WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CLAUDIA CANTO SHADOAN, *Applicant*

vs.

CITY OF SAN DIEGO, permissibly self-insured, *Defendant*

Adjudication Numbers: ADJ11349806, ADJ11349617
San Diego 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.

Defendant seeks reconsideration of the "Findings and Award" (F&A) issued on February 19, 2021, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant sustained industrial injury to her back for a cumulative injury through March 2, 2017, and that applicant's injury caused 24% permanent partial disability. The WCJ further found that applicant qualified for the duty-belt presumption of Labor Code[1], section 3213.2, and thus her disability was not subject to apportionment under section 4663(e). Finally, the WCJ found that applicant's prior specific injury to the back in 2010, which resulted in 9% permanent partial disability, warranted apportionment under section 4664. However, the WCJ did not deduct the percentage of disability, but instead deducted the monetary value of the prior disability due to application of the non-attribution clause of section 4663(e).

Defendant contends that the WCJ erred because the opinion does not follow the California Supreme Court's holding in *Brodie v. Workers' Comp. Appeals Bd*. (2007) 40 Cal. 4th 1313, 57 Cal. Rptr. 3d 644, 156 P.3d 1100 (*Brodie*), which mandates that when calculating apportionment under section 4664, the *percentage* of disability is deducted and not the *dollar value* of the disability.

[1] All future references are to the Labor Code unless noted.

Defendant attached additional exhibits to its Petition in violation of WCAB Rule 10945(c)(2). (Cal. Code Regs., tit. 8, § 10945(c)(2).) Defendant is politely reminded to follow proper procedure because exhibits must not be attached to petitions for reconsideration. To the extent that defendant wishes to cite to the Legislative Counsel's Digest in support of any arguments, defendant should include citations in their brief. (Jessen, California Style Manual, 4th ed., (2000), § 2:29, p. 69.) We have not considered the additional exhibits attached to the Petition for Reconsideration.

We have received an Answer from applicant. 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 Answer, 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 February 19, 2021 F&A and substitute a new finding that applicant's disability after apportionment under section 4664 is 15% (24% - 9%). As a precaution, we will issue an order deferring all issues in ADJ11349617**.**

FACTS

Per the WCJ's Report:

> Applicant is a police detective who has received a prior permanent disability award of 9% for a specific low back injury of August 24, 2010. This award provided applicant with permanent disability payments totaling $6,210. Thereafter, applicant filed two additional low back injury claims: A specific injury and a cumulative trauma claim, which are now the subject of the current dispute. The parties have stipulated that applicant now has a 24% permanent disability to the low back due to the combined effects of the prior August 24, 2010 injury and the cumulative trauma injury currently alleged in ADJ11349806. The specific injury (ADJ11349617) has not produced any disability.
>
> The parties have stipulated that labor code section 3213.2 applies in this case.

(WCJ's Report, p. 3.)

In her Answer, applicant does not challenge the conclusion that apportionment under 4664 applies in this case. (See generally, Applicant's Response to Defendant's Petition for Reconsideration, March 18, 2021.) Instead, the issue presented is purely one of law: does the non-

attribution clause of section 4663(e) affect the calculation of apportionment under section 4664 to allow a dollar amount deduction, instead of subtraction of disability percentages per *Brodie*, *supra*? For the reasons discussed below, we conclude that it does not.

DISCUSSION

a. The proper legal standard for establishing apportionment under section 4664.

Section 4663 requires any report addressing permanent disability to also address apportionment of disability. Defendant carries the burden of proof on apportionment. (§ 5705.) However, certain presumptive injuries are not subject to apportionment based upon causation due to the non-attribution clause of section 4663(e), which states: "(e) Subdivisions (a), (b), and (c) do not apply to injuries or illnesses covered under Sections 3212, 3212.1, 3212.2, 3212.3, 3212.4, 3212.5, 3212.6, 3212.7, 3212.8, 3212.85, 3212.9, 3212.10, 3212.11, 3212.12, 3213, and 3213.2." (§ 4663(e).)

Here, applicant's injury was stipulated as presumptive under section 3213.2. Accordingly, section 4663 does not apply, and we cannot apportion applicant's disability based upon causation. However, that is not the end of the analysis.

