living (ADLs) impacted by each impairment, and 2) That the ADLs either do not overlap, or overlap in such a way that it increases or amplifies the impact of the overlapping ADLs.

Here, with respect to applicant's ADLs, Dr. Sabsovich, in his April 5, 2022 report, outlined the following limitations:

1. Self-care, Personal Hygiene: he has difficulty shaving his head, bathing, personal hygiene, donning/doffing his clothes, and eating.
2. Communication: he has difficulty seeing and hearing.
3. Physical Activity: he has difficulty standing for more than 5 minutes, walking, climbing stairs, and sitting.
4. Sensory Function: he has abnormal sensitivity in the deltoid area of the left arm.
5. Non-specialized Hand Activities: he has difficulty grasping/gripping and lifting with left hand. He cannot hold a dinner plate or a glass of water with his left hand.
6. Travel: he has difficulty driving due to the left arm pain and travelling.
7. Sexual Function: he has difficulty with erection and sex drive.
8. Sleep: he has difficulties with sleep due to severe insomnia.

(Applicant's Exhibit 9, p. 8.)

Dr. Sabsovich further noted that:

The patient does not exercise due to shortness of breath, fatigue and pain in the left shoulder. He does not participate in any sports activities. He is able to perform his normal and regular household chores and activities but is limited because he gets tired easily and has shoulder and low back pain.

(*Id.* at p. 9.)

Dr. Anderson in his November 3, 2022 report, similarly indicated the following limitations with respect to applicant's ADLs:

He can perform no significant cooking, housecleaning or physical exercise. He can perform very minimal stooping activities. He is limited in his capacity for bending, walking, sitting, and lifting. He does not perform any climbing and feels unable to do so. He can walk for five minutes, sit for 30 minutes and lift with the left arm only about 2 pounds. He writes on the intake questionnaire that walking five minutes or more causes more pain with movement in his arm and back. The maximal activities he can engage in include: "Slow walk, wash my car, climb stairs, carrying grocery bag right hand only. I do not have physical activities as much as I want to do in some conditions. Shortness of breath, left shoulder and arm pain, severe depression and fatigue, constant tiredness."

(Applicant's Exhibit 13, p. 4.)

In his July 12, 2023 report, Dr. Sabsovich underscored the fact that, given applicant's limitations and the "anatomical and functional integration of the shoulder and the cervical spine," it was necessary to add rather than combine applicant's impairments as the CVC method would

not reflect applicant's overall disability. (Applicant's Exhibit 8, p. 7.) With respect to applicant's internal claims, he opined that based upon his prior reporting and review of applicant's medical records, he found, to a "reasonable degree of medical probability" that it was similarly more accurate to add rather than combine the internal medicine and orthopedic impairments because the "internal medicine and musculoskeletal body systems" also had a "synergistic effect" which caused the resulting impairment to be greater than that reflected through use of the CVC. (*Id.* at p. 8.) He further noted that:

It is well known that internal medicine issues are systemic and can cause a detrimental influence on a musculoskeletal disability and vice versa and both systems are intrinsically related. Thus, for example, less mobility and obesity are known risk factors associated with musculoskeletal issues and pain. Chronic pain medications (NSAIDs) intake can worsen/cause GERD as well as cause issues with renal function, hypertension, and blood coagulation and cardiovascular problems. Therefore, the severity of the disability of the two body systems, result to certain extent in more disability or impairment than in someone who would be able to compensate (e.g., by adjusting ADLs and/or a modified work) or the major injury would be less severe (lesser impairment and disability).

(*Ibid.*)

Based upon the totality of the evidence, including the reports of Drs. Sabsovich and Anderson, we believe that the requirements outlined under *Kite* and *Vigil* have been satisfied in this case.

III.

Defendant also asserts that the WCJ's decision to withhold apportionment is erroneous, as the record contains "detailed evidence regarding the non-industrial factors." (Petition, pp. 13, 18.) It is well established that defendant carries the burden of proof on the issue of apportionment. (Lab. Code, § 5705; *Pullman Kellogg v. Workers' Comp. Appeals Bd. (Normand)* (1980) 26 Cal.3d 450, 456 [45 Cal.Comp.Cases 170]; *Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 613 (Appeals Bd. en banc).) To meet this burden, defendant "must demonstrate that, based upon reasonable medical probability, there is a legal basis for apportionment." (*Gay v. Workers' Comp. Appeals Bd.* (1979) 96 Cal.App.3d 555, 564 [44 Cal.Comp.Cases 817]; see also *Escobedo, supra*, at p. 620.)

Further, “[a]pportionment is a factual matter for the appeals board to determine based upon all the evidence.” (*Gay, supra*, at p. 564.) The WCJ has the authority to determine the appropriate amount of apportionment, if any. However, any decision issued by a WCJ must be based upon 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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

In *Escobedo*, the Appeals Board outlined the following requirements for substantial evidence on the issue of apportionment:

[I]n the context of apportionment determinations, the medical opinion must disclose familiarity with the concepts of apportionment, describe in detail the exact nature of the apportionable disability, and set forth the basis for the opinion, so that the Board can determine whether the physician is properly apportioning under correct legal principles. (citations.)

Thus, to be substantial evidence on the issue of the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors, 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, supra*, at p. 621.)

Here, orthopedic PQME, Dr. Sabsovich, provided in his April 5, 2022 report, that for applicant’s lumbar spine impairment, he would apportion “50% for the industrial injury on [October 23, 2017] and 50% for the preexisting lumbar spine conditions.” (Applicant’s Exhibit 9, p. 36.) Internal PQME, Dr. Anderson, provided in his November 3, 2022 report, that for impairment related to applicant’s GERD and constipation, he would apportion 60% to medication usage from the subject injury and the remaining 40% to preexisting obesity. (Applicant’s Exhibit 13, pp. 165-168.) For impairment related to applicant’s sleep apnea, he apportioned 40% to weight gain from the injury and the remaining 60% to preexisting obesity. (*Ibid.*) No further explanations were provided by either PQME as to how or why such findings were made.

Based upon our review of the evidentiary record, we agree with the WCJ that Drs. Sabsovich and Anderson both failed to provide sufficient reasoning to support their opinions on the issue of apportionment. Aside from the cursory explanations noted above, neither PQME has

provided any real reasoning for their apportionment findings. As such, defendant failed to carry their burden of proof on the issue of apportionment.

Accordingly, defendant's Petition is denied.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the July 15, 2025 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 17, 2025

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

**ADONAI BONILLA
GORELICK WOLFERT
GILSON DAUB**

RL/cs

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