As we have explained in previous decisions, apportionment also exists under section 4664, which allows apportionment to prior awards and precludes the accumulation of awards to certain body regions from exceeding 100% over the course of one's life. (§ 4664.) Before addressing the interplay of sections 4663(e) and 4664, it is important to understand the history of section 4664, which was previously discussed by the Appeals Board in dual en banc decisions as follows:

> The apportionment of pre-existing permanent disability has been a fixture of California workers' compensation law since its inception. The original Workmen's Compensation, Insurance and Safety Act of 1917 (the 1917 Act) contained a provision stating: "The percentage of permanent disability caused by any injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any injury previously suffered or any permanent disability caused thereby." (Stats. 1917, ch. 586, p. 839, § 9; see also, Stats. 1919, ch. 471, p. 916, § 4; Stats. 1925, ch. 354, p. 643, § 1.) In 1929, the Legislature amended the 1917 Act to provide:
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> > ""The fact an employee has suffered previous disability or received compensation therefor shall not preclude compensation for a later injury . . . ; . . . provided, however, that an employee who is suffering physical impairment and shall sustain permanent injury thereafter shall not receive compensation for a later injury in excess of the compensation allowed for such injury when considered by itself and

> not in conjunction with or in relation to the previous disability or impairment. The employer shall not be liable for compensation to such employee for the combined disability but only for that portion due to the later injury as though no prior disability or impairment had existed." (Stats. 1929, ch. 222, p. 420, § 1.)"

In 1937, the 1917 Act and its amendments were codified in the Labor Code. At that time, the Legislature adopted former section 4750, whose language was substantially similar to the 1929 law, *supra*. For the next 67 years, the language of former section 4750 remained essentially unchanged, until its repeal on April 19, 2004 by SB 899. (Stats. 2004, ch. 34, § 37.) At the time of its repeal, former section 4750 provided:

> ""An employee who is suffering from a previous permanent disability or physical impairment and sustains permanent injury thereafter shall not receive from the employer compensation for the later injury in excess of the compensation allowed for such injury when considered by itself and not in conjunction with or in relation to the previous disability or impairment.
>
> "The employer shall not be liable for compensation to such an employee for the combined disability, but only for that portion due to the later injury as though no prior disability or impairment had existed." (Stats. 1937, ch. 90, p. 285; amended by Stats. 1945, ch. 1161, p. 2209, § 1.) "

One long-standing purpose of former section 4750 was to encourage employers to hire people with disabilities; the Legislature recognized that employers might refrain from hiring the disabled if, upon a subsequent injury, the employer would become obligated to compensate the employee for the pre-existing disability. (Citations.) Thus, under former section 4750, when an employee who had pre-existing permanent disability sustained an industrial injury that also resulted in permanent disability, the employer or its insurer was not liable for the combined disability, but only for that portion attributable to the subsequent industrial injury, considered alone. (.)

(*Sanchez v. County of Los Angeles* (2005) 70 Cal. Comp. Cases 1440, 1444-1445 [Appeals Board en banc] disapproved on another ground in *Kopping v. Workers' Comp. Appeals Bd*. (2006) 142 Cal.App.4th 1099; see also *Strong v. City and County of San Francisco* (2005) 70 Cal. Comp. Cases 1460 [Appeals Board en banc] disapproved on another ground in *Kopping*, *supra*.)

Under SB 899, section 4664 was added to the Labor Code in place of former section 4750 and it states, in pertinent part:

> (a) The employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment.
>
> (b) If the applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury. This presumption is a presumption affecting the burden of proof.

Over the years since its enactment in 2004, multiple cases have interpreted how apportionment is established pursuant to section 4664(b).

First, defendant must prove that a prior award of disability exists. (*Pasquotto v. Hayward Lumber* (2006) 71 Cal. Comp. Cases 223 [Appeals Board en banc]; see *Sanchez*, *supra*; see also *Strong*, *supra*.) This burden requires the production of a prior Stipulations with Request for Award, or a prior Compromise and Release, where the parties agreed to applicant's level of permanent disability in the settlement. (*Pasquotto*, *supra*, at p. 230.)

Once a prior award of permanent disability is established, the disability in that award is conclusively presumed to exist.

> When the defendant has established the existence of any prior permanent disability award(s) relating to the same body region, the permanent disability underlying any such award(s) is conclusively presumed to still exist, i.e., the applicant is not permitted to show medical rehabilitation from the disabling effects of the earlier industrial injury or injuries[.]

(*Sanchez*, *supra*, 70 Cal. Comp. Cases at p. 1442; *Strong*, *supra*, 70 Cal. Comp. Cases at p. 1462; see also *Brodie v. Workers' Comp. Appeals Bd*. (2007) 40 Cal.4th 1313, 1327 ["[S]ection 4664, subdivision (b) was intended to reverse the rule based on former section 4750 that permitted an injured employee to show rehabilitation of an injury for which a permanent disability award had already been issued. (Citation.)")

Section 4664 contains contradictory language, indicating that it operates as both a conclusive presumption and a rebuttable presumption. In dual en banc opinions, the Appeals Board initially interpreted this contradiction as a burden-shifting mechanism, which required defendant to establish the existence of a prior award of disability, but permitted applicant to rebut the conclusive presumption by proving that the prior award did not overlap with applicant's current disability. (*Sanchez*, *supra*, 70 Cal. Comp. Cases at p. 1442; *Strong*, *supra*. 70 Cal. Comp. Cases at p. 1462.) However, the Court of Appeal rejected this burden-shifting approach, and instead

required that defendant prove both the existence of a prior award of disability and that the prior award of disability overlaps with the current award of disability. (*Kopping*, *supra*, 142 Cal.App.4th at p. 1115.)

Accordingly, and following the decisions in *Sanchez* and *Strong* as modified by *Kopping*, where defendant proves that a prior award of disability exists and proves that the prior award of disability overlaps with the current award, defendant is entitled to subtract the prior award of overlapping permanent disability from applicant's current award. (*Brodie*, *supra*, 40 Cal.4th at p. 1332 [deciding that the proper method of calculating apportionment is to subtract the prior disability from the present].)

The Appeals Board noted in both *Sanchez* and *Strong* that the principles of proving overlap are substantially the same principles of overlap applied prior to the enactment of SB 899. (*Sanchez*, *supra*, 70 Cal. Comp. Cases at p. 1457; *Strong*, *supra*, 70 Cal. Comp. Cases at p. 1477.)

> We state that apportionment shall be determined "substantially" in accordance with historical overlap principles because we recognize that, in future cases, the differences between how permanent disability is determined under the April 1997 Schedule for Rating Permanent Disabilities and how it is determined under the January 2005 Schedule for Rating Permanent Disabilities may present novel overlap questions. None of these questions are presented here, however, and we will not speculate on them.

(*Sanchez*, *supra*, 70 Cal. Comp. Cases at p. 1457; *Strong*, *supra*, 70 Cal. Comp. Cases at p. 1477.)

The Appeals Board explained the historical principles of overlap within its decisions in *Sanchez* and *Strong*:

> In applying former section 4750, when the permanent disability resulting from a new injury included factors of disability that were the same as ones that already existed as the result of a prior injury or condition, the disabilities were said to "overlap." (Citations.) If all of the factors of permanent disability attributable to the subsequent industrial injury already existed as a result of the prior injury or condition, then there was "total" overlap, and the employee was not entitled to any additional permanent disability indemnity; if, however, the subsequent industrial injury caused some new factors of permanent disability that were not pre-existing, then there was "partial" overlap, and the employee was entitled to permanent disability indemnity to the extent the subsequent industrial injury further restricted his or her earning capacity or ability to compete. (*Mercier v. Workers' Comp. Appeals Bd.*, *supra*, 16 Cal.3d 711

(employee had prior back disability precluding heavy lifting and repetitive bending, and then sustained a new industrial injury to his heart resulting in a limitation between light work and semi-sedentary work and in a need to avoid strenuous activities and severe emotional stress; *held*, all factors of disability attributable to the back were included in or subsumed by the factors attributable to the heart injury, resulting in total overlap, and it was proper to deduct the rating for the back disability from the rating for the heart disability); *State Comp. Ins. Fund v. Industrial Acc. Com.* (*Hutchinson*), *supra*, 59 Cal.2d 45 (employee had prior neck disability consisting of constant slight pain, becoming slight with overhead work and climbing, and becoming moderate with lifting over 30 pounds, and then sustained a new injury to his low back resulting in disability consisting of minimal pain increasing to slight pain on heavy work; *held,* disability from neck injury was held to overlap the disability from back injury because the latter resulted in pain when performing certain work activities); *Edson v. Industrial Acc. Com*. (1928) 206 Cal. 134 [273 P. 572] [15 I.A.C. 193] (employee had previously lost 30/50ths of the sight of each eye, and then sustained new industrial injury resulting in an additional 17-&1/2/50ths loss of the sight of his left eye; *held*, employee entitled to compensation only for the latter impairment); *Gardner v. Industrial Acc. Com.*, *supra*, 28 Cal.App.2d 582 (employee had prior left ankle disability resulting in partial stiffness of the ankle joint, and then sustained a new industrial injury resulting in amputation of left leg between knee and hip joint; *held*, rating for loss of leg properly reduced by rating for ankle).) As can be seen from these cases, it was not the part of the body involved in the subsequent industrial injury that was important; rather, it was the nature of the disability resulting from the new injury in relation to the pre-existing disability that was determinative. (Citation.) Thus, the fact that the pre-existing disability and the new disability involved two different anatomical parts of the body, while relevant, did not in itself preclude apportionment using the rules of overlap. (Citations) **The mechanics of rating overlap generally provided that each separate factor of permanent disability for both the new industrial injury and the pre-existing condition be set forth, so it could be determined what elements, if any, of one disability were included in the other**. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Gaba*), *supra*, 72 Cal.App.3d 13 (rating instructions for subsequent industrial heart injury described employee's disability as "moderate" but omitted any heart-related work restrictions; WCAB's decision was annulled and the matter remanded to delineate work preclusions for heart and to determine extent, if any, to which employee's heart disability overlapped pre-existing back disability resulting in a limitation to light work).) The

> issue of apportionment would be resolved by determining the percentage of combined disability after the new injury, and then subtracting the percentage of disability due to the prior injury which overlapped—either partially or totally—the disability resulting from the new injury. (Citations.)
>
> If, however, successive injuries produced separate and independent disabilities—i.e., if the disabilities did not fully or partially overlap because they did not affect the *same* abilities to compete and earn—then each was rated separately. (*Mercier v. Workers' Comp. Appeals Bd*., *supra*, 16 Cal.3d at p. 714; *State Comp. Ins. Fund. v. Industrial Acc. Com*. (*Hutchinson*), *supra*, 59 Cal.2d at p. 53; *Fresno Unified School Dist. v. Workers' Compensation Appeals Bd*. (*Humphrey*) (2000) 84 Cal.App.4th 1295, 1310, fn. 3 [101 Cal. Rptr. 2d 569] [65 Cal.Comp.Cases 1232].) Thus, for example, where an employee, who had a childhood disease that resulted in the amputation of one leg above the knee, later sustained an industrially-related cerebral vascular accident that resulted in hearing loss, loss of the use of his left arm, decreased vision, loss of memory, and learning disabilities, the employee was entitled to the full rating for the industrial disabilities because they did not overlap the pre-existing loss of his leg. (*Newman v. Workers' Comp. Appeals Bd*. (1984) 152 Cal.App.3d 219, 223 [199 Cal. Rptr. 422] [49 Cal.Comp.Cases 126].)

(*Sanchez*, *supra*, 70 Cal. Comp. Cases at pp. 1445-1447, emphasis added; *Strong*, *supra*, 70 Cal. Comp. Cases at pp. 1465-1468.)

Accordingly, in analyzing overlap we are looking at the *factors* of disability that constitute the rating.

Under the 1997 Permanent Disability Rating Schedule (PDRS), impairment was assigned through objective limitations, such as amputations, and through preclusions upon the ability to work. (Cal. Dept. of Industrial Relations, Div. of Workers' Comp., Schedule for Rating Permanent Disabilities (1997) p. 1-2.) For example, a disability to the spine could be described through a work restriction chart which progressively increased beginning with a preclusion from substantial work, and ending with a limitation to sedentary work only. (*Id*. at p. 2-15.)

However, under SB 899 the mechanics of rating permanent disability significantly changed. The Legislature adopted and incorporated the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (2001) (AMA Guides). Impairment under the AMA Guides is designed to reflect how a disability affects a person's activities of daily living

("ADLs") (self-care, communication, physical activity, sensory function, non-specialized hand activities, travel, sex, and sleep). (AMA Guides, pp. 2–9.) Unlike the prior PDRS, the AMA Guides expressly excludes work from the impairment analysis. (*Id*. at p. 6.)

> Impairment percentages or ratings developed by medical specialists are consensus-derived estimates that reflect the severity of the medical condition and the degree to which the impairment decreases an individual's ability to perform common activities of daily living (ADL),excluding work. Impairment ratings were designed to reflect functional limitations and not disability. The whole person impairment percentages listed in the Guides estimate the impact of the impairment on the individual's overall ability to perform activities of daily living, excluding work[.]

(*Ibid*.)

Thus, similar to the 1997 PDRS, overlap under the 2005 PDRS is shown on a *legal* basis when the second impairment is simply a progression of the first impairment utilizing the exact same chart or table within the AMA Guides.

In cases where the disability is not rated using a progression within the same chart or table, overlap is a *factual* issue requiring medical evidence establishing overlap between the two disabilities. In some cases, a doctor may deviate from using the same chart to rate the subsequent injury. For example, a doctor may rate an injury by analogy using other charts or tables in the AMA Guides. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd*. (*Almaraz-Guzman*) (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].) Another example could occur where a low back injury is rated disparately using a Diagnosis Related Estimate in one case, and the Range of Motion method in another.

Where the disability is not rated using a progression within the same chart or table, overlap may be shown when the medical evidence demonstrates the following:

1. The impacts to the ADLs from the prior award of disability are to the same body region.
2. The impacts to the ADLs from the current award of disability overlap the impacts to the ADLs measured in the prior disability.

The presence of factual overlap requires medical reporting. 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. (See also, *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604, 621 (Appeals Board en

banc) [wherein the Appeals Board required that apportionment under section 4663 be established by substantial medical evidence].) "[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] ["In a field which forces the experts into hypothesis, unaided lay judgment amounts to nothing more than speculation"].) We see no reason to deviate from this requirement when analyzing application of section 4664(b).

b. Defendant's Petition for Reconsideration

With the above analysis in mind, we can now address the issues raised in this case. Applicant does not challenge the WCJ's finding that apportionment under section 4664 exists. The only issue on reconsideration is how such apportionment should be calculated.

When apportionment is proven pursuant to section 4664, the correct method for calculating apportionment was decided by the Supreme Court in *Brodie*, *supra*. The percentage of disability attributable to the new injury is calculated by subtracting the old rating from the new rating, then awarding the difference. (*Brodie*, *supra* 40 Cal. 4th 1322.) The *Brodie* court expressly rejected the formula used by the WCJ in this case, which was to subtract the dollar amount of the prior disability from the dollar amount of the present disability. (*Ibid*.)

The WCJ based their opinion, in part, upon the Appeals Board holding in *Bates v. County of San Mateo*, 2019 Cal. Wrk. Comp. P.D. LEXIS 72.[2] In *Bates*, the Appeals Board addressed a novel argument raised by defendant, that apportionment based upon causation was allowed notwithstanding section 4663(e) because section 4664(a) states: "(a) The employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment." (§ 4664(a).) The employer argued that section 4664(a) was outside section 4663 and thus apportionment based upon causation was permissible notwithstanding 4663(e)'s non-attribution clause. The Appeals Board rejected this argument and held that section 4664(a) states a general principle of apportionment and the more specific section

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

of 4663(e) excluding apportionment based upon causation for certain presumed injuries was controlling. *(Bates, supra*, at *17-19.)

The Appeals Board further noted that apportionment under *Benson* is also not permitted when dealing with presumptive injuries as *Benson* apportionment necessarily involves apportionment based upon causation under section 4663. (*Id*. at *12-13.)

We continue to find the holding in *Bates* persuasive. The inclusion of a general principle of apportionment in section 4664(a), does not override the more specific exclusion of apportionment based upon causation contained in 4663(e). However, the *Bates* opinion did not address the dispute in this matter. The question here is whether the non-attribution clause of section 4663(e) in any way impacts the apportionment calculation under section 4664(b) and *Brodie*. It does not.

In reaching our conclusion, we must address another panel decision, *Thomas Santiago v. California Highway Patrol*, which expanded our holding in *Bates* and found that presumptive injuries contained in 4663(e) are not subject to apportionment under section 4664(b). (2022 Cal.Wrk.Comp. LEXIS 51; 87 Cal Comp.Cases 1011.) However, we do not find the holding in *Santiago* persuasive as it does not adequately explain why section 4664(b) is preempted by section 4663(e).

Section 4663(e) precludes apportionment based upon *causation* of disability. *Apportionment under 4664(b) is not apportionment based upon causation, but instead is apportionment to a prior award of disability, which overlaps with the current award.*

That is, like section 4663(e), section 4664 requires an analysis of whether the two disabilities overlap, but that analysis **does not involve causation of the disability**. This is because a prior award necessarily reflects only that portion of the disability that was found industrial. When examining a prior award of disability, any analysis under section 4663 has already occurred.

As explained above, overlap analyzes **the *factors* of disability**. (*Contra Costa County Fire Protection District v. Workers' Comp. Appeals Bd*. (*Minvielle*) (2010) 75 Cal.Comp.Cases 896 [2010 Cal. Wrk. Comp. LEXIS 144].) The factors of disability are the methods used in the AMA Guides to rate an impairment. (See *Hom v. City & County of San Francisco*, 2020 Cal. Wrk. Comp. P.D. LEXIS 124 [finding overlap where injuries are rated using the same edition of the AMA Guides]; *Robinson v. Workers' Comp. Appeals Bd*. (2011) 76 Cal.Comp.Cases 847 [finding

overlap where prior award was recalculated using the same metric as the current award and constituted substantial medical evidence].)

As the basis for apportionment under section 4664(b) does not analyze the cause of the disability, section 4663(e) does not preclude its application. When calculating apportionment under section 4664(b), we find no reason to disregard the holding in *Brodie*, even where the injury is subject to the anti-attribution clause of section 4663(e).

Accordingly, as our Decision After Reconsideration, we rescind the WCJ's February 19, 2021 F&A and substitute a new finding that applicant's disability after apportionment under section 4664 is 15% (24% - 9%). As a precaution, we will issue an order deferring all issues in ADJ11349617 as the case number was raised at trial; however, the parties entered into no stipulations on that case and raised no issues related to that case and the WCJ made no findings that appear linked to that case. It appears that the parties may have intended to dismiss that case as it appears to have been subsumed as part of the cumulative trauma. If that is the case, the parties may wish to submit a stipulation to that effect.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Award issued WCJ's February 19, 2021, is **RESCINDED** with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT IN ADJ11349806

1. Claudia Canto Shadoan, while employed during the period August 25, 2010 through March 2, 2017 as a detective, occupational group number 490 at San Diego California by the City of San Diego, sustained injury arising out of and in the course of employment to her back.

2. At the time of injury, the employee's earnings were $1,533.60 per week.

3. Applicant is in need of further medical treatment to cure or relieve from the effects of the industrial injury.

4. Applicant's level of permanent disability to the low back is 24% before apportionment.

5. Applicant has received a prior award of permanent disability to the low back in the amount of 9%.

6. Labor Code section 3213.2 is applicable to this injury.

7. This injury caused permanent disability of 15% after apportionment under Labor Code section 4664.

8. Applicant requires further medical treatment to cure or relieve from the effects of this injury.

9. Attorney's fees of 15% of the benefits awarded herein are reasonable.

AWARD IN ADJ11349806

AWARD IS MADE in favor of **CLAUDIA CANTO SHADOAN**, against **CITY OF SAN DIEGO** of:

A. Permanent disability of 15% after apportionment under Labor Code section 4664, which is all due and payable at the rate of $290.00 per week for 50.5 weeks, for a total of $14,645.00, less credit for permanent disability advances made, if any, and less attorney's fees of $2,196.75, payable to the Law Offices of O'Mara & Hampton.

B. Further medical treatment in accordance with Finding No. 2, above.

ADJ11349617

1. All issues are deferred.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level**.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 4, 2025

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

CLAUDIA CANTO SHADOAN
O'MARA & HAMPTON
OFFICE OF THE CITY ATTORNEY, CITY OF SAN DIEGO

EDL/mt

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